STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: August 28, 2024]

VM PARKWAY, LLC and KARL AUGENSTEIN,	:	
Plaintiffs,	:	
	:	
vs.	:	**C.A. No. PC-2020-03841**
	:	
METACOMET INVESTORS LLC, BRADFORD J. FAXON, STEPHEN NAPOLI, and BRENDAN VANDEVENTER,	:	
Defendants.	:	

DECISION

STERN, J. "Metacomet is in my soul because I kind of learned to play there." Joe Kayata, *Faxon Looks to Restore Metacomet to its Former Glory*, Turn to 10 (Aug. 6, 2019), https://turnto10.com/sports/rhode-island-sports-headlines/faxon-looks-to-restore-metacomet-to-its-former-glory. An optimistic Bradford J. Faxon (Faxon), one of Rhode Island's most well-known Professional Golf Association (PGA) Tour players, exclaimed of the Metacomet Golf Club (the Club) in 2019. *Id.* Opened in 1902, re-designed by famed golf course architect Donald Ross in 1924, and situated on prime real estate a stone's throw from Narragansett Bay, the Club fell on hard times after the Great Recession of 2008.[1] Membership dues increased, while the Club struggled to offset the departure of older members with millennials apathetic at the prospect of private golf.[2]

[1] Joel Beall, *Brad Faxon saved his childhood club. Members are now suing him for fraud. [1]The curious case of Metacomet Golf Club*, GOLF DIGEST (September 30, 2020) https://www.golfdigest.com/story/brad-faxon-saved-his-childhood-club-members-are-now-suing-him-for-fraud-the-curious-case-of-metacomet-golf-club.

[2] *See id.*

Determined to revitalize the place that helped turn him into a PGA star, Faxon endeavored to reverse the Club's fortunes, purchasing the golf course along with four other real estate investors for $2.2 million and assuming its $1.5 million in debt. *Id.* Joining the purchasing group headlined by Faxon, was Stephen Napoli (Napoli), a Rhode Island golf titan who formerly served as head professional at nearby Wannamoisett Country Club and currently serves as head golf coach at the College of the Holy Cross; Brendan VanDeventer (VanDeventer), an investment banker who leads Riparian Partners in Providence; Tim Fay (Fay), real estate developer and President of StoneStreet Corporation, who held his stake in the Club through a holding company, VM Parkway, LLC (VM Parkway); and Karl Augenstein (Augenstein), general manager of Providence-located Triggs Memorial Golf Course. *Id.* Within the span of a year, Faxon's dream of reinvigorating the Club ended with a sale to local developer, Marshall Properties, Inc. (Marshall). *Id.* Outraged members labeled Faxon a "liar[,]" as the prospect of the Club as they knew it were extinguished. *Id.* However, a closer look at Faxon and his colleagues' operation of the Club and the members own role in the Club's demise may tell a different story. *Id.*

Allegations of broken promises, deceit, freeloading, and an unknown-to-most sixth investor plagued the five principals during their tumultuous year in charge of the Club. *See generally* 2d. Am. Compl. The five immediately realized that the Club was taking on water as soon as they assumed control in 2019. *See generally* VanDeventer Tr. Efforts to increase cashflow by allowing public golf play at the course and hosting more functions at the clubhouse proved fruitless, like rearranging deck chairs on the Titanic. *See id.* The Club, as Faxon knew it growing up, was doomed. *See id.*

A precursor to this litigation was a uniquely crafted operating agreement between the five Club investors that provided that four of the five were mandated to post an initial capital

contribution as well as additional payments that may arise if the Club needed further funding. *See generally* Pls.' Ex. 1. Augenstein, however, was purportedly brought on as a Member given his golf course management acumen and was subject to different rules than his counterparts, as explored in more detail below.

After it became clear the Club was not destined for the success that Faxon and his partners had hoped, a dispute arose that eventually pitted Fay and Augenstein against VanDeventer, Faxon, and Napoli. VanDeventer, Faxon, and Napoli accused Fay and Augenstein of failing to contribute their pledged capital to the doomed Club, while Fay and Augenstein denied that such funds were owed. VanDeventer, Faxon, and Napoli re-allocated the shares of Fay and Augenstein for failing to make the contributions.

Eventually, when the sale to Marshall became imminent, Fay and Augenstein disagreed with the re-allocation of their shares and each demanded their full shares. VanDeventer, Faxon, and Napoli rebuked, and lawyers became involved, culminating in the filing of the instant lawsuit. The storied, century old golf course was set to close and the five men that set out to save the Club were now engulfed in a dispute about how to distribute its proceeds.

The Court is now tasked with closing the door on the Club's 18-hole, private golf course chapter. Faxon's dream to bring the Club back to prominence is a distant memory. All that remains to be determined is who gets what. A trial was held to answer this very question without a jury on September 18 through the 21 and September 28, 2023. Docket, PC-2020-03841. The Court heard testimony from various witnesses and was presented with a bevy of exhibits. After several extensions were granted, the parties furnished post-trial briefings on April 2 and 3, 2024. *Id.* The Court's Decision follows. Jurisdiction is pursuant to Rule 52 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

A

The Operating Agreement

Metacomet Investors LLC (Metacomet) is a Delaware Limited Liability Corporation (LLC) formed on April 3, 2019, to own and operate Metacomet Property Company, LLC, a Rhode Island LLC. (Pls.' Ex. 1 (Operating Agreement)). Metacomet is comprised of the following Members: VanDeventer; Faxon; Napoli; VM Parkway; and Augenstein. (Joint Stipulation of Facts ¶ 1.) The Board of Managers of Metacomet consists of VanDeventer, Faxon, Napoli, and Fay.[3] *Id.* ¶ 8. VM Parkway is a Rhode Island LLC run by its managing member, Fay. (Pls.' Ex. 1, at 39). Members entered into the Operating Agreement on April 3, 2019. (Joint Stipulation of Facts ¶ 3.)

The Operating Agreement provides for the organization, procedure, and ownership of Metacomet. *See generally* Pls.' Ex. 1. Ownership of Metacomet is held in "Membership Units." *Id.* at 8. '"**Membership Units**' means Class A Membership Units, Class B Membership Units, the Managing Member Membership Units and any other units representing an ownership interest in the Company." *Id.* at 5. (emphasis in original). The Operating Unit granted Members Class A Membership Units and Class B Membership Units. *Id.* at Schedule A-1. '"**Class A Membership Units**' means Units representing an interest in the Company as a Class A Member. Allocations of any amounts among Class A Members shall be in accordance with their ownership of Class A Membership Units." *Id.* at 3 (emphasis in original). '"**Class B Membership Units**' means Units representing an interest in the Company as a Class B Member. Allocations of any amounts among

[3] VanDeventer, Faxon and Napoli are also Defendants in this action, sued in their individual capacities. When discussing these parties together, the Court will refer to them as "the Individual Defendants."

Class B Members shall be in accordance with their ownership of Class B Membership Units. Class B Units shall be non-voting Units." *Id.* (emphasis in original). The Individual Defendants and VM Parkway each received 2,325 Class A Membership Units. *Id.* at Schedule A-1. Augenstein received 700 Class B Membership Units. *Id.* Schedule A of the Operating Agreement states that, at formation, the Individual Defendants and VM Parkway had a 23.25% "Membership Interest" in Metacomet; Augenstein had a 7% "Membership Interest[.]"[4] *Id.*

Further, in Schedule A of the Operating Agreement, a footnote provided that Augenstein's Membership units were "subject to [Section [6[.3](b)] of the LLC Agreement." (Pls.' Ex. 1 at 13-14.) Section 6.2(b) provides:

> "[I]n the event that the Class B Member contributes $50,000 as a Capital Contribution[5] to the Company prior to the earlier of (i) eighteen (18) months or (ii) the date construction of the Project[6] is commenced by the Owner[7] (the "Admission Date"), 200 of the Class B Member's Class B Units shall be converted into Class A units and (ii) in the event that the Class B Member fails to make such $50,000 Capital Contribution on or before the Admission Date, the Class B Member shall forfeit 200 Class B Units." *Id.*

The determination of the amount a Member was required to pay as an Initial Capital Contribution (ICC) is important because funding an ICC created additional responsibilities for Members. *See id.* at 13. Section 6.2(a) of the Operating Agreement created an obligation for Members to make at least one Additional Capital Contribution. *Id.* Section 6.2(a) states: "[e]ach

[4] "Membership Interest" is not a term defined by the Operating Agreement. *See* Pls.' Ex. 1 at 1-7.
[5] "Capital Contribution" is "the total value of all cash, credits for deposits advanced to a subsidiary of the Company, and the Gross Asset Value of property contributed to the Company by each Member set forth on Schedule A hereto as the same may be amended from time to time in accordance with" the Operating Agreement. (Pls.' Ex. 1 at 3.)
[6] "'**Project**' means the renovation of the existing golf course and club house together with approximately 100 condominium units to be constructed and developed on the Property." Pls.' Ex. 1 at 6 (emphasis in original).
[7] "Owner" refers to Metacomet. (Trial Tr. vol. II, 151:4-6.)

Member, by executing this Agreement, hereby agrees to contribute one or more additional contributions to the Company in an aggregate amount of up to twenty percent (20%) of such Member's Initial Capital Contribution[.]" *Id.* at 13. Section 6.2(a) also required the Board to give Members "written notice of any Additional Capital Contribution[.]" *Id.*

Section 13.4 of the Operating Agreement provides Metacomet with the procedure required for notice of an Additional Capital Contribution: "[a]ny notice, demand, offer or other written instrument required or permitted to be given shall be in writing signed by the party giving such notice . . . to the parties at the addresses provided below." *Id.* at 29-30. Below, Section 13.4 provides that notice should be sent "[a]t such address set forth in Schedule A." The "addresses" section on Schedule A, however, is blank. *Id.* at 29-30, Schedule A-1. No Members' addresses are listed anywhere in the Operating Agreement. *See generally* Pls.' Ex. 1.

To initially fund Metacomet, the Operating Agreement required VanDeventer, Faxon, Napoli and VM Parkway each to make an ICC in the amount of $200,000. *Id.* The Operating Agreement provided that $100,000 of VM Parkway's initial contribution could be satisfied "by obtaining from the development manager a partial waiver of the first $100,000 of the development fee otherwise payable to the development manager under the development management Agreement." *Id.* The "Project Development Fee Agreement" (the Stone Street Contract) was a contract between Metacomet and Stone Street Corporation (Stone Street), an entity whose President is Fay. (Pls.' Ex. 2, at 5.) The agreement called for Stone Street to renovate "the existing golf course and club house together with approximately 100 condominium units to be constructed and developed . . . on an approximately 110 acres of land . . . ." *Id.* at 1. The plan never came to fruition. The Individual Defendants and VM Parkway are credited $200,000 for their ICC. (Pls.' Ex. 1, at Schedule A-1) Augenstein's ICC is left blank in Schedule A. *Id.*

The Individual Defendants aver that they each paid the $200,000 ICC as required by the Operating Agreement. (Defs.' Post-Trial Mem. 18; Operating Agreement 40.) By contrast, Metacomet and the Individual Defendants submit that VM Parkway's ICC was only $125,000. (Defs.' Post-Trial Mem. 18.) Metacomet and Individual Defendants further state that Augenstein was required to make an ICC of $50,000 and never paid his $50,000 contribution. *Id.*

Plaintiffs aver that Metacomet breached the Operating Agreement by improperly transferring Membership Units from VM Parkway and Augenstein to the Individual Defendants. (Ver. Am. Compl. ¶ 135.) Section 6.6(b) is the only section of the Operating Agreement which provides for the change of ownership of Membership Units between Members. (Pls.' Ex. 1, at 16.) When a Member does not fulfill their default obligations to fund an Additional Capital Contribution:

> [T]he Board, in its sole and absolute discretion, may designate one or more parties, which parties… that will be permitted to make the Additional Capital Contribution of the Defaulting Member, provided that Units of the Defaulting Member with a Capital Account equal to twice the amount of the Default Contribution shall be transferred to the designated party upon the contribution of the Default Contribution and the Capital Account of such designated party shall be increased by twice the Default Contribution and the Defaulting Member's Capital Account shall be reduced by the same amount. *Id.*

Separately, the parties agreed that before adjustments under Section 6.6(b) the total of "actual payments in the form of cash or credits that the Members have paid in to Metacomet," of Class A Members were: VanDeventer, $356,667; Faxon, $356,667; Napoli, $355,922; and VM Parkway, $141,341. (Joint Stipulation of Facts ¶ 12.)

B

Operation of the Club

Metacomet's subsidiary, Metacomet Property Company, LLC, purchased the Club on April 3, 2019.[8] (Joint Stipulation of Facts ¶ 4). VanDeventer testified that the Managers immediately went to work as they took over management of the Club. (Trial Tr. vol. IV, 530, 531.) The financial stability of Metacomet proved treacherous early on, with Napoli testifying that the course was in "far[,] far worse shape than [he] had thought it would be." (Trial Tr. vol. IV, 429.) Napoli testified that the clubhouse was in disrepair, the tee reservation system was non-operational, the staff was unfriendly, and existing members had harsh attitudes towards women, all dissuading new membership interest. (Trial Tr. vol. IV, 433.)

Given the hardships that the Club faced early on, VanDeventer distributed a budget assessment crafted by Mark Mitchell (Mitchell), a Certified Public Accountant (CPA) on May 22, 2019. The excel sheet showed that Metacomet was cash strapped and would run out of cash within weeks. (Defs.' Ex. 4; Trial Tr. vol. IV, 521.) VanDeventer further warned of a cash crunch and implored the Managers to avoid the mistakes of its predecessor owner by failing to pay its bills. *Id.* Mitchell began working directly with the Club's controller, Winnie Aparicio (Aparicio), for a more detailed spreadsheet showing cashflows.

On June 3, 2019, VanDeventer sent out that spreadsheet and declared that Metacomet would need an infusion of cash by mid-June to avoid getting too close to negative cash. Fay and Augenstein had purportedly prepared their own budget reports early on in the Managers' operation of Metacomet. (Defs.' Ex. 5.) VanDeventer testified that Mitchell and VanDeventer's own,

[8] Metacomet Property, LLC was created on the same day as the Metacomet's Operating Agreement was executed. Metacomet is its only member.

independent accounts labeled Fay and Augenstein's budget projections as a "fallacy" that lacked consideration for Metacomet's debt obligations. (Trial Tr. vol. IV, 522:6-13.) VanDeventer called the detailed revelation of Metacomet's dire financial situation an "epiphany" that sparked concerns over potential insolvency with only two months left in the golf playing season. *Id.*

Seven days later, the Managers and Augenstein were sent into a panic when Aparicio detailed over a million dollars in projected operational loses from Metacomet's loan year under the Managers and Augenstein's ownership. (Defs.' Ex. 6; Trial Tr. vol. IV, 524-526.) VanDeventer requested that the Managers meet to devise a plan for immediate implementation. *Id.* Fay shared the same concern. (Defs.' Ex. 41.) After discussing the arduous situation, VanDeventer sent an email to the Managers and Augenstein on June 25, 2019, formally requesting that VanDeventer, Faxon, Napoli, and VM Parkway, through Fay, contribute $50,000 or at least $40,000 and requesting Augenstein contribute $10,000. (Defs.' Ex. 7.) This notice was only signed by VanDeventer. *Id.* VanDeventer testified that none of the Managers nor Augenstein objected to the request. (Trial Tr. vol. IV, 526-528.)

VanDeventer, Faxon, and Napoli all made their $50,000 capital contributions in late June and early July. (Trial Tr. vol. IV, 527-528.) VanDeventer sent an email on July 19, 2019, that offered that, while less dire than earlier in the summer, Metacomet was "still bleeding" and encouraged the Managers and Augenstein not to delay addressing business "variables." At subsequent meetings, VanDeventer and Napoli testified that Fay pledged to contribute $20,000 of capital at some point but was non-specific about when VM Parkway would do so. (Trial Tr. vol. IV, 490, 558, 534; Trial Tr. vol. V, 620.) The Individual Defendants posit that VanDeventer, Faxon, and Napoli relied on Fay's assertions that VM Parkway would satisfy its capital contribution commitment. *Id.* VanDeventer testified that the problems that plagued the early

months of the Managers and Augenstein operation of the Club still persisted in late July of 2019, including disgruntled members about outside golf play, disrepair in the clubhouse, almost no new members, and other issues. (Trial. Tr. vol. IV, 530.)

Defendants aver that formal procedures outlined by the Operating Agreement addressing meetings, notice, and other small details of management were not followed given Metacomet's financial trouble. Napoli specifically testified to the same and even Fay acknowledged that decision-making had to occur quickly, with little advance notice. The Managers and Augenstein exchanged 824 emails through October of the first season as Metacomet was "in day to day existence trying to fight off insolvency." (Trial Tr. vol. V, 596.) Fay remarked that the Managers were "basically drinking out of a firehose." (Trial, Tr. vol. II, 181.)

Napoli testified that both Fay and Augenstein began to withdraw from their operational obligations in August. (Trial Tr. vol. IV, 436-437.) Faxon relayed the same as to Fay. *Id.* at 492. Napoli had asked the Club's golf superintendent if he had seen or heard from Fay, the self-described "greens chairman[,]" in the later summer of 2019, and superintendent stated that he had not. (Trial Tr. vol. IV, 430.) Of Augenstein, Napoli testified that he "just didn't hear from [Augenstein] or see [Augenstein] any longer." (Trial Tr. vol. IV, 437, 438.) Napoli testified that Augenstein "certainly didn't have any day to day duties at Metacomet Golf Club" because he managed Triggs Golf Club. (Trial Tr. vol. IV, 431.)

VanDeventer also confirmed that Fay and Augenstein scaled back their work at the club, testifying that Fay's involvement diminished in July and August after the first capital call and dropped again in September. (Trial Tr. vol. IV, 532.) The same went for Augenstein. *Id.*

On August 29, 2019, VanDeventer, frustrated by a purported failure to live up promised contributions, reminded Fay that the Individual Defendants had put $250,000 into Metacomet, and

that VanDeventer was the only investor in Metacomet who had personally guaranteed a $1.2 million loan to Metacomet. (Defs.' Ex. 11.) VanDeventer followed this up with an email on September 1, 2019, to the Managers and Augenstein, noting the inequity of the investors' relationship given that VM Parkway and Augenstein had failed to pay their purported promised contributions. (Defs.' Ex. 12; Trial Tr. vol. IV, 538, 539.) VanDeventer floated the idea of bringing in another investor or engaging with an outside developer. *Id.* At this point, VM Parkway had contributed $100,000 of their $200,000 Initial Capital Contribution, and Augenstein had contributed nothing.

Aparicio circulated an email on September 13, 2019. The email showed concerning cash flow projections through November and stated that she had to push $50,000 in accounts payable off since there was not enough money to meet payroll. (Defs.' Ex. 13.) VanDeventer sent Aparicio's communication to Fay and asked if VM Parkway would be able to contribute $50,000, the amount Metacomet requested from VM Parkway in the first capital call. *(*Trial Tr. vol. IV, 541.) VanDeventer testified that September hit Metacomet hard financially, and the Club was again on the brink of insolvency after revenue from the golf season ended. (Trial Tr. vol. IV, 541.)

The next day, Fay responded to VanDeventer that VM Parkway will put more money in but "[w]ill I do it blindly while we all fail to make real decisions? . . . [P]robably not." (Defs.' Ex. 14.) VanDeventer responded the next day and directed Fay to the Operating Agreement, while pointing out that the development contract, which Fay had cited as a potential reason for his non-payment, was limited to VM Parkway's ICC, not VM Parkway's Additional Capital Contribution. (Trial Tr. vol. IV, 546-549.) VanDeventer advised Fay to "protect his investment" and that the Operating Agreement provided for a scenario in which no contribution was made. *Id.* VanDeventer also told Fay that he believed it may be time to look into selling the Club. *Id.*

Almost two weeks later, on September 26, 2019, VanDeventer informed Fay that the deal between Metacomet and Stone Street to develop a portion of the Club into residential or commercial space should not move forward. (Trial Tr. vol. IV, 550-552.) The total amount from the Stone Street Contract credited to VM Parkway's ICC was $25,000. (Defs.' Ex. 3.) On October 8, 2019, VanDeventer sent an email proposing termination of the Stone Street contract to the Managers and Augenstein and directed each to respond "Yea" or "Nay" to whether each wanted to terminate. (Defs.' Ex. 18.) To authorize a proposal like this, Section 5.3(b) declares that "[e]ach Manager shall be entitled to one vote at meetings of the Board." (Pls.' Ex. 1, at 10.) The "[a]uthorization of the majority of the then-current Managers shall be the act or Authorization . . . of the Board." *Id.* The Operating Agreement establishes that a vote of approval from a majority of the Members is necessary to approve a decision. *Id.*

VanDeventer, Faxon, and Napoli all voted to terminate the development contract with Fay as the lone dissenter. (Trial Tr. vol. IV, 554.) VanDeventer stated the termination of the Stone Street Contract was "based on the realization that we did not have the resources to continue to look at developing the property[.]" *Id.* at 556. Developers interested in the property wanted to handle the development themselves and would need their own resources to do so. (Trial Tr. vol. V, 611, 616.)

On October 16, 2019, VanDeventer met with Fay and Augenstein to discuss the termination of the Stone Street contract and the operating of the Club. (Trial Tr. vol. IV, 557.) Augenstein again maintained that he had no obligation to pay $50,000 into Metacomet. (Trial Tr. vol. IV, 555, 557.) Fay asked what could be done to help save the Club. (Trial Tr. vol. IV, 557.) VanDeventer directed Fay to immediately pay into Metacomet and fly to Florida to meet with Napoli and Faxon to regain their trust. *Id.* VanDeventer informed both that all Members were obligated to make a

contribution of 20% of their ICC in an additional capital contribution. (Pls.' Ex. 1, at 13.) Neither VM Parkway nor Augenstein purportedly raised issues over notice they received to make the contributions. (Trial Tr. vol. IV, 558.)

Two days later, VanDeventer sent the Managers and Augenstein a capital position letter and again implored VM Parkway and Augenstein to correct their missed contributions. (Defs.' Ex. 19.) He asked that the pairing make their payments by November 1, 2019, ten business days after the request. *Id.* In the letter, VanDeventer informed each of the Members that they should consider the letter to be a "formal notice to provide the additional called Capital of 20% of your original committed capital." (Defs.' Ex. 19.) The letter specifically referred to Section Six of the Operating Agreement. *Id.*

On November 8, 2019, Faxon, Napoli, and VanDeventer sent joint letters to both Fay and Augenstein informing each that their individual Membership interests in Metacomet had been "adjusted" for failure to pay the required Additional Capital Contributions per the Operating Agreement. (Defs.' Exs. 20, 21.) VanDeventer attached a schedule showing the adjusted Membership interests. *Id.* The schedule reflected that the Individual Defendants covered the purported defaults by VM Parkway and Augenstein and that VM Parkway's and Augenstein's Membership Units were re-allocated in proportion to their defaults to the Individual Defendants. *Id.* (Trial Tr. vol. IV, 560-562.)

VanDeventer acknowledged in testimony that the schedule in the letter contained a clerical error reflecting the amount credited to VM Parkway for the Stone Street contract as $62,500, an amount far above the correct credit of $25,000. *Id.* VanDeventer testified that he corrected the schedule, and it "ceased to be an issue." *Id.*

In December of 2019 and January of 2020, Marshall displayed interest in purchasing the Club; Metacomet and Marshall reached an agreement in February 2020, for a conditional sale of the Club for $7.6 million. (Joint Statement of Facts ¶ 13; Trial Tr. vol. IV, 563.) The Managers concurred that they must focus efforts on raising sufficient capital to reimburse dues collected from golf members that had prepaid for the 2020 season. (Trial Tr. vol. IV, 556-567.) The expense to do so was $300,000, and the money had to come from the Managers and Augenstein themselves. *Id.* VanDeventer testified that Fay was first to propose the idea of a capital call to satisfy the $300,000 in outstanding dues. (Defs.' Ex. 41, Fay Dep. 84.)

On February 6, 2020, Fay again proposed and supported a formal capital call for $300,000 to $400,000 to finance the refund of dues. (Trial Tr. vol. IV, 566-67.) The Managers agreed that this was the correct path forward. *Id.* VanDeventer sent Fay an email on February 29 asking if Fay would be willing to contribute $100,000 to fund expenses through the June 30, 2023 closing of Marshall deal. (Defs.' Ex. 23; Trial Tr. vol. IV, 565.) Fay responded with hesitancy, pointing to the credit for the terminated Stone Street Contract. (Defs.' Ex. 24.) VanDeventer replied that VM Parkway had already been credited with the development contract's balance owed. *Id.*

Later, VanDeventer sent the Managers and Augenstein the last cash flow forecast completed by Aparicio on March 4, 2020. (Defs.' Ex. 25.) The refunds owed to members left Metacomet with insufficient funds to pay its creditors. *Id.* VanDeventer's email formally proposed an additional capital call of $350,000 that Fay had originally supported in February. *Id.* A written consent was entered between VanDeventer, Faxon, and Napoli approving an additional capital call beyond the 20% permitted in the Operating Agreement.[9] (Defs.' Ex. 27.) The email also noted that

[9] The Individual Defendants pointed to Section 5.3(d) of the Agreement as support for the written consent. Section 5.3(d) provides:

the Individual Defendants had already deposited checks in Metacomet's account for $250,000 total. *Id.* Fay objected to the amount VM Parkway owed and asked for a meeting to establish the precise figure VM Parkway needed to contribute. (Defs.' Ex. 26.) VanDeventer declined the meeting request and pointed Fay to Metacomet's corporate attorney, Jim Redding, to present Fay's concerns. *Id.*

At a formal meeting of the Managers on April 17, 2020, the amount on Capital Call II was lowered to $325,000 through another corporate action pursuant to Section 5.3 of the Operating Agreement. (Defs.' Ex. 28.) VanDeventer categorized this action as the investors looking "at this as getting out of the transaction." (Trial Tr. vol. IV, 569.) VanDeventer sent formal notice of the additional capital call to Fay on April 27, 2020, a notice which detailed that VM Parkway owed $16,340.78 after VM Parkway's shares had been transferred to the other Members for failure to pay the first capital call. (Defs.' Ex. 29.) The notice provided VM Parkway with ten days to make payment. *Id.* VanDeventer also sent a capital call notice to Augenstein, detailing that he owed $10,893.85. (Defs.' Ex. 30.) Augenstein had already made a payment of $10,000, however, so the amount requested from him was $893.85. *Id.* Both Augenstein and VM Parkway made their payments with the caveat that they disagreed with the capital call calculations. (Fay Dep. 84-88.)

> "Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if one or more proposed written consents, setting forth the action to take or to be taken: (i) is sent to all of the Managers, (ii) is signed by those Managers possessing the votes necessary to approve such action at a duly convened meeting of the Board (or the duly authorized representative or representative of any such Manager or Managers as provided by Section 5.3(b) and (iii) such signed written consent is included in the Company's records. *Id.*

The parties do not dispute that the five investors all satisfied their payment obligations in the second capital call. Fay, however, began to take issue with the requests for capital that occurred in 2019 shortly after he paid the second capital call. (Pls.' Ex. 9.) Specifically, VM Parkway's attorney sent a letter to Jim Redding stating that VM Parkway had not been properly noticed of the first capital call because the letter had been sent to Fay personally and not by certified mail to VM Parkway's corporate address. (Defs.' Ex. 31.) VM Parkway's attorney sought to have VM Parkway's shares recalculated back to its original interest represented in the Operating Agreement. *Id.*

It must be noted that Section 13.4 of the Operating Agreement, the Section that deals with the form of notice, was left incomplete. (Pls.' Ex. 1.) Section 13.4 of the Operating Agreement states: "[a]ny notice, demand, offer or other written instrument required or permitted to be given shall be in writing signed by the party giving notice . . . to the parties at the addresses provided below." (Pls.' Ex. 1.) Below, Section 13.4 provides that notice should be sent "[a]t such address set forth in Schedule A." The "addresses" section on Schedule A is blank, and VM Parkway's address is not listed anywhere in the Operating Agreement. *Id.* (Schedule A-1). *Id.* The notices and all communications from and to VM Parkway emanated from Fay's primary email: TFay@stonestreetcorp.com. (Defs.' Ex. 41.) Fay did not raise any grievances about the deficiencies in notice of the capital calls at the time they were made. (Trial Tr. vol. IV, 446.)

On April 14, 2020, Fay's counsel sent another communication to Jim Redding stating that Augenstein was also being represented by VM Parkway's counsel and offering that a formal meeting should have been held on the first capital call and that both VM Parkway and Augenstein should have voted to authorize the same. (Pls.' Ex. 10.) The communication requested that VM Parkway and Augenstein's Membership interests in Metacomet be restored to their original shares.

Id. Augenstein had not previously raised notice issues, instead asserting that he had no contractual obligation to make a contribution. (Trial Tr. vol. IV, 534.) Both Fay and Augenstein raised no notice concerns with the second capital call. (Defs.' Ex. 41.)

Distributions from Metacomet are outlined in Section 7.6 of the Operating Agreement. *Id.* Plaintiffs submit that the transfer of their Membership interests in Metacomet to the Individual Defendants resulted in diminished distributions to Plaintiffs upon the sale of Metacomet to Marshall. The "waterfall" distribution system is outlined in Section 7.6, which provides that:

> "The Company shall make all distributions of Available Cash to the Members at such time or times and in such amounts as shall be determined by the Board, in its sole discretion in the following order and priority:
>
> (a) first, to the Class A Members in proportion to their Unrecovered Capital until the Unrecovered Capital of all Members is zero;
>
> (b) second, the Class A Members in proportion to their Percentage Interests in the Company in a percentage equal to the Class A Member Percentage Interest,[10] until the cumulative amount distributed pursuant to this Section 7.6(b) equals the Preferred Return on cumulative Capital Contributions, calculated for the period of time commencing on the date such Capital Contributions were made by, and expiring on the date such Capital Contributions were returned to them; and
>
> (c) to the Class A Members and the Class B Members in proportion to their Membership Interests in the Company.[11] (Pls.' Ex. 1, at 20.)

[10] '"**Class A Member Percentage Interest**' means the fraction, expressed as a percentage, the numerator of which is the total Capital Contributions by the Class A Members, and the denominator of which is the total Capital Contributions of all Members." Pls.' Ex. 1, at 3 (emphasis in original).

[11] '"**Class B Member Percentage Interest**' means the fraction, expressed as a percentage, the numerator of which is the total Capital Contributions by the Class B Members, and the denominator of which is the total Capital Contributions of all Members." *Id.* (emphasis in original).

C

The "Mystery" Investor

Michael Hanna is a Rhode Island CPA and member of several boards of directors of prominent Rhode Island businesses. Hanna was the majority member of VM Parkway, one of the Class A Members of Metacomet. Hanna testified that he paid the $100,000 ICC required from VM Parkway. (Defs.' Ex. 41 at 13, 14.) While Hanna provided the financial muscle for VM Parkway, Hanna testified that he deferred to Fay when it came to the management of Metacomet. (Defs.' Ex. 41.) After all, Fay was the signor on behalf of VM Parkway as the "manager" for that entity in its Metacomet ownership. (Hanna Dep. 13-14.) Hanna merely described himself as an "investor" in Metacomet and that he "had no desire" to manage the "day-to-day" operations of VM Parkway and Metacomet. Id. (Trial Tr. vol. III, 283:5-11.)

D

The Witnesses' Credibility

In total, the Court heard from eight witnesses: VanDeventer, Faxon, Napoli, Fay, Augenstein, Hanna, and Plaintiffs and Defendants' respective CPAs. The Court found Augenstein credible. Augenstein presented as a mild-mannered golf course operator, who tested truthfully to his understanding of parties' business arrangement. *See* Trial Tr. vol. I, 8:16-20. The Court accepts Augenstein's representations that he did not have sufficient funds to contribute to the enterprise as true. *Id.* The Court believes that Fay engaged Augenstein for the value his golf course management experience could provide, an expertise that the Individual Defendants may not have known came with a "free deal[.]" (Trial Tr. vol. IV, 509:4-6.) The Court was surprised that savvy businessmen like the Individual Defendants would allow for Augenstein to retain equity in Metacomet without requiring him to contribute capital.

Further, the Court viewed Fay's credibility as murky at best. Fay often paused, seemingly looking for correct answers as he was cross-examined. (Trial Tr. vol. II, 167:20-25.) He acknowledged shady business dealings in the past. *Id.* Additionally, his evasiveness to VanDeventer about whether VM Parkway would contribute to Metacomet bordered on bad faith and was in clear contrast to VM Parkway's contractual obligations. (Trial. Tr. vol. I, 96:2-15.) In sum, Fay's combination of dubious relationships, his apparent concealment of Hanna, and his unwillingness to contribute to Metacomet hampered his credibility.

Hanna's testimony was useful in highlighting the deference given to Fay to manage VM Parkway. (Trial Tr. vol. III, 282:10-12.) He testified that he provided the funding for VM Parkway but allowed Fay to run the organization. *Id.* at 283:7-16. Hanna's strange and, at times, concealed involvement with VM Parkway puzzled the Court and left the Court to wonder why Hanna, a decorated Rhode Island businessman, would allow Fay to make crucial decisions for him. *Id.* at 284:1-5. Regardless, his testimony showed the control Fay had over VM Parkway in its interactions with Metacomet.

VanDeventer appeared as the financial leader of the five Members of Metacomet and the Individual Defendants, despite Napoli's status as President of the Club itself. He generally testified credibly. VanDeventer seemed to acknowledge that he had sometimes bit off more than he could chew, admitting that he made a clerical error when transferring shares of VM Parkway to the other Managers. (Trial Tr. vol. IV, 560:18-25.) His testimony and actions during the parties' business dealings were that of someone with genuine concern for the well-being of the enterprise. Unfortunately, the Club was doomed by the same problems that plagued previous owners and VM

Parkway's failure to contribute capital, all factors that hindered VanDeventer's efforts to save the Club.[12]

VanDeventer's anger towards Fay and Augenstein was clear from his testimony. As to Augenstein, he frequently referenced an adage used by himself, Faxon, and Napoli: "no scholarships[.]" (Trial Tr. vol. V, 606: 9-10.) This "no scholarship" rhetoric did not make its way into the Operating Agreement, though. *See* Pls.' Ex. 1.

VanDeventer's feelings about Fay are more understandable. Fay's runaround when it came to making his capital contributions and frequent referencing of the Stone Street contract had to be maddening. It is clear in hindsight that VM Parkway—through Fay—never intended to pay into Metacomet when he believed the ship was sinking. This is further supported when part of the Club was about to be sold for a substantial profit and a reinvigorated Fay returned with cash on hand to make VM Parkway's contribution and the assistance of counsel to raise technical issues with the reallocation of VM Parkway's Membership interests. Fay's opportunism would make any unsuspecting business partner fed up to say the least.

Faxon, the biggest attraction to the investors' original proposal to purchase the Club and the golf version of Rhode Island's prodigal son, testified credibly. His disdain for Augenstein and Fay, particularly, was palpable. (Trial Tr. vol. IV, 498:7-11.) Faxon testified that he was unaware of Hanna, the mystery investor's involvement with VM Parkway. Further, his "I don't know who you are" back and forth with Hanna, was something of a trial side show. (Trial Tr. vol. II, 240:24-

[12] Joel Beall, *Brad Faxon saved his childhood club. Members are now suing him for fraud. The curious case of Metacomet Golf Club*, GOLF DIGEST (September 30, 2020) https://www.golfdigest.com/story/brad-faxon-saved-his-childhood-club-members-are-now-suing-him-for-fraud-the-curious-case-of-metacomet-golf-club.

25. While Faxon's testimony provided helpful context surrounding the deterioration of the parties' relationships, VanDeventer's statements mostly covered the Individual Defendants' position.

Same goes for Napoli, who likewise presented credibly. Napoli's testimony was useful for showing the poor performance of Metacomet and the issues with the clubhouse. Napoli seemed to be the most "in the trenches" of the Managers and clearly gave the course's day-to-day operations his best shot. Like Faxon, however, Napoli's testimony substantively changes little for the Court's analysis.

Finally, the testimony of the two accountants relied on incorrect assumptions as to what numbers should be used for their calculations. Both CPAs insisted their calculations were correct and that the other side had improperly determined the shares of each member of Metacomet. (Trial Tr. vol. V, 670:11-16.) The Court appreciates the time and efforts of the experts, and the Court relies on the CPA's determination that at formation, the price of a Class A Membership Unit was $86.02. (Trial Tr. vol. III, 331:21-25.)

E

Procedural Background

Incensed at the perceived improper transfer of Membership interests by the Individual Defendants, Plaintiffs filed this action on May 13, 2020. (Docket). Six days later, Plaintiffs submitted an amended verified complaint alleging seven counts against Metacomet and the Individual Defendants, including (1) declaratory and injunctive relief "under 6 Del. C. §§ 18-111 and 10 Del. C. § 6501," as to both VM Parkway and Augenstein, (2) civil conspiracy under Rhode Island law as to the Individual Defendants, (3) breach of contract under 6 Del. C. § 18-111, (4) unjust enrichment under 6 Del. C. § 18-111, (5) equitable indemnity for the hiring of Raymond Corcoran, the former General Manager of the Club who Plaintiffs accuse the Individual

Defendants of deferring his compensation until after the entrance of his divorce decree, and (6) injunctive relief. (Ver. Am. Compl.) On June 8, 2020, Plaintiffs filed an emergency motion for a temporary restraining order, barring Defendants from distributing the proceeds to Metacomet to any of the Members. (Docket). The parties agreed to freeze the assets at issue in this dispute so the Court could resolve their disagreements in two consent orders entered on September 18, 2020 and January 20, 2021. *Id.*

On July 16, 2020, Plaintiffs moved to dismiss the counterclaims filed against them by Defendants and strike Defendants' affirmative defenses. (Docket). The Court denied Plaintiffs' motion on July 20, 2022. *Id.* In an order entered on the same day, the Court also denied the parties' cross-motions for summary judgment, which Augenstein had filed on March 10, 2022 and Defendants submitted on April 27, 2022. *Id.* Thereafter, the parties proceeded to trial on September 18, 19, 20, 21 and 28 in 2023, with trial concluding upon the submissions of the parties' post-trial briefs in April of 2024. *Id.*

II

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure provides that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon[.]" Super. R. Civ. P. 52(a). In a non-jury trial, '"[t]he trial justice sits as a trier of fact as well as of law.'" *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)). This means that the trial justice "weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." *Id.* (internal quotations omitted).

"When a case is tried without a jury, 'the task of determining credibility of witnesses is peculiarly the function of the trial justice[.]'" *Jotorok Group, Inc. v. Computer Enterprises, Inc.*, No. PC01-3237, 2005 WL 2981658, at *4 (R.I. Super. Nov. 4, 2005) (quoting *State v. Sparks*, 667 A.2d 1250, 1251 (R.I. 1995) (further citation omitted)).

Our Supreme Court has recognized that a trial justice's analysis of the evidence and findings in the bench trial setting "'need not be exhaustive,"' and must '"reasonably indicate[] that [the trial justice] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses . . ."' *Notarantonio v. Notarantonio*, 941 A.2d 138, 144 (R.I. 2008) (quoting *McBurney v. Roszkowski*, 875 A.2d 428, 436 (R.I. 2005)). '"Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case."' *Hilley v. Lawrence*, 972 A.2d 643, 651 (R.I. 2009) (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998)).

III

Analysis

It is undisputed that the Members of Metacomet entered into the Operating Agreement on April 3, 2019. (Joint Stipulation of Facts ¶ 2.) Metacomet is organized in Delaware. *Id.* In Rhode Island, "[t]he laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs[.]" G.L. 1956 § 7-16-48(a). The Delaware Supreme Court stated:

> "'The first step when analyzing a case involving the internal affairs of an LLC is . . . to examine the LLC agreement to determine whether it addresses the issue. If the agreement covers the issue, the agreement controls unless it violates one of the [LLCA[13]]'s mandatory provisions. If the agreement is silent, then the Court must

[13] Delaware's Limited Liability Company Act (LLCA) governs limited liability companies organized in Delaware. DEL. CODE ANN. tit. 6, § 18-1101 (West 2024).

> look to the [LLCA] to see if one of its default provisions apply. If neither the agreement nor the [LLCA] addresses the matter, the rules of law and equity shall govern.'" *Holifield v. XRI Investment Holdings LLC*, 304 A.3d 896, 923 (Del. 2023) (quoting *In re Coinmint, LLC*, 261 A.3d 867, 900-01 (Del. Ch. 2021)).

Therefore, when addressing the claims in this case, the Court will first analyze the Operating Agreement. *Id.* Should the Operating Agreement not determine the claims, the Court will next assess if the LLCA's default provisions apply. *Id.* Finally, if the LLCA's default provisions do not apply, the Court will apply the rules of law and equity. *Id.*

The Delaware Supreme Court stated '"[w]hen analyzing an LLC agreement, a court applies the same principles that are used when construing and interpreting other contracts."' *Holifield*, 304 A.3d at 923-24 (quoting *Absalom Absalom Trust v. Saint Gervais LLC*, C.A. No. 2018-0452-TMR, 2019 WL 2655787, at *2 (Del. Ch. Jun. 27, 2019), *superseded by statute on other grounds*; DEL. CODE ANN. tit. 6, § 18-1101(e)). When analyzing a contract, '"[i]f a writing is plain and clear on its face, *i.e.*, its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent."' *Holifield*, 304 A.3d at 924 (quoting *City Investing Co. Liquidating Trust v. Continental Casualty Co.*, 624 A.2d 1191, 1198 (Del. 1993)). "Contracts will be interpreted to 'give each provision and term effect' and not render any terms 'meaningless or illusory.'" *Manti Holdings, LLC v. Authentix Acquisition Company, Inc.*, 261 A.3d 1199, 1208 (Del. 2021) (quoting *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010)). "Language is ambiguous if it is susceptible to more than one reasonable interpretation." *Id.* "An interpretation is unreasonable if it 'produces an absurd result' or a result 'that no reasonable person would have accepted entering into the contract.'" *Id.* (quoting *Osborn*, 991 A.2d at 1160). '"The parties' steadfast disagreement over interpretation will not, alone, render the contract ambiguous."' *Id.* (quoting *Osborn*, 991 A.2d at 1160).

The Operating Agreement contains definitions that are crucial to the Court's analysis. The Operating Agreement established each Member's ownership interest at the formation of Metacomet. (Pls.' Ex. 1, at Schedule A-1.) The Operating Agreement's definition section defines: Percentage Interest, Membership Units, Class A Member Percentage Interest, and Class B Member Percentage Interest. *Id.* at 1-7. '"**Percentage Interest**' shall mean, as to each Member, the fraction, expressed as a percentage, the numerator of which is the Capital Contributions by such Member, and the denominator of which is the total Capital Contributions of all Members." *Id.* at 6 (emphasis in original). Notably, Percentage Interest does not refer to ownership interest in Metacomet. *See id.*; *Holifield*, 304 A.3d at 924. '"**Membership Units**' means Class A Membership Units, Class B Membership Units, the Managing Member Membership Units and any other units representing an ownership interest in the Company." (Pls.' Ex. 1, at 5.) (emphasis in original) Membership Units represent an ownership interest in Metacomet. *Id.* The meaning of Membership Units is distinct from Class A Member Percentage Interest and Class B member Percentage Interest. *See id.* at 3-4; *Manti Holdings, LLC*, 261 A.3d at 1209. '"**Class A Member Percentage Interest**' means the fraction, expressed as a percentage, the numerator of which is the total Capital Contributions by the Class A Members, and the denominator of which is the total Capital Contributions of all Members." (Pls.' Ex. 1, at 3) (emphasis in original). Similarly, '"**Class B Member Percentage Interest**' means the fraction, expressed as a percentage, the numerator of which is the total Capital Contributions by the Class B Members, and the denominator of which is the total Capital Contributions of all Members." *Id.* (emphasis in original) Class A Member Percentage Interest and Class B Member Percentage Interest represent the proportion of Capital Contributions by Members of Class A or Class B, respectively, to the total Capital Contribution made by all Members. *See id.* If Class A Member Percentage Interest and Class B Member Percentage Interest signified

ownership interest in the company, Membership Units would be meaningless because Class A Member Percentage Interest and Class B Member Percentage Interest are not calculated using Membership Units. *See Manti Holdings, LLC*, 261 A.3d at 1209. Class A Member Percentage Interest and Class B Member Percentage Interest do not signify ownership interest in Metacomet. *See id.*

A

Augenstein's Ownership Interest in Metacomet

The Court will analyze the Operating Agreement to determine if (i) Augenstein was required to make an ICC and if (ii) Augenstein's actions caused him to forfeit 200 Class B Membership Units. *Holifield*, 304 A.3d at 923 (citing *Coinmint*, 261 A.3d at 900-01). The Operating Agreement must be interpreted as a contract. *Holifield*, 304 A.3d at 923-24. '"If a writing is plain and clear on its face, *i.e.*, its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent."' *Id.* at 924 (quoting *City Investing Co. Liquidating Trust*, 624 A.2d at 1198). "Contracts will be interpreted to 'give each provision and term effect' and not render any terms 'meaningless or illusory.'" *Manti Holdings, LLC*, 261 A.3d at 1208 (quoting *Osborn ex rel. Osborn*, 991 A.2d at 1159). "Language is ambiguous if it is susceptible to more than one reasonable interpretation." *Id.* "An interpretation is unreasonable if it 'produces an absurd result' or a result 'that no reasonable person would have accepted when entering into the contract.'" *Id.* (quoting *Osborn*, 991 A.2d at 1160). '"The parties' steadfast disagreement over interpretation will not, alone, render the contract ambiguous."' *Id.* (quoting *Osborn*, 991 A.2d at 1160). The Operating Agreement does not violate any of the LLCA's mandatory provisions. *See generally* DEL. CODE ANN. tit. 6, § 18-1101. Therefore, the Operating Agreement controls the issue, specifically Section 6.2(b). *Holifield*, 304 A.3d at 923.

1

Augenstein's Capital Obligations under the Operating Agreement

Augenstein was not required to make an Additional Capital Contribution under Section 6.2(b). (Pls.' Ex. 1, at 13-14.) Section 6.2(b) provides:

> "[I]n the event that the Class B Member contributes $50,000 as a Capital Contribution to the Company prior to the earlier of (i) eighteen (18) months or (ii) the date construction of the Project is commenced by the Owner[14] (the "Admission Date"), 200 of the Class B Member's Class B Units shall be converted into Class A units and (ii) in the event that the Class B Member fails to make such $50,000 Capital Contribution on or before the Admission Date, the Class B Member shall forfeit 200 Class B Units." *Id.*

The Operating Agreement refers to $50,000 as an optional Capital Contribution; "in the event that" Augenstein paid, 200 of his Class B Membership Units would be "converted" into 200 Class A Membership Units. *Id.* "In the event that" Augenstein did not pay, he would "forfeit" 200 Class B Membership Units. *Id.* The writing of the Operating Agreement outlines a "clear" and "unmistakable meaning" of what will occur if Augenstein contributes the $50,000 and what will occur if Augenstein does not contribute $50,000. *See Holifield*, 304 A.3d at 923-24. There cannot be more than one reasonable interpretation of Section 6.2(b) because the section explicitly states each outcome, payment or non-payment and the consequences of each outcome, transfer of units or forfeiture of units. *See Manti Holdings, LLC*, 261 A.3d at 1209. Augenstein's failure to contribute the $50,000 before the date set out in the Operating Agreement shall cause Augenstein to forfeit 200 Class B Units. (Pls.' Ex. 1, at 13-14.) The Agreement granted Augenstein 700 Class B Membership Units. (Pls.' Ex. 1, at Schedule A-1.) Augenstein made no ICC; the Operating Agreement provided Augenstein an option to contribute capital. (Pls.' Ex. 1, at 13-14, Schedule A-1.)

[14] "Owner" refers to Metacomet. (Trial Tr. vol. II, 151:4-6.)

Defendants argue that Membership interest should be calculated from each Member's ICC. (Defs.' Post-Trial Brief at 15.) However, this claim is incompatible with the text of the Operating Agreement. *See* Pls.' Ex. 1, at 13-14, Schedule A-1. Even if Section 6.2(b) did provide for Augenstein to make an ICC of $50,000, Membership interest could not have been calculated based on ICCs because $50,000 is not "7.00%" of $850,000; no reasonable person would have calculated Membership interest based on ICCs alone then granted Augenstein a Membership interest larger than the percentage determined his ICC.[15] *See Manti Holdings, LLC*, 261 A.3d at 1209; (Pls.' Ex. 1, Agreement Schedule A-1.) Therefore, Augenstein did not have to make an ICC to receive 700 Class B Membership units.

2

Augenstein's Performance of Section 6.2(b)

Separately, Augenstein forfeited 200 of his Class B Membership Units because he did not pay $50,000 within the timeframe established by Section 6.2(b) of the Operating Agreement. *Id.* at 13-14. "Contracts will be interpreted to 'give each provision and term effect' and not render any terms 'meaningless or illusory.'" *Manti Holdings, LLC*, 261 A.3d at 1208 (quoting *Osborn*, 991 A.2d at 1159). "Language is ambiguous if it is susceptible to more than one reasonable interpretation." *Id.* "An interpretation is unreasonable if it 'produces an absurd result' or a result 'that no reasonable person would have accepted entering the contract.'" *Id.* (quoting *Osborn*, 991

[15] For illustrative purposes, the Court presents the following hypothetical: the sum of all Members' ICCs was $850,000. VanDeventer, Faxon, Napoli, and VM Parkway each contributed $200,000; Augenstein contributed $50,000. To determine a Member's percentage of ownership interest, one must divide a Member's ICC by the sum of all Member's ICCs. Dividing Augenstein's hypothetical ICC of $50,000 by the sum of $850,000 and multiplying by one hundred shows Augenstein would have a 5.88% Membership interest. However, Augenstein had a "7.00%" Membership interest. (Pls.' Ex. 1, at Schedule A-1.) Therefore, Membership interest was not calculated based on the Members' ICC. *See id.*

A.2d at 1160). '"The parties' steadfast disagreement over interpretation will not, alone, render the contract ambiguous."' *Id.* (quoting *Osborn*, 991 A.2d at 1160).

The Members entered into the Operating Agreement on April 3, 2019. (Joint Stipulation of Facts ¶ 3.) This case was filed before October 2, 2020, less than eighteen months after the Operating Agreement. *Id.* ¶ 14. Therefore, the Court must make a determination of "the date construction of the Project [was] commenced by the Owner[.]" (Pls.' Ex. 1, at 13-14.) The Operating Agreement defines the term Project: '"**Project**' means the renovation of the existing golf course and club house together with approximately 100 condominium units to be constructed and developed on the Property." *Id.* at 6 (emphasis in original). Augenstein had the option to contribute $50,000 to Metacomet. *Id.* In return, 200 of Augenstein's Class B Membership Units would convert to 200 Class A Membership Units. *Id.* Should Augenstein have chosen not to contribute $50,000 to Metacomet within the established timeframe, Augenstein would forfeit 200 of his Class B Membership Units. *Id.*

The Operating Agreement defined the Project as renovating the golf course, renovating the club house, and building one hundred (100) condominium units. (Pls.' Ex. 1, at 6, 13-14.) Section 6.2(b) stated that should construction of the "Project" begin before Augenstein contributed $50,000, Augenstein would forfeit 200 Class B Membership Units. *Id.* at 13-14. The Operating Agreement references construction on the golf course, the club house, and one hundred (100) condominium units so the Court must interpret the contract to give effect to each term. *Manti Holdings, LLC*, 261 A.3d at 1209. The term "together with" combines renovation of the golf course and the club house with the construction of one hundred (100) condominiums into the overarching term, the Project. *Id.*; Pls.' Ex. 1 at 6. It would be absurd to assert that for the Project to begin, construction must start on the golf course, the club house, and the one hundred (100) condominium

units because the Operating Agreement defined the term Project to include all three areas. (Pls.' Ex. 1 at 6.) The Project commenced when construction began on the golf course, club house, or condominiums because all were defined together as a singular project. *See Holifield*, 304 A.3d at 924.

The Project commenced before Augenstein's alleged payment. *Id.*; *Holifield*, 304 A.3d at 924. Metacomet renovated the club house. (Trial Tr. vol. II, 152:3-5; 205:9-20.) Augenstein alleges he made a payment of $50,000 on October 1, 2020. (Trial Tr. vol. I, 15:17-25.) The club house renovation began before October 1, 2020. *See* (Trial Tr. vol. IV, 473:12-17.) Therefore, Augenstein did not comply with Section 6.2(b) and forfeited 200 Class B Membership Units. Augenstein does, however, retain 500 Class B units.

B

Notice to VM Parkway Required for Additional Capital Calls

As it did when it evaluated Augenstein's ownership interest, the Court will first examine the Operating Agreement to determine if it addresses the notice issue. *Holifield*, 304 A.3d at 923. Second, the Court will assess if any of the LLCA's mandatory provisions apply. *Id.* Third, the Court will apply the rules of law and equity. *Id.*

1

Notice Required by the Operating Agreement

First, the Court will analyze the Operating Agreement to determine if it addresses the notice required for Additional Capital Calls. *Id.* at 923 (citing *Coinmint*, 261 A.3d at 900-01). The Operating Agreement states: "[a]ny notice, demand, offer or other written instrument required or permitted to be given shall be in writing signed by the party giving such notice . . . to the parties at the addresses provided below." (Pls.' Ex. 1, at 29.) Below, the Operating Agreement states

notice to Members should be sent to "[a]t such address set forth in in Schedule A[.]" *Id.* at 29-30. The "addresses" section in Schedule A is blank. (Pls.' Ex. 1, at Schedule A-1.) It is impossible for the parties to perform the Operating Agreement as written so it naturally follows that Metacomet did not comply with the Operating Agreement. *See id.* Therefore, the Court must look to the LLCA. *Holifield*, 304 A.3d at 923.

2

Applicability of the LLCA's Mandatory Provisions

Second, the Court will analyze Delaware's LLCA to determine if a mandatory provision applies. *Id.* The LLCA allows for a limited liability company to ratify an act that the company committed beyond its operating agreement. Section 18-106(e). LLCA § 18-106(e) states:

> "Any act or transaction that may be taken by or in respect of a limited liability company under this chapter or a limited liability company agreement, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the limited liability company agreement making such act or transaction void or voidable may be waived) by the members, managers or other persons whose approval would be required under the limited liability agreement[.]" Section 18-106(e).

Under the LLCA, Metacomet may ratify an act beyond its Operating Agreement so long as the act is approved by the process required under Metacomet's Operating Agreement. *See id.*

The Operating Agreement established voting procedures: "[e]ach Manager shall be entitled to one vote at meetings of the Board." (Pls.' Ex. 1, at 10.) The "[a]uthorization of the majority of the then-current Managers shall be the act or Authorization . . . of the Board." *Id.* The Board of Managers of Metacomet Investors, LLC consisted of "Brendan VanDeventer, Bradford Faxon, Steve Napoli, and Timothy Fay." (Joint Stipulation of Facts ¶ 8.) Therefore, a majority of three (3) Members needed to ratify a failure to comply with the requirements of the Operating Agreement for the requirements to be waived. *See id.*; § 18-106(e).

The Operating Agreement provides that "[t]he board shall cause each Member to receive written notice of any Additional Capital Contribution[.]" (Pls.' Ex. 1, at 13.) Section 5.3(d) of the Operating Agreement provides for action by the Board without a meeting. (Pls.' Ex. 1, at 10-11.)

> "Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if one or more proposed written consents, setting forth the action so taken or to be taken: (i) is sent to all of the Managers, (ii) is signed by those Managers possessing the votes necessary to approve such action at a duly convened meeting of the Board (or the duly authorized representative or representatives of any such Manager or Managers as provided by Section 5.3(b)) and (iii) such signed written consent is included in the Company's records." *Id.*

At the very least, a majority of the Board must approve an action taken outside of a meeting when the Operating Agreement would normally require said action to be taken at a meeting for the action to be valid. *See id.* In June of 2019, there was a request that Members make an Additional Capital Contribution. (Joint Stipulation of Facts ¶ 11.) This notice was signed only by VanDeventer. (Defs.' Ex. 7.) A majority of the Members did not sign this action. *See id.* As a result, the Board did not ratify the decision to send e-mail notice regarding the first Additional Capital Call outside of a Board meeting. *See id.* Therefore, the Court will apply the rules of law and equity. *Holifield*, 304 A.3d at 923.

3

Substantial Compliance

Third, the Court will determine if Defendants substantially complied with the notice provision when literal compliance was impossible. *See Gildor v. Optical Solutions, Inc.*, No. 1416-N, 2006 WL 4782348, at *7 (Del. Ch. June 5, 2006). "When confronted with less than literal compliance with a notice provision, courts have required that a party substantially comply with the notice provision." *Gildor*, 2006 WL 4782348, at *7; *see also Corporate Property Associates 6 v. Hallwood Group Inc.*, 792 A.2d 993, 1000 (Del. Ch. 2002) (finding that parties demonstrated,

through their conduct, that substantial compliance with a corporation's notice provision fulfilled the notice provision's requirements when literal compliance was impossible), *reversed on other grounds*, 817 A.2d 777 (Del. 2003).

Literal compliance with the Operating Agreement was impossible because the Operating Agreement required notice to be sent to the Members' addresses listed in Schedule A; however, there are no addresses listed in Schedule A. (Pls.' Ex. 1, at 29-30, Schedule A-1.) Fay used TFay@Stonestreetcorp.com as his primary email address for business. (Trial Tr. vol. II, 184:4-5.) TFay@Stonestreetcorp.com was the only email address Fay used to communicate with the Board. *Id.* (Trial Tr. vol. II,183:16-19.) The Board, accordingly, used TFay@Stonestreetcorp.com to correspond with Fay, who represented VM Parkway. *See id.* Fay alone signed the signature page of the Operating Agreement for VM Parkway; the page states Fay is "[VM Parkway's]: Manager[.]" (Pls.' Ex. 1, at 35.) Hanna, the only member of VM Parkway other than Fay, understood Fay acted as a representative of VM Parkway. (Trial Tr. vol. III, 283:5-11.) Hanna "had no desire" to manage the "day-to-day operations" of VM Parkway. *Id.* Metacomet Members understood, correctly, that Fay represented VM Parkway in communications with Metacomet. *See id.*

Here, Defendants substantially complied with the Operating Agreement's notice provision when literal compliance was impossible. *See id.*; *Gildor*, 2006 WL 4782348, at *7. In "June of 2019, there was a request that the Members contribute an Additional Capital Contribution ('Fall, 2019 Capital Call #1') in accordance with the LLC Agreement." (Joint Stipulation of Facts ¶ 11.) Defendants substantially complied with the notice provision by sending e-mails to VM Parkway's manager, Fay. (Trial Tr. vol. II, 183:16-19.) Fay received the e-mail request for an Additional Capital Contribution and was aware of the request, rebuffing members of the Board several times

at meetings when they asked Fay to contribute capital. (Trial Tr. vol. II, 178:1-5.) Fay agreed that attempting to manage Metacomet at the time was like "drinking out of a firehose[.]" (Trial Tr. vol. II, 181:11-14.) The Operating Agreement intended for Members to be notified of requests for Additional Capital Contributions, and Fay, as the manager of VM Parkway, had notice of the Additional Capital Contribution request that occurred in June of 2019. *See Gildor*, 2006 WL 4782348, at *7. The impossibility of specific performance, the demand for rapid action, and Fay's actual knowledge of the Capital Call show that Metacomet substantially complied with the Operating Agreement's notice provision with respect to VM Parkway. *Id.* Metacomet's communication with Fay regarding the first Additional Capital Call substantially complied with the Operating Agreement. *Id.* Fay, representing VM Parkway, admits he felt that there were no notice issues with the second Additional Capital Call in the Spring of 2020. (Trial Tr. vol. II, 184:16-24.) Therefore, Defendants substantially complied with the Operating Agreement's notice provision in regard to the Additional Capital Calls.

C

The Transfer of Class A Membership Units

Following the framework it used to establish Augenstein's ownership interest and whether VM Parkway received notice, the Court will first analyze the Operating Agreement to determine if it addresses the procedure required for transfer of a Member's ownership interest, also referred to as Membership Units, in the event of non-payment. *Holifield*, 304 A.3d at 923 (citing *Coinmint*, 261 A.3d at 900-01). Then, the Court will apply the procedure to the case to determine the ownership of Class A Membership Units. *Id.* The Operating Agreement does not violate any of the LLCA's mandatory provisions. *See* § 18-1101. Therefore, the Operating Agreement controls the issue. *Holifield*, 304 A.3d at 923.

When analyzing a contract, '"[i]f a writing is plain and clear on its face, *i.e.*, its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent."' *Holifield*, 304 A.3d at 924 (quoting *City Investing Co. Liquidating Trust*, 624 A.2d at 1198). "Contracts will be interpreted to 'give each provision and term effect' and not render any terms 'meaningless or illusory.'" *Manti Holdings, LLC*, 261 A.3d at 1208 (quoting *Osborn*, 91 A.2d at 1159). "Language is ambiguous if it is susceptible to more than one reasonable interpretation." *Id.* "An interpretation is unreasonable if it 'produces an absurd result' or a result 'that no reasonable person would have accepted when entering into the contract."' *Id.* (quoting *Osborn*, 991 A.2d at 1160). '"The parties' steadfast disagreement over interpretation will not, alone, render the contract ambiguous."' *Id.* (quoting *Osborn*, 991 A.2d at 1160).

The Operating Agreement states the Membership Units given to each Member at the formation of Metacomet in Schedule A. (Pls.' Ex. 1, at Schedule A-1.) Ten thousand (10,000) Membership Units were granted, 9,300 Class A Membership Units and 700 Class B Membership Units. *Id.* VanDeventer, Faxon, Napoli, and VM Parkway each received 2,325 Class A Membership Units. *Id.* Augenstein received 700 Class B Membership Units. Schedule A also stated each Members "Membership Interest[.]" *Id.* VanDeventer, Faxon, Napoli, and VM Parkway each had a "23.25%" Membership interest; Augenstein had a "7.00%" Membership interest. The term "Membership Interest" used in Schedule A is not defined in the Operating Agreement. *Id.* at 1-7. However, the plain language of the Operating Agreement, specifically Schedule A, conveys an unmistakable meaning; each Member's Membership interest represents the percentage of the total Membership Units the Member owns. *See* Pls.' Ex. 1 at, Schedule A-1; *Holifield*, 304 A.3d at 924. A Member's ICC was not used to calculate their Membership interest because Augenstein did not initially contribute capital yet received a "7.00%" Membership interest. *See* Pls.' Ex. 1 at,

Schedule A-1. Membership interest could not have been not calculated based on ICCs because $50,000 is not "7.00%" of $850,000; no reasonable person would have calculated Membership interest based on ICC alone, then granted Augenstein a Membership interest larger than the percentage determined his ICC. *See id.*; *Manti Holdings, LLC*, 261 A.3d at 1208.

1

Procedure to Transfer Class A Membership Units

Membership Units are the sole determination of ownership interest in Metacomet; Membership Units are not granted exclusively solely on a Member's capital contribution. *See* § III.A. Section 6.6(b) is the only section of the Operating Agreement which provides for the change of ownership of Membership Units. (Pls.' Ex. 1, at 13-14) Additional Capital Contributions alone do not impact the distribution or value of Membership Units. *See id.* When a Member does not fulfill their default obligations to fund an Additional Capital Contribution:

> "[T]he Board, in its sole and absolute discretion, may designate one or more parties, which parties… that will be permitted to make the Additional Capital Contribution of the Defaulting Member, provided that Units of the Defaulting Member with a Capital Account equal to twice the amount of the Default Contribution shall be transferred to the designated party upon the contribution of the Default Contribution and the Capital Account of such designated party shall be increased by twice the Default Contribution and the Defaulting Member's Capital Account shall be reduced by the same amount." *Id.*

If a Member failed to make their Default Contribution, another entity could provide the full Additional Capital Contribution for that Member. *Id.* Said entity would receive the Defaulting Member's Membership Units equal to twice the amount of the Additional Capital Contribution. *Id.* Essentially, if a Member failed to make a required Additional Capital Contribution, that Member could potentially lose double the value of the Additional Capital Contribution worth of Membership Units. *Id.*

2

Applying the Operating Agreement to Transfer Membership Units

Metacomet made two Additional Capital Contribution (Capital Call) requests, the Court will apply the Operating Agreement to determine the proper transfer of Membership Units for each Member. (Joint Stipulation of Facts ¶ 11.) As noted, the first Capital Call occurred in June of 2019; VanDeventer, Faxon, and Napoli made the requested contribution. *Id.* VM Parkway did not. *Id.* VanDeventer, Faxon, and Napoli funded the sums that had been requested of VM Parkway. *Id.* The Court determined Metacomet substantially complied with the Operating Agreement's notice provisions for the first Capital Call. *See* § III.B.

As a result of the first Capital Call, each Member's Membership Units must be redistributed based on the requirements of Section 6.6(b). (Pls.' Ex. 1, at 13-14.) VM Parkway's ICC is $200,000. (Pls.' Ex. 1, at Schedule A-1.) For the first Capital Call, VM Parkway was obligated to pay $40,000, twenty percent of $200,000. (Pls.' Ex. 1, at 13-14.) VM Parkway paid nothing in response to the first Capital Call. (Joint Stipulation of Facts ¶ 12.) VanDeventer, Faxon, and Napoli invoked Section 6.6(b) and each paid $56,667 to satisfy all of the Class A Members Capital Call obligations and transferred a portion of VM Parkway's Membership Units to themselves. *Id.* While VanDeventer, Faxon, and Napoli each paid an additional $26,667 at the first Additional Capital Call, Section 6.6(b) states that Members are permitted to make the "Additional Capital Contribution of the Defaulting Member." (Pls.' Ex. 1, at 13-14.) As such, only $13,333[16] of each of VanDeventer, Faxon, and Napoli's payments can be used when calculating the amount of VM Parkway's Membership Units that will transfer to each party. *Id.*

[16] To sum to $40,000, two parties must pay $13,333 and one must pay $13,334 or each must pay $13,333 and one third. The Court uses $13,333 to simplify the matter but recognizes it is not the most accurate depiction of the value.

The Operating Agreement does not directly state how to calculate the value of Class A Membership Units. *See generally* Agreement. However, the Operating Agreement provides that Membership Units are not granted based solely on a Member's Capital Contribution. *See* § III.A. As such, the value of a Membership Unit cannot change based on Additional Capital Contributions. *See id.*; Trial Tr. vol. III, 338:17-23. Section 6.6(b) is the only section of the Operating Agreement which provides for the change of ownership of Membership Units between Members. (Pls.' Ex. 1, at 13-14.) Metacomet never granted additional Membership Units. *See generally* Joint Stipulation of Facts. Therefore, the value of a Membership Unit may be determined from the Membership Unit's value at the formation of Metacomet. At trial, evidence was presented that when a Member made an ICC of $200,000 and received 2,325 Class A Membership Units, those units would be valued at $86.02 a unit. (Tr. 331:21-25.) The Court accepts this determination.

Section 6.6(b) states that when VanDeventer, Faxon, and Napoli make an Additional Capital Contribution for a Defaulting Member, here VM Parkway, VM Parkway's Class A Membership Units "equal to twice the amount of the Default Contribution shall be transferred to" VanDeventer, Faxon, and Napoli. (Pls.' Ex. 1, at 13-14.) The value of double VM Parkway's default contribution is $80,000, $80,000 divided by $86.02 is 930 Class A Membership Units, rounded. (Trial Tr. vol. III, 331:21-25.) To properly allocate the Class A Membership Units between the Individual Defendants, 930 is divided by three (3), which is 310. Therefore, VM Parkway should transfer 310 of its Class A Membership units to VanDeventer, Faxon, and Napoli. This process results in VanDeventer, Faxon, and Napoli each having 2,635 Class A Membership Units and VM Parkway having 1,395 Class A Membership Units.

The second Capital Call occurred in "March/April of 2020[.]" (Joint Stipulation of Facts ¶ 11.) "All the Members satisfied their respective amounts as requested by [Metacomet]." *Id.*

Therefore, because all Members responded and paid the amounts they were requested to pay, Members could not transfer Membership Units because VM Parkway paid its requested Additional Capital Contribution. Joint Stipulation of Facts ¶ 12; Trial Tr. vol. IV, 572:19-23. As a result, there was no transfer of Class A Membership Units due to the second Capital Call. Therefore, VanDeventer, Faxon, and Napoli each own 2,635 Class A Membership Units and VM Parkway owns 1,395 Class A Membership Units.

The transfer that occurred because of VM Parkway's failure to pay the first Capital Call should be reflected in the Members' total Capital Contributions per Section 6.6(b). (Operating Agreement § 6.6(b).) To comply with Section 6.6(b), $80,000 should be subtracted from VM Parkway's overall Capital Contribution and distributed to VanDeventer, Faxon, and Napoli. (Trial Tr. vol. III, 331:21-25.) The Capital Contributions of VanDeventer, Faxon, and Napoli would be credited $26,667, $26,667, $26,666 respectively. *Id.* The parties agreed that before adjustments under Section 6.6(b), the total of "actual payments in the form of cash or credits that the Members have paid to Metacomet," of Class A Members were: Vandeventer, $356,667; Faxon, $356,667; Napoli, $355,922; VM Parkway, $141,341. (Joint Stipulation of Facts ¶ 12.) Using this determination, the Court calculates the Class A Members' total Capital Contributions: VanDeventer, $383,334; Faxon, $383,334; Napoli, $382,588; VM Parkway, $61,341. *See id.* Class A Member Percentage Interest may be calculated using this determination of total Capital Contribution.

D

Recovery of Attorneys' Fees

The Court may award a reasonable attorney's fee if the Court: "(1) [f]inds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party, or (2)

[r]enders a default judgment against the losing party." Section 9-1-45. Here, a default judgment was not granted and there were justiciable issues. *See* § IV; *see generally* Decision. Therefore, the Court will not award a reasonable attorneys' fee.

IV

Conclusion

For the reasons stated herein, Counsel shall submit the appropriate order and separate judgment that contains the following information: as to **Count I**, the Court finds based on a preponderance of the evidence that VM Parkway, LLC is entitled to partial declaratory relief as Metacomet violated the Operating Agreement's procedure for the transfer of Class A Membership Units; as to **Count II**, the Court finds based on a preponderance of the evidence that Karl Augenstein is entitled to partial declaratory relief as Metacomet violated the Operating Agreement's procedure for the transfer of Class B Membership Units; as to **Count IV**, the Court finds based on a preponderance of the evidence that Metacomet Investors LLC, breached the Operating Agreement by improperly transferring the Membership Units of VM Parkway, LLC and Karl Augenstein.

Additionally, as to Defendants' counterclaims: as to **Count VI**, the Court finds based on a preponderance of the evidence that Defendants are entitled to a partial declaratory judgment, as Metacomet substantially complied with the Operating Agreement's notice provisions for the Additional Capital Contribution in June of 2019; as to **Count VII**, the Court finds based on a preponderance of the evidence that VM Parkway, LLC breached the Operating Agreement by failing to pay the required amount of the Additional Capital Contribution requested in June of 2019; as to **Count IX**, the Court finds based on a preponderance of the evidence that Defendants are not entitled to the Recovery of Attorneys' Fees Pursuant to § 9-1-45.

The Court determined the following facts according to the Operating Agreement. VanDeventer, Faxon, and Napoli each own 2,635 Class A Membership Units; VM Parkway owns 1,395 Class A Membership Units. Augenstein owns 500 Class B Membership Units. As such, the Members' Membership Interests are: VanDeventer, 26.89%; Faxon, 26.89%; Napoli, 26.89%, VM Parkway, 14.23%; Augenstein, 5.10%. The Class A Members' Class A Membership Percentage Interests are: VanDeventer, 28.33%; Faxon, 28.33%; Napoli, 28.33%; and VM Parkway, 15%. The Class A Members' total amounts of Unrecovered Capital are: VanDeventer, $383,334; Faxon, $383,334; Napoli, $382,588; and VM Parkway, $61,341.

The parties shall use the figures in the paragraph above to determine the proper distribution of monies under Section 7.6 of the Operating Agreement and therefore, the damages parties are owed. (Pls.' Ex. 1, at 20.) Section 7.6 states:

> "7.6 Distributions. The Company shall make all distributions of Available Cash to the Members at such time or times and in such amounts as shall be determined by the Board, in its sole discretion in the following order and priority:
>
> "(a) first, to the Class A Members in proportion to their Unrecovered Capital until the Unrecovered Capital of all Members is zero;
>
> "(b) second, to the Class A Members in proportion to their Percentage Interests in the Company in a percentage equal to the Class A Member Percentage Interest, until the cumulative amount distributed pursuant to this Section 7.6(b) equals the Preferred Return on cumulative Capital Contributions, calculated for the period of time commencing on the date such Capital Contributions were made by, and expiring on the date such Capital Contributions were returned to them; and
>
> "(c) to the Class A Members and the Class B Members in proportion to their Membership Interests in the Company. *Id.* (emphasis in original).

The parties shall meet to determine the appropriate distribution according to the facts and process determined by the Court through the Operating Agreement.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **VM Parkway, LLC and Karl Augenstein v. Metacomet Investors LLC, Bradford J. Faxon, Stephen Napoli, and Brendan VanDeventer**

CASE NO: **PC-2020-03841**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **August 28, 2024**

JUSTICE/MAGISTRATE: **Stern, J.**

ATTORNEYS:

For Plaintiffs: **Andrew R. Bilodeau, Esq.**

For Defendants: **William R. Landry, Esq.**