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By Permission of the Court

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

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## PRELIMINARY STATEMENT

SJI's Opposition repeats the same errors in the Injunction Order and fails to show how this decision was a defensible exercise of trial court discretion. The Injunction Order was effectively a judicially-ordered firing of REV LNG's founding CEO. It was premised on a fundamental misreading of a single subpart in an interested-transactions section, a misreading that disregarded the rest of the LLCA, including the specific provisions that govern Kailbourne's hiring or dismissal, to hand SJI a unilateral termination right as the minority Member. And it turned the status quo on its head, causing significant prejudice to Appellants and the Company, while forcibly removing the only CEO the Company had since its inception.

SJI notably cannot dispute that: (i) Kailbourne was CEO at the time SJI filed this suit; (ii) the Company's revenues and Company EBITDA increased dramatically during his tenure; and (iii) SJI did not take the position that Kailbourne could or should be terminated through the unilateral vote of its own Managers until more than a month after it filed suit, despite having been complaining vociferously regarding Kailbourne's actions as CEO for more than a year before the lawsuit.<sup>1</sup> If, as SJI now

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<sup>1</sup> SJI correctly states that it requested a vote on Kailbourne's termination in a May 27, 2025 letter and makes no assertion that it attempted to remove Kailbourne before that time. (*See* SJI Br. at 11.) The May 27 letter was sent more than a month after SJI filed this lawsuit. And the May 27 letter itself makes no assertion that RH's Managers are barred from voting on whether Kailbourne should be terminated. (*See* R44; R529.) While Appellants strongly disagree with the contentions in the May 27 letter, the absence of any assertion in that letter regarding SJI's purported right to

asserts, it had “negotiated” or “bargained” for the right to exclude the RH-appointed Managers from any vote to terminate Kailbourne (and especially given that SJI itself drafted the relevant interested-transaction provision), one would expect SJI would have “discovered” this purported “right” long before it commenced litigation. SJI did not do so because it never had this right and did not “bargain” for such a right. The LLCA’s express terms, structure, and purpose foreclose SJI’s argument that Section 8.1(f)(iv) gives SJI the unilateral right to terminate Kailbourne.

After RH filed its opening appellate brief (the “RH Brief” or “RH Br.”), SJI took additional wrongful action to exclude Kailbourne from any operational or employment role at the Company, including by adopting a second purported written consent on October 3, 2025 purporting to bar Kailbourne from all employment or day-to-day involvement with the Company, not just as CEO. Appellants thereafter filed a motion with the First Department on October 29, 2025 for an interim stay of the Injunction Order pending appeal. On November 3, 2025, Justice Mendez granted Appellants’ application for an interim stay of the Injunction Order pending determination of the stay motion by a full panel of the Court. Briefing on the stay motion is due to be completed on November 17, 2025.

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exclude RH’s Managers from a termination decision only further undercuts SJI’s position.

Simply put, the Injunction Order was an abuse of discretion, has caused substantial prejudice, and should be reversed.

### **ARGUMENT**

SJI fails to show that the trial court had discretion to grant preliminary injunctive relief based on a legally erroneous contractual interpretation, or that this Court lacks discretion or authority to reverse such an erroneous order. *See Vision Dev. Grp. Of Broward County, LLC v. Chelsey Funding, LLC*, 43 A.D.3d 373, 373-74 (1st Dep't 2007) (reversing injunction "on the law" where contract language was "unambiguous" and refuted plaintiff's position); *Lehey v. Goldburt*, 90 A.D.3d 410, 412 (1st Dep't 2011) ("To the extent Supreme Court based its order on its examination of FSJ's operating agreement, we examine the agreement's language de novo," and "we read the agreement to unambiguously permit Goldburt to serve as manager" of LLC; reversing preliminary injunction removing him as manager).

As in *Lehey*, the trial court did not have discretion to remove Kailbourne based on a misreading of the LLCA and abused its discretion in ousting an LLC's chief executive through a preliminary injunction. Just like the erroneous Injunction Order itself, SJI's Opposition takes Section 8.1(f)(iv) out of context and offers no plausible explanation of why the parties would intend this generalized provision to swallow and annul the specific protections for dismissal decisions pertaining to Kailbourne, who is defined by name as a "Key Employee." If this really was a "bargained-for

minority right” as SJI repeatedly claims on appeal, one would expect to see it spelled out with specificity, and one would expect SJI to have asserted this right long before it filed suit, not more than a month afterwards.

The trial court further abused its discretion in using the guise of status-quo-preservation to upend the status quo that existed at the time this suit was filed in April 2025 and at all prior times in REV LNG’s history: that Kailbourne was CEO. The “status quo” for preliminary injunction purposes is the “established” status quo between the parties, not an artificial litigation “status quo” manufactured for the first time by plaintiffs more than a month after suit was filed. *See Wall St. Garage Parking Corp. v. New York Stock Exch., Inc.*, 10 A.D.3d 223, 226-27 (1st Dep’t 2004) (reversing preliminary injunction where status quo had not “undergone any substantial change so as to warrant judicial restoration of established procedures,” where status quo was represented by security measures “that had already been in place for some 2½ years”); *Shake Shack Fulton St. Brooklyn, LLC v. Allied Prop. Group, LLC*, 177 A.D.3d 924, 928 (2d Dep’t 2019) (reversing portions of preliminary injunction where “the grant of this relief effectively altered the status quo” rather than merely “maintaining the status quo”); *New York Auto. Ins. Plan v. New York Schools Ins. Recip.*, 241 A.D.2d 313, 315 (1st Dep’t 1997) (reversing preliminary injunction where “the injunction here dramatically altered, rather than maintained, the status quo” by altering the “established practice between the parties”

that existed before the suit); *Rosa Hair Stylists, Inc. v. Jaber Food Corp.*, 218 A.D.2d 793, 794 (2d Dep’t 1995) (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”).

As set forth below, SJI’s arguments for affirmance lack merit.

**I. SJI and the Trial Court Have Fundamentally Misconstrued the LLCA**

SJI is flatly wrong about the core contractual construction issue that underpins the Injunction Order: Does the LLCA bestow upon SJI the extraordinary unilateral right as minority Member to remove Kailbourne as CEO? As previously shown, it does not. (*See* RH Br. at 27-38.) The LLCA again identifies Kailbourne by name in the definition of “Key Employee,” which provides that Kailbourne cannot be divested of that status without amending the LLCA. (RH Br. at 12; R66 § 1.1.) Schedule D to the LLCA specifically identifies “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” as matters that require approval by a “Super-Majority in Interest.” (RH Br. at 13-14, 29; 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.” (RH Br. 29; R71 § 1.1.) It makes no sense for the parties to have included these specific provisions—

which convey an unmistakable intent to make it harder to terminate Kailbourne—if the parties actually intended to make it easy for SJI to terminate him unilaterally.

Further, 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. (RH Br. at 31-32.) SJI would thus be “Interested” to the same extent as RH. It would be similarly anomalous, would frustrate the LLCA’s purpose, and would contravene the duty of good faith and fair dealing to interpret Section 8.1(f) as giving SJI the unilateral right to block the continued employment “Milestone Closing Condition” by simply terminating Kailbourne, thereby transforming the closing obligations into an option that SJI could unilaterally exercise. (RH Br. at 34-36; LLCA § 1.1, R63, R65.) Indeed, Section 15.8 of the LLCA requires SJI to “take such further actions as may be reasonably required or desirable to carry out the provisions and the transactions contemplated by this LLC Agreement,” which would necessarily include the Milestone Closing Conditions set forth in the LLCA, and which is inconsistent with allowing SJI to attempt to frustrate a Milestone Closing Condition by unilaterally terminating Kailbourne. (LLCA § 15.8; R113.)

In fact, under SJI’s logic, Section 8.1(f)(iv) could be read to encompass virtually any Board decision. Companies cannot act other than through their “officers, employees, or other personnel.” Thus, virtually any Board decision could

be said to be “in respect of” the Company’s “officers, employees, or other personnel” (which necessarily would include Kailbourne as a Key Employee) and thus shoehorned into SJI’s errant construction of Section 8.1(f)(iv). Does Section 8.1(f) mean that the RH Managers cannot vote to approve any business plan or transaction that might indirectly impact Kailbourne’s compensation or responsibilities? Does it mean that the RH Managers cannot vote to direct Kailbourne or any other officer associated with RH to carry out the Board’s resolutions? Section 8.1(f)(iv) should be interpreted consistently with Section 8.1(f)’s first three subparts, which more narrowly pertain to transactions and agreements between interested parties and the Company rather than internal employment decisions that are addressed elsewhere in the LLCA with specificity. (RH Br. at 34-35; *Com. Ex rel. Fisher v. Philip Morris, Inc.*, 4 A.3d 749, 756 & n. 8-9 (Pa. Commw. Ct. 2010) (discussing principles of *ejusdem generis* and *noscitur a sociis* in interpreting prongs of a consent decree as having consistent meanings); *Com. Ex. Rel. Kane v. UPMC*, 129 A.3d 441, 463-64 (Pa. 2015) (“[T]he entire contract should be read as a whole ... to give effect to its true purpose”) (citing *Pritchard v. Wick*, 178 A.2d 725, 727 (Pa. 1962)).

The required presence of “at least one RH Manager” for a quorum, as well as the use of the singular word “Manager” in Section 8.1(f) and the absence of any reference to “dismissal” decisions or the defined terms “Key Employee” and “Officer” in Section 8.1(f)(iv), further confirm the LLCA was never intended to

allow the complete elimination of any input from RH's Managers in voting on Kailbourne's termination. (*See* RH Br. at 32-33.)

The fact that SJI drafted Section 8.1(f)(iv) also weighs heavily against interpreting it in SJI's favor. (RH Br. at 36-37.) Once again, despite peppering its brief with the phrases "bargained-for minority rights" and "bargained-for minority voting rights," SJI is tellingly unable to cite any evidence that it "bargained" for the unilateral termination right that it now claims, or that SJI believed it had "bargained" for any such right before it filed this suit. The fact that SJI itself drafted Section 8.1(f)(iv), yet made no claim that it had "bargained" for a unilateral minority termination right until well after this litigation was already underway (and more than a year after it launched its anti-Kailbourne campaign) belies SJI's contention that it bargained for the right it now asserts. The "course of dealing" evidence similarly refutes SJI's position. (RH Br. at 37-39.)

In short, before it filed this lawsuit, not even SJI itself believed that the provision it drafted and "bargained for" confers the unilateral termination right it now claims. This is unsurprising because the LLCA affords SJI no such right.

## **II. SJI's Contrary Contractual Construction Arguments Are Meritless**

SJI's efforts to explain away the numerous faults in the Injunction Order's interpretation are unavailing and contradict basic contract construction canons.

**A. The Last Sentence of Section 8.1(e)(ii) Does Not Give SJI the Unilateral Right To Terminate Kailbourne**

First, contrary to SJI's assertion, the fact that the last sentence of Section 8.1(e)(ii) contemplates the possibility that "one or more Managers" could be prohibited from voting on a matter requiring Super-Majority in Interest approval does not in any way mean that Section 8.1(f)(iv) applies to "hiring and dismissal" decisions involving Kailbourne. (SJI Br. at 26.) Some of the items in Schedule D, such as "entering into any transaction or investment that is not within the Business of the Company," could potentially involve a "transaction" with a Member-associated entity, so it is unsurprising that the LLCA would include a mechanism for addressing those situations. By contrast, any "hiring and dismissal decisions" affecting Kailbourne would always necessarily affect a person associated with RH. Kailbourne is defined by name as a permanent Key Employee, signed the LLCA as CEO of RH, and is listed in Exhibit A as the contact for RH. He was the CEO of REV LNG before SJI invested, so it was fully understood he was associated with the preexisting 100% owner. It makes no sense that the parties would go to the trouble of requiring Super-Majority in Interest approval of "dismissal decisions" regarding Kailbourne if in fact SJI had a unilateral termination right with respect to all such decisions.

Again, Pennsylvania courts avoid interpretations that "annul" other contractual provisions or defeat the common-sense purpose of the agreement. *See*

*UPMC*, 129 A.3d at 464 (Pa. 2015) (courts typically “will not interpret one provision of a contract in a manner which results in another portion being annulled”) (citing *LJL Transp. v. Pilot Air Freight*, 962 A.2d 639, 648 (2009)); *Binswanger of Pa., Inc. v. TSG Real Estate LLC*, 217 A.3d 256, 262 (Pa. 2019) (“[b]efore a court will interpret a provision . . . in a contract in such a way as to lead to an absurdity or make the . . . contract ineffective to accomplish its purpose, it will endeavor to find an interpretation which will effectuate the reasonable result intended”). SJI’s interpretation flouts these principles by making the Super-Majority requirement self-annulling and self-defeating for any vote on Kailbourne’s dismissal. Its proposed interpretation would give SJI an automatic termination right over Kailbourne under all circumstances, which defeats the common-sense purpose of imposing a Super-Majority voting requirement. And SJI’s interpretation again tramples the long-standing principle that specific contractual provisions control over more general language like that in Section 8.1(f)(iv). *See Nitardy v. Chabot*, 195 A.3d 941, 952 (Pa. Super. Ct. 2018) (“[W]hen interpreting a contract, the specific controls over the general”). SJI’s Section 8.1(e)(ii) argument is wholly meritless.

**B. SJI Did Not “Bargain” for the Right To Terminate Kailbourne**

Second, there is again no merit to SJI’s bald assertion that it “bargained for” Section 8.1(f)(iv) as a “minority” right to terminate Kailbourne unilaterally. (*See SJI Br.* at 26-28.) SJI never before claimed it had “bargained” for such a right until more

than a month after it filed this lawsuit, and more than a year after it launched its anti-Kailbourne disparagement campaign. On its face, Section 8.1(f) does not address “minority” rights and equally applies to situations where SJI is the “Interested Member.” SJI’s assertion that its interpretation does not give it the “unmitigated right” to terminate Kailbourne (SJI Br. at 28) is demonstrably untrue, as any vote on Kailbourne’s dismissal by definition would involve an RH-associated person and thus be an “Interested Member Matter” under SJI’s litigation-concocted reading.

Simply put, the fact that SJI drafted Section 8.1(f)(iv) while knowing that Kailbourne was both CEO and a RH Manager, yet never claimed a unilateral right to terminate Kailbourne until years later, fatally undercuts any contention that SJI “bargained” for this right. Until this lawsuit, not even SJI itself believed the “mousehole” of Section 8.1(f)(iv) housed the “elephant” of a right it now claims it negotiated to achieve. (RH Br. at 28.) Even the May 27, 2025 letter setting forth SJI’s meritless factual pretext for Kailbourne’s termination does not assert that SJI’s Managers could make this decision unilaterally. (*See* R44; R529.)

For good reason, Pennsylvania law construes provisions like this against the drafter and will not construe generalized language to override specific contractual rights. (*Id.* at 28, 36.) And Pennsylvania law requires that courts exercise common sense in interpreting contractual terms to achieve “the reasonable result intended.” *Binswanger*, 217 A.3d at 262. As a matter of common sense, the “reasonable result”

of requiring a “Super-Majority” vote is to make it impossible for either Member to terminate Kailbourne unilaterally, not to allow SJI to do it on its own. The “reasonable result” of designating Kailbourne as a permanent “Key Employee” is that SJI cannot unilaterally decide that he can no longer be employed. SJI’s upside-down world where “Super-Majority” means “unilateral minority” and permanent “Key Employee” means “unilaterally fireable by SJI”<sup>2</sup> is entirely at odds with Pennsylvania law.

**C. SJI Would Itself Be an “Interested Member” under Section 8.1(f)(i) if Section 8.1(f) Applies to Kailbourne-Related Dismissal Decisions**

Third, SJI has no effective response to Appellants’ observation that, if Section 8.1(f) applies to dismissal decisions regarding Kailbourne, then SJI would itself be an “Interested Member” with respect to such decision under Section 8.1(f)(i) because Kailbourne’s continued employment is a Milestone Closing Condition for the Initial and Final Milestones. (*See* SJI Br. at 30-31; RH Br. at 31-32.) SJI cannot reasonably dispute that it is an Interested Member with respect to the buyout or that the Milestone Closing Conditions are directly related to the buyout. Section 8.1(f)(i) restricts Members from voting on “taking any other action in respect of any

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<sup>2</sup> SJI’s assertion that Kailbourne is an “at-will” employee as CEO (SJI Br. at 29-30) is of no moment. Appellants are not contending Kailbourne can never be terminated *by the Company* as CEO, but that decisions regarding his “dismissal” cannot be made unilaterally by SJI. And again, the express terms of the LLCA’s “Key Employee” definition state that Kailbourne is a Key Employee unless the definition is later amended.

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.

SJI appears to assert that one cannot construe Section 8.1(f)(i) as rendering SJI interested with respect to the buyout without construing Section 8.1(f)(i) as applying to literally every decision by the Board, on the theory that every decision is “in respect of” the LLCA because the LLCA is the Company’s governing document. (SJI Br. at 30-31.) This assertion is meritless. The buyout contemplated in the LLCA is a transaction agreement in which SJI has a self-evident financial interest. The Milestone Closing Conditions pertaining to the buyout expressly include Kailbourne’s continued employment. Just because the buyout “agreement” is housed in the LLCA itself rather than a separate document does not mean it is carved out from Section 8.1(f)(i). One can easily interpret Section 8.1(f)(i) as implicating a buyout-related closing condition without adopting SJI’s expansive straw-man interpretation that Section 8.1(f)(i) encompasses every Board decision. Again, Pennsylvania law requires “reasonable” constructions. (*See Binswanger* 217 A.3d at 262)

Regardless, the provisions fit together and confirm that the parties did not intend for Section 8.1(f)(iv) to give SJI a unilateral right to terminate Kailbourne. The LLCA expressly provides elsewhere that Kailbourne is a Key Employee and that “hiring and dismissal” decisions regarding Key Employees require Super-

Majority approval. Nothing in Section 8.1(f)(iv) states that it confers on SJI a unilateral right to make “dismissal” decisions involving Key Employees, which include Kailbourne. Section 8.1(f)(i) would further divest SJI of any such unilateral authority because SJI itself would be an “Interested Member” with respect to such a determination. It is thus no mystery why SJI never claimed to have unilateral termination authority over Kailbourne until after this suit was filed.

**D. SJI’s “Motive” and “Waiver” Arguments Lack Merit**

Fourth, SJI wrongly asserts that Appellants did not raise SJI’s self-interested motive to frustrate the “continued employment” condition in the trial court. (SJI Br. at 46-50.) Appellants expressly joined the Company’s injunction opposition in the trial court and adopted all of the Company’s trial court arguments in opposition to SJI’s injunction request. (*See* R680, RH Injunction Opp. at 6 (stating that Appellants “join in, and incorporate by reference, the Company’s opposition.”) The Company’s trial court opposition repeatedly and prominently asserted that SJI’s injunction motion was part of SJI’s “effort to litigate its way out of its buyout obligation” and was motivated by SJI’s belief that it can “later argue that Kailbourne is no longer an employee so it does not have to proceed with closing under Section 11.7.” (R708 (Company Trial Br. at 2); R720) (“To the extent the SJI Member contends Kailbourne’s removal could eliminate its buyout obligation, the SJI Member is undeniably an Interested Party regarding Kailbourne’s continued employment”).)

SJI's motive to avoid the buyout is transparent from the face of its pleadings. Notably, while SJI has had every opportunity to prove it lacks such a motive with respect to Kailbourne's termination by agreeing to waive the continued-employment condition (which SJI admits it has the right to do (*see* SJI Br. at 49)), SJI has not done so. Indeed, SJI continues to assert that "it is SJI's choice whether to stand on" the continued-employment condition "to facilitate a buyout," with no exception if SJI itself caused this condition to fail by firing Kailbourne. (SJI Br. at 49.)

SJI is thus necessarily asserting that the buyout is no longer an "obligation" but simply an "option" that it can avoid by unilaterally firing the CEO. Interpreting Section 8.1(f)(iv) as transforming a carefully negotiated buyout *obligation* enshrined in numerous provisions of the LLCA into an *option* that SJI can unilaterally decline would render the buyout obligation meaningless and would not "effectuate the reasonable result intended" by the parties. *See Binswanger*, 217 A.3d at 262. The fact that the duty of good faith and fair dealing bars parties from defeating contractual expectations in such a manner, as well as Section 15.8's express requirement that SJI "take such further actions as may be reasonably required or desirable to carry out the provisions and the transactions contemplated by this LLC Agreement," further weigh against SJI's interpretation of Section 8.1(f)(iv) as transforming its buyout obligation into an option. (LLCA § 15.8; R113.) Regardless of whether SJI's termination of Kailbourne was itself motivated by SJI's desire to

avoid the buyout, interpreting Section 8.1(f)(iv) as allowing such a termination would frustrate the “reasonable result intended” by the LLCA.

**E. SJI’s “Quorum” and “Managers” Arguments Are Also Meritless**

SJI also misses the mark with respect to the “quorum” issue by contending that “Section 8.1(j) explicitly excludes Interested Managers from the quorum calculation with respect to Interested Member Matter.” (*See* SJ Br. at 32 n. 14; RH Br. at 14-15.) 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 just because RH itself is purportedly an Interested Member. (R89-90 § 8.1(j) (emphasis added).) The quorum provision thus further evidences that the parties did not intend to exclude all RH Managers from Board meetings where RH itself is supposedly “Interested.”

Further, while the “Rules of Interpretation” states that the defined terms in Section 1.1 “include the plural as well as the singular” (SJI Br. at 32), that clause simply reflects that the definition of “Manager” (for which the singular form is used in Section 1.1) would also apply when the plural is used. It does not say that the use of the singular term “Manager” in the specific context of Section 8.1(f) means that

the parties intended for the plural to apply instead.<sup>3</sup> The fact that at least one RH Manager must be present to have a quorum weighs against SJI's interpretation that all four RH Managers are automatically disqualified just because Kailbourne's association with RH allegedly renders RH "Interested." The LLCA's structure thus refutes SJI's assertion that the use of the singular term "Manager" in describing the scope of the purported disqualification in Section 8.1(f) was accidental.

In sum, when the LLCA is construed as a whole in compliance with Pennsylvania law, the agreement refutes SJI's assertion that the addition of Section 8.1(f)(iv) gave SJI the unilateral right to fire Kailbourne.

### **III. The Trial Court Abused Its Discretion in Finding Irreparable Injury or that the Balance of Equities Favored Injunctive Relief**

As stated before, the trial court also abused its discretion because the Injunction Order went far beyond "preserving" the status quo and instead enshrined a new artificial litigation-created alternative reality until Justice Mendez entered the interim stay. The trial court did exactly what *Lehey* forbids by prematurely resolving the merits of an LLC leadership dispute and terminating the chief executive in contravention of the LLC agreement's terms. *Lehey*, 90 A.D.3d at 411-12.

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<sup>3</sup> Moreover, the defined "terms include the plural as well as the singular" only "[u]nless otherwise indicated." R72 (LLCA § 1.2(a)). "Manager" is defined as "a Manager," and therefore "otherwise indicate[s]" that only the singular is included, not the plural. R67 (LLCA § 1.1).

For all practical purposes, the Injunction Order was a mandatory injunction implementing a judicially-ordered firing, rather than simply preserving the “established” status quo. The status quo at all times prior to SJI’s purported June 2025 termination—from the time the Company was founded and including the time *when this suit was filed*—was that *Kailbourne was CEO*. That should be viewed as the “established” status quo being preserved, not the artificial, litigation-driven circumstances that SJI engineered more than a month after filing suit. *See supra* at 4-5; *New York Auto.*, 241 A.D.2d at 315 (reversing preliminary injunction that altered the “established practice between the parties” that existed before the suit); *Wall St. Garage*, 10 A.D.3d at 226-27 (framing preliminary injunction analysis as whether the facts warranted “judicial restoration of established procedures”).

While SJI and the Injunction Order rely heavily on the Second Circuit’s decision in *Wisdom Import Sales Co., L.L.C. v. Labatt Brewing Co., Ltd.*, 339 F.3d 101, 114 (2d Cir. 2003) in finding irreparable harm, that decision confirms why the trial court abused its discretion and why the Injunction Order should be reversed. (*See* Injunction Order at 3; SJI Br. at 38-39.) The plaintiff in *Wisdom* had negotiated for a “super-majority” threshold on certain “fundamental matters” to ensure that at least one Wisdom director approved the decision. *See Wisdom*, 339 F.3d at 105. Here, it is Appellants—not SJI—who negotiated the heightened “Super-Majority” protections for votes regarding Kailbourne’s hiring or dismissal. By depriving RH

and Kailbourne of the heightened voting thresholds, the Injunction Order has wrought the same fundamental harm on Appellants at issue in *Wisdom*: the failure to enforce heightened voting requirements that prevent another member from unilaterally approving a decision that is subject to those requirements. *See id.*

Similarly, while Section 15.13 of the LLCA states that “money damages” and other remedies “at law” are not “an adequate remedy” for breaches of Section 8.1 (*see* SJI Br. at 39), the provision does not affirmatively state that any alleged breach of Section 8.1 automatically constitutes irreparable injury properly remedied by an injunction, nor does it contain the words “irreparable” or “injunction.” *See Noyack Med. Partners, LLC v. OSK IX, LLC*, 206 A.D.3d 429, 430 (1st Dep’t 2022) (holding that plaintiffs could not rely on contractual provision to show irreparable harm “because that paragraph does not provide that any damage resulting from a breach of the agreement is irreparable”). The specific alleged “breach” at issue is that Kailbourne cannot continue to act as CEO. As stated previously, SJI had no right to fire him in the first instance. Further, RH admittedly retained its 4-3 Board majority, thus retaining “management” authority over the Company. (*See* SJI Br. at 42.) And SJI consented to the appointment of Jacob Digel—another individual defendant SJI has sued in this matter—as interim CEO before the stay order. (*See id.* at 43.) While SJI contends that Kailbourne merely “holding himself out” as CEO would cause irreparable harm, SJI does not allege the existence of any “dueling CEOs” situation

where Kailbourne is usurping the authority of another CEO, nor does SJI assert that it can override RH's 4-3 majority to install a new CEO of SJI's choosing. Any purported "harm" to SJI is, at best, limited and not irreparable.

Conversely, SJI's wrongful termination of a founding, contractually-defined "Key Employee," as well as the trial court's order forbidding Kailbourne from serving as CEO, have deprived Appellants of the very sort of "super-majority" protection that the Second Circuit deemed irreparable. *See Wisdom*, 339 F.3d at 105. Granting SJI such relief—especially through a preliminary injunction—was improper. *See Lehey*, 90 A.D.3d at 411-12. SJI states on appeal that it negotiated the continued-employment condition "for the sole benefit of SJI," thus admitting that SJI itself viewed Kailbourne's continued employment as so significant a benefit that it should be enshrined as a Milestone Closing Condition. (*See SJI Br.* at 49.)

The evidence unsurprisingly establishes that Kailbourne not only presided over exponential growth in the Company's revenues and Company EBITDA, but that he has critical relationships with customers, employees, and vendors that face impairment if the Injunction Order is enforced. (*See Company*. R747 (Digel Aff. ¶¶ 64-67) (affirming 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 very essence of the Company's business, which includes securing rights from dairy farm owners to produce RNG

from cow manure, underscores the hands-on nature of the leadership required to make it successful. It is wholly unreasonable to expect that the Company will not face significant damage from sidelining the person responsible for building, operating, and growing this business. Having openly agreed in the LLCA that Kailbourne is so important to the Company that he receive “Key Employee” status, key-man insurance, and that his continued employment was important enough to warrant inclusion as a Milestone Closing Condition, SJI cannot convincingly take the position now that removing Kailbourne as CEO does not cause substantial harm. SJI has thus failed to establish irreparable harm or that the balance of the equities favors the Injunction Order.

#### **IV. Adoption of REV LNG’s Arguments**

Defendants-Appellants REV LNG Holdings, LLC, E. David Kailbourne, and Jacob Digel also adopt and join all arguments set forth in the Reply 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.

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## **PRINTING SPECIFICATIONS STATEMENT**

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