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THE BUSINESS COURT OF TEXAS
ELEVENTH DIVISION

RUSSELL A. HINDS, *Plaintiff,* v. SANDMAN OFFSHORE, LLC, and DAVID WEGNER, *Defendants,* v. ENVIROCORE, INC., *Third-Party Defendant.*	§ § § § § § § § § § § § §	Cause No. 26-BC11A-0053

MEMORANDUM OPINION AND ORDER

¶1 Before the court are the partial motions to dismiss under Rule 91a filed by Defendant Sandman Offshore, LLC ("Sandman") and Defendant David Wegner on July 31, 2026. Having considered the parties' briefing and oral argument, the pleadings, and the relevant law, the court partially grants Sandman's motion and partially grants Wegner's motion for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Sandman is an oil and gas company with five members each holding a 20% interest, including Hinds and Wegner, who acted as co-managers. According to

Hinds's First Amended Petition ("Pet."), he was the day-to-day manager who devoted thousands of hours of service to Sandman and Wyotex Offshore, LLC ("Wyotex"), the assignee of one of Sandman's oil and gas leases. Then, in March 2026, Sandman's members removed him as a co-manager and expelled him as member the next month—all without notice or an opportunity to be heard.

¶3 In response, Sandman pleads that Hinds's removal and expulsion was prompted by his self-dealing and conflicting business activity. Specifically, Sandman pleads, Hinds recommended that Wyotex hire Hinds's own drilling-services company, Third-Party Defendant EnviroCore, Inc., without disclosing his ownership interest. According to Sandman's counterclaims, Hinds then acted unilaterally to prioritize Wyotex's payments to EnviroCore over Wyotex's lease payments to Sandman, causing delay in funds owed. Sandman also accuses Hinds of making other unilateral action property and tax filings without obtaining proper approval.

¶4 Hinds pleads that Sandman's members have known all along about his ownership of EnviroCore, and that its services were not in conflict with Sandman's business in any event. He, in turn, accuses Wegner of self-dealing management, alleging that Wegner was motivated by personal animus, retaliation, and his own economic gain to orchestrate the written consents for Hinds's removal and expulsion.

¶5 Under Texas Rule of Civil Procedure 91a, all parties move for dismissal. Sandman moves to dismiss Hinds's breach-of-contract and conversion claims. Wegner moves to dismiss Hinds's contract and breach-of-fiduciary-duty claims to the extent they are based on Hinds's removal and expulsion as Sandman manager and member, and he moves for dismissal of the remaining claims against him in their entirety. [1] At least three days before the hearing on the Rule 91a motions, Hinds nonsuited his claim for tortious interference with an existing contract. *See* TEX. R. CIV. P. 91a.5. The court now considers Defendants' motions as to the remaining claims.

LEGAL STANDARD

¶6 A motion under Texas Rule of Civil Procedure 91a seeks dismissal of a claim "on the grounds that it has no basis in law or fact." TEX. R. CIV. P. 91a.1. A claim lacks basis in law "if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought." *Id.* A claim lacks basis in fact "if no reasonable person could believe the facts pleaded." *Id.*

¶7 To survive dismissal, the plaintiff must satisfy Texas's notice-pleading rules. *In re First Rsrv. Mgmt., L.P.*, 671 S.W.3d 653, 662–63 (Tex. 2023). Beyond giving fair notice of the claims themselves, the petition must contain "the essential factual allegations supporting those claims, which must be sufficient to support a judgment if ultimately proven." *Id.* at 663 (internal quotations omitted).

¶8 The court may not consider evidence to decide a Rule 91a motion, basing its

[1] Hinds and EnviroCore later moved for Rule 91a dismissal of Defendants' counterclaims, but those motions have been taken under advisement and are not addressed here.

ruling "solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59." TEX. R. CIV. P. 91a.6. Rule 59 permits that "written instruments, constituting, in whole or in part, the claim sued on" may be "made a part of the pleadings by copies thereof, or the originals, being attached or filed and referred to as such." *Id.* at R. 59.

ANALYSIS

I. Hinds's claim against Wegner for breach of fiduciary duty is dismissed in part.

¶9 Wegner's motion seeks partial dismissal of Hinds's two claims for breach of fiduciary duty to the extent the claims are based on Hinds's expulsion and removal. The court partially grants the motion.

¶10 "The elements of a breach of fiduciary duty claim are: (1) a fiduciary relationship between the plaintiff and defendant, (2) a breach by the defendant of his fiduciary duty to the plaintiff, and (3) an injury to the plaintiff or benefit to the defendant as a result of the defendant's breach." *Lundy v. Masson*, 260 S.W.3d 482, 501 (Tex. App.—Houston [14th Dist.] 2008, pet. denied).

¶11 Wegner's motion seeks dismissal for lack of any fiduciary duty he owed to Hinds. Whether a fiduciary duty exists is a question of law. *See Nat'l Plan Adm'rs, Inc. v. Nat'l Health Ins. Co.*, 235 S.W.3d 695, 704 (Tex. 2007).

A. Wegner owed no fiduciary duty as LLC member.

¶12 According to Hinds's pleading, Wegner is a member and manager of Sandman.

Pet. ¶¶ 14–16. "[M]embers of limited-liability companies . . . do not owe formal fiduciary duties to fellow members simply because of their relationship as co-members." *Bertucci v. Watkins*, 709 S.W.3d 534, 544 (Tex. 2025). Texas law permits a company agreement to "expand, restrict, or eliminate any duties, including fiduciary duties, and related liabilities" owed by a member. TEX. BUS. ORGS. CODE § 101.401. Here, Sandman's Company Agreement, the entity's operative governing document ("Sandman Agreement"), contains no language creating fiduciary duties between members.[2] Wegner owes no fiduciary duty merely by virtue of his membership interest.

B. Wegner owed a limited fiduciary duty as LLC manager.

¶13 Whether Wegner owed fiduciary duties to Hinds as a manager equally depends on whether the Sandman Agreement expanded or restricted those duties. *See* TEX. BUS. ORGS. CODE § 101.401 (allowing LLC company agreement to "expand, restrict, or eliminate any duties, including fiduciary duties, and related liabilities" owed by a manager). Here, the Agreement stated:

[2] Hinds sues on the Sandman Agreement, which he attaches to his live pleading, and no party objects to the court's consideration of the Agreement's terms under Texas Rules of Civil Procedure 91a and 59. *See Hensarling v. Carmichael*, No. 25-BC04B-0014, 2025 Tex. Bus. 50, ¶¶ 11–12, 2025 WL 3688733, at *2 (4th Div.).

5.10. *limitations on Duties and liabilities of Managers.* A Manager shall be liable to the Company and the other Members for acts or omissions in the management of the Company only in the case of gross negligence, willful misconduct or breach of this Agreement by such Manager; but a Manager shall not be liable to the Company or any other Member for any other acts or omissions, including the negligence, strict liability, or other fault or responsibility (short of gross negligence, willful misconduct, or breach of this Agreement) by such Manager. Except for such duties as may be expressly set forth in this Agreement, a Manager shall not be subject to any duties (including fiduciary duties) in the management of the Company.

Pet. Ex. A § 5.10.

¶14 The Texas Supreme Court has cautioned that imposing a fiduciary duty between parties who disclaimed such duties in a written contract would "give judges and juries—rather than the parties themselves—the authority to define the parameters of the parties' legal relationship." *Pitts v. Rivas*, 709 S.W.3d 517, 529–30 (Tex. 2025). This court previously analyzed an LLC company agreement stating that "no special relationship shall exist between any Manager and the Members, and no Member or Manager shall have any duty to any Member, whether fiduciary or otherwise," and limiting liability "unless the loss or damage shall have been the result of gross negligence, fraud or intentional misconduct." *Tall v. Vanderhoef*, 2025 Tex. Bus. 15, ¶ 26, 2025 WL 1165208, at *3 (8th Div.). The court dismissed the claims for fiduciary breach under Rule 91a, noting that the parties "chose to contractually eliminate fiduciary duties between them and liability for losses or damages sustained by them, except for those arising from gross negligence, fraud, or intentional misconduct." *Id.*; *see also Reeder v. Wood Cnty. Energy, LLC*, 395 S.W.3d 789, 797 (Tex. 2012) (enforcing joint operating agreement's exculpatory clause exempting operator "unless the liability arises from gross negligence or willful misconduct").

¶15 In contrast, courts have imposed fiduciary duties on LLC managers where the company agreement contains no limitation of a manager's fiduciary obligations or expressly imposes them. *See Davis v. Crawford*, 700 S.W.3d 438, 447–49 (Tex. App.—Eastland 2024, no pet.) (citing *Strebel v. Wimberly*, 371 S.W.3d 267 (Tex. App.—Houston [1st Dist.] 2012, pet. denied)).

¶16 Here, the Sandman Agreement unequivocally limits the duties owed. Rather than eliminate all managerial fiduciary duties, Section 5.10 eliminates any fiduciary duties owed by managers, "[e]xcept for such duties as may be **expressly set forth** in this Agreement." Pet. Ex. A § 5.10 (emphasis added). Among the duties "expressly set forth" is the duty not to manage the company with acts or omissions of gross negligence, willful misconduct, or breach of the Agreement. *Id.*

¶17 All parties concede in their briefing and in oral argument that Sandman's managers owed **some** fiduciary duties to the company and its members, though each party describes the scope of those duties differently. Wegner contends the "only fiduciary duty pertinent to viable claims in this case is the one barring a specific type of conflicted business activity," referencing Section 5.11. Wegner Reply at 6. But Section 5.10 on its face also preserves liability for willful misconduct, which Hinds has pleaded here. Pet. ¶¶ 59–60, 107; *see Gilbreath v. Horan*, 682 S.W.3d 454, 529–30, 532 n.60 (Tex. App.—Houston [1st Dist.] 2023, pet. denied) (holding that fiduciary-duty claims arising under a limited partnership agreement were properly pleaded and submitted to the jury where the agreement's limitation-of-liability provision excepted gross negligence, bad faith, willful breach, and willful misconduct); *cf. Tex. Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240, 251 (Tex. 2002) (under now-superseded version of trust statute, holding that clause limiting liability "except in the case of gross negligence, bad faith, or fraud" applied to limit duty against self dealing that was owed by trustee); *Marshall v. Marshall*, 738 S.W.3d 548, 574 (Tex. App.—Houston [14th Dist.] 2025, no pet.), *as clarified on denial of reh'g* (Mar. 3, 2026) (concluding that clause precluding trustee's liability except for gross negligence, bad faith, or fraud limited fiduciary duty owed).

¶18 Hinds pleads no gross negligence by Wegner, and his contract claims are separately pleaded and addressed below in this opinion. At this stage of the suit based on Hinds's factual allegations as pleaded, his claims for fiduciary breaches based on Wegner's alleged willful misconduct in managing Sandman and in usurpation of corporate opportunities and diversion of Hinds's royalty interest are grounded in the pleadings, including in the Sandman Agreement.

¶19 Wegner is correct, though, that several of Hinds's pleaded fiduciary breaches are based on duties that are not express exceptions under Section 5.10—and that instead contradict the Agreement's terms. Hinds accuses Wegner of orchestrating Hinds's expulsion, "concealing his plan to expel" Hinds, and of appointing a replacement manager without affording Hinds notice or an opportunity to be heard.

Pet. ¶ 71(a), (d), (e). But the Agreement outlines the procedures for expulsion and removal and provides that "[a]ny action required or permitted to be taken at such a meeting may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the" requisite majority. *Id.* Ex. A § 5.8(d).

¶20 The Sandman Agreement expressly permits company action **without** notice and specifies a procedure for removal of managers and expulsion of members. So neither a fiduciary duty to give such notice—nor a fiduciary duty not to remove a manager or to expel a member using the Agreement's procedure—could possibly be carved out as "duties . . . expressly set forth in this Agreement" that would override the Agreement's exculpatory clause. *Id.* §§ 5.8(d); 5.10.

¶21 "The freedom of contract includes the freedom to define the nature and scope of a business relationship in a way that forecloses the imposition by courts of duties inconsistent with the parties' agreement." *Pitts*, 709 S.W.3d at 529–30. Wegner, as manager, was subject to Section 5.10, which exposes him to only the limited, express fiduciary duties in the Agreement. *Id.* Hinds's fiduciary-breach claims that are based solely on his removal and expulsion, or lack of notice of those actions, are legally baseless. His remaining fiduciary-breach claims, as limited by the willful-misconduct standard, survive the Rule 91a pleadings analysis.

C. No other basis for a fiduciary duty exists between Wegner and Hinds.

¶22 Hinds pleads no facts supporting the creation of a fiduciary duty stemming from any source beyond Wegner's managerial role.

¶23 The Supreme Court of Texas has held "that an informal fiduciary relationship can arise from personal relationships of special trust and confidence." *Pitts*, 709 S.W.3d at 528. Courts do not lightly impose informal fiduciary duties in a commercial setting, *id.*, and prior "arms-length transactions entered into for the parties' mutual benefit" are not enough. *Meyer v. Cathey*, 167 S.W.3d 327, 330 (Tex. 2005). Where a plaintiff over an extensive period of time "relied heavily" on and had "a high degree of trust and confidence" in defendants, including a history as family friends, enjoying dinners together, and exchanging free or discounted services for each other over the years, the Texas Supreme Court held that "[t]his evidence comes nowhere close to creating a fiduciary relationship under our precedents." *Pitts*, 709 S.W.3d at 529.

¶24 While Hinds cites authority in the insurance context or based on other inapplicable relationships, Texas precedent creates no fiduciary duty due to a power imbalance alone, and Hinds himself pleads no facts invoking such a doctrine in any event. He instead alleges he and Wegner were equal co-managers and co-members of Sandman. Hinds's Resp. at 6; Pet. ¶¶ 14–16. Even so, seeking to benefit from the informal-fiduciary doctrine, Hinds pleads that "[a] special relationship of trust and confidence existed," with Wegner. Pet. ¶ 64. Hinds alleges that he and "Wegner were business associates for approximately sixteen years through Sand Hill Resources and related ventures beginning in or about 2010, an association marked by mutual trust, reliance on one another's judgment, and personal confidence." *Id.*

¶25 These facts preclude the creation of any informal fiduciary duty under established Texas precedent. Taking them as true, Hinds and Wagner shared a trusting business relationship that, as in *Pitts*, came nowhere close to an informal fiduciary relationship. 709 S.W.3d at 529. Instead, according to Hinds's own pleading, he knew he held a longstanding, trusting relationship with Wegner—but then chose to stringently restrict the obligations owed between them, reducing them to writing in the Sandman Agreement. Under these facts, no additional fiduciary duties will be imposed. *See id.* (noting that "nothing in the parties' engagement letters suggests that either party contemplated that the law would treat them as having a special relationship of trust and confidence."); *Enosis Inv., LLC v. Jensen*, 2026 Tex. Bus. 19, ¶¶ 6–9, 737 S.W.3d 357, 361–62 (3rd Div.) (rejecting fiduciary-duty theory where LLC governing documents foreclosed a joint-venture relationship on which the duty depended and reasoning that, "[i]f the parties had wished to structure their Reserve endeavor as a joint venture or partnership, that option was available to them").

¶26 On this basis, Wegner's motion to dismiss Hinds's claim for breach of fiduciary duties is granted in part and denied in part.

II. Hinds's claim for breach of the implied covenant of good faith and fair dealing is dismissed.

¶27 The Texas Supreme Court has been "clear that absent a special relationship, parties to a contract have no duty to act in good faith." *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 490 (Tex. 2019). Hinds's claim for breach of the implied covenant of good faith and fair dealing must therefore hinge on a special relationship between Wegner and Hinds. *See id.* at 490–91.

¶28 For the reasons described above, when taking every fact in the Petition as true, Hinds fails to allege a special relationship recognizable under Texas law. Though Hinds distinguishes Wegner's cited case law based on the procedural posture of those cases, this court applies the Rule 91a standard to reach its conclusion. And the court must grant motion to dismiss when, as here, the facts as pleaded "do not entitle the claimant to the relief sought." TEX. R. CIV. P. 91a.1. Hinds's petition negates the existence of a special relationship under well-settled Texas law. *See Pitts*, 709 S.W.3d at 529–30. The good-faith claim must be dismissed.

III. Hinds's claim for breach of contract against Defendants is dismissed in part.

¶29 Hinds alleges Sandman breached the Sandman Agreement by expelling him as a member and stripping his membership interest and economic rights without proper cause, notice, or other procedural requirements; and by refusing his demand for a special meeting. Hinds also alleges Wegner breached the Agreement by orchestrating

Hinds's removal as manager and expulsion as member, along with other alleged breaches on which Wegner has not moved for dismissal at this stage.

¶30 A breach-of-contract claim requires a valid contract, the claimant's performance or tendered performance, the respondent's breach, and resulting damages. *Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019).

A. Hinds's claim based on procedural deficiencies is dismissed.

¶31 Hinds's claim based on Sandman's failure to comply with notice, hearing, and procedural requirements is legally baseless and must be dismissed.

¶32 The Business Organizations Code generally states that LLCs may take action with or without a meeting, and it allows the LLC's governing documents to alter those requirements. TEX. BUS. ORGS. CODE § 101.358 (for actions required or authorized to be taken at special or annual meeting, the "action may be taken without holding a meeting, providing prior or subsequent notice, or taking a vote if a written consent or consents stating the action to be taken is signed by the number" necessary); *id.* § 101.359 (permitting LLC members and managers to "take action at a meeting of the members or managers or without a meeting in any manner permitted by this title, Title 1, or the governing documents of the company"). Here, the Sandman Agreement specified the circumstances under which expulsion may occur and specified that "an act of a Majority Interest shall be an act of the Members." Pet. Ex. A §§ 2.9, 5.7. As described above, the Agreement further specified that company action "may be taken without a meeting, without prior notice, and without a vote if" a sufficient majority executed a written consent. *Id.* § 5.8(d).

¶33 In sum, Sandman's Agreement permitted action—including expulsion—without notice or an opportunity to be heard. This court recently rejected a similar attempt to impose an advance-notice requirement that the parties had omitted from their agreement, emphasizing that courts may not rewrite contracts to add procedural protections that the parties could have negotiated but did not. *Primexx Energy Opportunity Fund, LP v. Primexx Energy Corp.*, 2025 Tex. Bus. 9, ¶¶ 179–81, 709 S.W.3d 619, 654–55 (1st Div.), *recons. den.* at 2025 Tex. Bus. 13, 713 S.W.3d 416. And Hinds identifies no facts in his pleading, nor any basis in the Sandman Agreement, for these procedural duties he claims were breached. Hinds pleads no facts that allow even a reasonable inference that Defendants failed to follow the procedural protections found within the four corners of the Agreement. Without more, "the court cannot impose a condition that the parties omitted from their agreements under the guise of construing their contracts." *Dallas Sports Grp., LLC v. DSE Hockey Club, L.P.*, 2026 Tex. Bus. 15, ¶ 156, 735 S.W.3d 759, 791 (1st Div.) (citing *Sundown Energy LP v. HJSA No. 3 P'ship*, 622 S.W.3d 884, 889 (Tex. 2021)). This basis for Hinds's contract claim must be dismissed.

B. Hinds's breach-of-contract claim based on his expulsion and removal is dismissed.

¶34 Hinds also pleads Defendants Sandman and Wegner breached the Sandman Agreement by expelling him as member without valid "cause." Hinds's pleading negates a valid contract claim and must be dismissed.

¶35 Sandman's Company Agreement outlined the conditions for expulsion:

> 2.9. *Expulsion.* A Member may not be expelled from the Company, except for cause and only with a Majority Interest decision. In the event that a Member is expelled for cause, the Member shall forfeit the right to vote and such Member's Interest shall be excluded from the Total Vote. Upon Expulsion, the Member has the right of Disposition of Membership Interest in accordance with section 2.03 (Disposition of Membership Interest) and 2.12 *(Members' Right of First Refusal)* herein.

Pet. Ex. A § 2.9. While Section 2.9 addressed grounds and process for expulsion, Section 5.11 addressed one particular "cause" for expulsion. It read:

> 5.11. *Conflicts of Interest.* Subject to the other express provisions of this Agreement, each Member, Manager, Officer, or affiliate thereof shall not engage in and possess interests in other oil and gas business ventures conflicting with the interest of the Company, independently or with others. Such conflicting business activity, as determined by Majority Interest of the Members, shall be cause for the Member's expulsion as described in 2.09 herein. The Company may transact business with any Member, Manager, Officer, or Affiliate thereof, provided the terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties.

Pet. Ex. A § 5.11.

¶36 In sum, Section 2.9 prohibits expulsion except "for cause and only with a Majority Interest decision." Pet. Ex. A §§ 2.2, 2.9, 5.11. Section 5.11 then identifies one such act that would warrant a for-cause expulsion: if a member or manager were to "engage in and possess interests in other oil and gas business ventures conflicting with the interest of the Company." *Id.* § 5.11. Under Section 5.11, one discrete event “**shall be cause**”—“[s]uch conflicting business activity, **as determined by Majority Interest of the Members.**” *Id.* (emphasis added).

¶37 Under Texas law, an entity and its managers do not breach the company agreement if they act according to its terms—including by removing members or managers. *E.g. Pak v. AD Villarai, LLC,* No. 05-14-01312-CV, 2018 WL 2077602, at *1 (Tex. App.—Dallas May 4, 2018, pet. denied); *Macy v. Waste Mgmt., Inc.*, 294 S.W.3d 638, 646 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). In *Pak*, the entity's governing documents permitted a manager's removal “by the vote of a majority of the members.” *Pak,* 2018 WL 2077602, at *3. Enforcing the documents' plain language, the court determined the majority had, indeed, voted for the removal and concluded the removal was proper. *Id. at* *3, 9. In *Macy*, the court similarly enforced the contractual process for a board's for-cause determination. *Macy*, 294 S.W.3d at 646–48. Based on the contractual terms, the court “conclude[d] the intent of the Agreement is that the determination of cause must be made by Waste Management alone.” *Id.* at 646 (internal quotations omitted).

¶38 Hinds's contract claim is founded on the Sandman Agreement. The court construes the Agreement, as it must, by its express terms. Hinds's petition attaches the written consent he received, which states that a Majority Interest found that Hinds conducted and possessed “interests in other oil and gas business ventures[,]” thereby engaging in conflicting business activity. Pet. Ex. G. While such a consent may be "made a part of the pleadings" under Texas Rule of Civil Procedure 59, the court in analyzing a motion to dismiss may not take as true the contents of the statements made within that document. *See* TEX. R. CIV. P. 91a.1. The court does not accept as true that Hinds's conduct was "conflicting business activity." Rather, according to Hinds's petition, his disputed business, Defendant EnviroCore, is not an "oil and gas business venture" and it does not conflict with Sandman. Pet. ¶¶ 45–47. For his part, Hinds claims he conducted "no conflicting business activity" creating cause for his expulsion. *Id.* ¶ 37.

¶39 But the Agreement dictates that the **Majority Interest** determines which conduct is "conflicting business activity"—not any one LLC member or the court. Upon the Majority Interest's determination, such conduct "shall be cause" under the Agreement. *Id.* Ex. A § 5.11. Section 2.9, which requires expulsion only for cause and with a Majority Interest determination, is therefore satisfied upon this specific type of for-cause finding by the Majority Interest. *Id.* Ex. A § 2.9.

¶40 Hinds's pleading contains no facts alleging he was expelled without such a determination from the Majority Interest, so dismissal is proper. At the Rule 91a stage, if the pleading lacks "the essential factual allegations supporting th[e] claims . . . sufficient to support a judgment if ultimately proven," the claim must be dismissed. *See In re First Rsrv. Mgmt., L.P.*, 671 S.W.3d at 662. Taking Hinds's own pleading as true, the petition contains no factual allegation supporting a breach by Defendants of any identifiable clause of the Agreement based on Hinds's removal as member.

¶41 Hinds's claim also alleges Wegner's orchestration of his removal of manager breached the Agreement, and he concedes the relevant section of the Agreement "permits removal of a manager with or without cause." Hinds Resp. at 5 (citing Pet. Ex. A § 5.3). Hinds points to no discrete clause in the Agreement that was even arguably breached by his removal. Hinds's breach-of-contract claim against Wegner based on his removal as manager is dismissed.

C. Hinds's contract claim based on Sandman's refusal to hold a special meeting satisfies Rule 91a's standards.

¶42 Hinds's claim for breach of the provision requiring a special meeting is based on the plain language of the Sandman Agreement. *See* Pet. Ex. A § 5.7 (providing that special meetings may be called by managers or by members with "at least ten percent of the Sharing Ratios" of all members and requiring that notice of a special meeting "shall be delivered to each Member at least ten days prior to such meeting"); *id.* § 9.2 (specifying delivery requirements for notice to members). Hinds pleads that, on April 29, 2026, he requested a meeting concerning his expulsion and that, the following day and after the expulsion was executed, he delivered notice of his request for a special meeting to be held on May 11. Pet. ¶¶ 36–37, Ex. E. He alleges Sandman then breached the Agreement "by refusing to honor [Hinds's] demand for a Special Meeting pursuant to Section 5.7 of the Agreement." Pet. ¶ 53.

¶43 Hinds adequately pleads that he complied with the Agreement's special-meeting requirements because he owned a 20% share of Sandman when he delivered his request for a special meeting to each of the members "at least ten days prior to" the proposed meeting date. *See* Pet. Ex. A § 5.7. And Sandman's refusal to honor Hinds's timely special-meeting demand violates Section 5.7 based on Hinds's allegations, taken as true. Defendants have not moved for dismissal based on a failure to adequately plead injury or causation. The Petition states a valid contract claim predicated on the denied special meeting.

IV. Hinds's fraud claims against Wegner are dismissed.

¶44 To plead a valid fraud claim, the claimant must allege: (1) a material misrepresentation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made the statement recklessly without any knowledge of the truth; (4) the speaker made the representation with the intent that the other party should act on it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. *See Formosa Plastics Corp. USA v. Presidio Eng's & Contractors, Inc.*, 960 S.W.2d 41, 47 (Tex. 1998). Wegner seeks dismissal of Hinds's claim for fraud by nondisclosure and constructive fraud, arguing Wegner owed no duty to disclose and that Hinds's reliance on any nondisclosure was not justifiable as a matter of law.

A. Hinds's claim for fraud by nondisclosure is dismissed.

¶45 Fraud by nondisclosure is a subcategory of fraud that occurs when a party has a duty to disclose certain information and fails to disclose it. *Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W.3d 213, 219 (Tex. 2019). To establish fraud by nondisclosure, the plaintiff must show: (1) the defendant deliberately failed to disclose material facts; (2) the defendant had a duty to disclose such facts to the plaintiff; (3) the plaintiff was ignorant of the facts and did not have an equal opportunity to discover them; (4) the defendant intended the plaintiff to act or refrain from acting based on the nondisclosure; and (5) the plaintiff relied on the nondisclosure, which resulted in injury. *Id.* at 219–20. Constructive fraud is "the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests." *Keyes v. Weller*, 692 S.W.3d 274, 278 n.4 (Tex. 2024).

¶46 Based on his pleading, Hinds's fraudulent-concealment and constructive-fraud claims both hinge on a fiduciary duty he claims Wegner owed him. *See* Pet. ¶¶ 81, 85, 87. As explained above, the confines of any fiduciary duty Wegner owed depend on the Sandman Agreement's limitation-of-liability clause. *See* TEX. BUS. ORGS. CODE § 101.401; Pet. Ex. A § 5.10. And the Agreement specifies that, "[e]xcept for such duties as may be expressly set forth in this Agreement, a Manager shall not be subject to any duties (including fiduciary duties) in the management of the Company." Pet. Ex. A §

5.10. Hinds fraud claims accuse Wegner of "conceal[ing] his plan to expel Mr. Hinds and seize Sandman's royalty interest . . . without providing Mr. Hinds any advance notice or warning." Pet. ¶¶ 81, 85 (accusing Wegner of "orchestrat[ing] Mr. Hinds's expulsion without notice or opportunity to cure in order to seize valuable royalty interests . . . .").

¶47 As described above, the Sandman Agreement expressly permits action without notice, so Wegner was under no fiduciary or other special duty to provide the notice Hinds complains Wegner did not give him. The Agreement's exculpatory clause restricts fiduciary duties to those expressly stated in the Agreement, and—rather than impose a duty to provide notice of company action—the Agreement **eliminates** such a duty. Pet. Ex. A at §§ 5.8(d); 5.10. Accepting every factual inference in Hinds's favor, his fraud-by-nondisclosure and constructive-fraud claims fail as a matter of law for these reasons.

¶48 At the motion-briefing stage, Hinds also proposed a partial-disclosure theory. *See Bombardier*, 572 S.W.3d at 220 (acknowledging duty to disclose may arise when a party makes a partial disclosure that created a false impression or voluntarily discloses only some information). While Hinds's response brief suggests Wegner partially disclosed the nature of EnviroCore's business to the other Sandman members, Hinds's fraud pleading is based on failure to disclose his expulsion plan **to Hinds**; not a partial disclosure of EnviroCore's business **to other Sandman members**.

See Pet. ¶¶ 80–87; *In re First Fin. Bank N.A.*, No. 09-22-00324-CV, 2023 WL 4781648, at *5 (Tex. App.—Beaumont July 27, 2023, pet. denied) (affirming Rule 91a dismissal of fraud-by-omission claim because, although petition alleged bank failed to disclose facts about a builder's financing and work, petition failed to plead a partial or voluntary disclosure triggering a duty to disclose). The partial-disclosure doctrine is not grounded in Hinds's pleading and does not save the legally baseless fraud claim.

B. The court need not address justifiable reliance.

¶49 "Justifiable reliance usually presents a question of fact for the jury to decide." *Maya Walnut LLC v. Ly*, 738 S.W.3d 764, 768 (Tex. 2026) (internal quotations omitted). "But the element can be negated as a matter of law when circumstances exist under which reliance cannot be justified, because those circumstances show it is extremely unlikely that there is actual reliance on the plaintiff's part." *Id.* (internal quotations and citations omitted). Under the red-flag doctrine, "a person may not justifiably rely on a representation if there are red flags indicating such reliance is unwarranted." *Id.* (internal quotations and brackets omitted).

¶50 Defendants argue that, because the contract permitted member expulsion without notice, Hinds's alleged reliance on the nondisclosure of the expulsion plan was not justifiable. Having concluded that Hinds's fraud theories fail as a matter of law for lack of any duty owed by Wegner to disclose his plans for expulsion, the court does not reach Wegner's justifiable-reliance theory.

V. Hinds's conversion claim against Defendants is dismissed.

¶51 Both Sandman and Wegner move for dismissal of Hinds's conversion claim. A conversion claim requires a showing that: (1) the plaintiff owned, had possession, or entitlement to possession of property; (2) the defendant unlawfully and without authorization assumed and exercised control over the property to the exclusion of, or inconsistent with, the plaintiff's rights; and (3) the plaintiff demanded the property's return, (4) which the defendant refused. *Guillory v. Dietrich*, 598 S.W.3d 284, 292 (Tex. App.—Dallas 2020, pet. denied). A plaintiff also must establish it was injured by the conversion. *See USAA Cas. Ins. Co. v. Letot*, 690 S.W.3d 274, 285 (Tex. 2024).

¶52 Hinds claims the Defendants converted his LLC interest in Sandman. "A membership interest in a limited liability company is personal property." TEX. BUS. ORGS. CODE § 101.106(a). This property "interest includes a member's share of profits and losses or similar items and the right to receive distributions." *Sohani v. Sunesara*, 546 S.W.3d 393, 404 (Tex. App.—Houston [1st Dist.] 2018, no pet.), *quoted in Tall*, 2025 Tex. Bus. at ¶ 12. The interest "does not include an owner's right to participate in management." TEX. BUS. ORGS. CODE § 1.002(54)).

¶53 Hinds's LLC membership interest is unquestionably personal property. But he does not plead facts showing Defendants stripped him of that interest. Instead, he claims a Sandman majority expelled him as a member, which by the Agreement's terms forfeited his voting rights but preserved his ownership of the interest itself—

such that he is permitted to sell it using a specified valuation process through a third-party appraiser. Pet. Ex. A §§ 2.9, 2.12. Sandman concedes Hinds has retained these contractual membership rights. Sandman Reply at 1, 5.

¶54 A viable Texas conversion claim generally requires that an interest be **tangible** personal property. *See Carrington v. Corsi*, 2026 Tex. Bus. 57, ¶ 9, 2026 WL 2547071, at *2 (11th Div.) (citing *Bell v. Bay Area RV Parks, L.L.C.*, 722 S.W.3d 176, 211 (Tex. App.—Houston [1st Dist.] 2025, no pet.)). The merger exception applies only when an intangible right has been merged into a physical document, and that physical document is converted. *Id.* ¶ 9 (citing *Bell*, 722 S.W.3d at 211); *see also Express One Int'l v. Steinbeck*, 53 S.W.3d 895, 901 (Tex. App.—Dallas 2001, no pet.) ("Texas law has never recognized a cause of action for conversion of intangible property except in cases where an underlying intangible right has been merged into a document and that document has been converted.").

¶55 In Texas, LLC membership interests are presumed to be uncertificated unless the governing documents provide otherwise. TEX. BUS. ORGS. CODE § 3.201(c); *Bell*, 722 S.W.3d at 215–16. In *Carrington*, this court held that a governing document's provisions stating units "may, but need not be certificated" did not displace the statutory presumption. 2026 Tex. Bus. 57, at ¶ 12. Under Rule 91a, the court therefore dismissed the claim for conversion of uncertificated LLC membership interests, holding the plaintiffs failed to allege dominion over any tangible personal property sufficient to invoke the merger exception. *Id.* ¶¶ 9–13.

¶56 Here, the Sandman Agreement contains no clause pertaining to certification of membership interests—much less any language requiring certification of the intangible voting rights that were allegedly stripped from Hinds. Hinds's petition and the Agreement's silence leave the statutory default rule intact, such that the rights that were allegedly forfeited here fall outside the merger exception for intangible property. *Id.* ¶ 13.

¶57 Hinds correctly points to the Texas Supreme Court's recognition of a conversion claim based on a corporation's refusal to recognize or transfer a stockholder's ownership interest. *Rio Grande Cattle Co v. Burns*, 17 S.W. 1043, 1045 (Tex. 1891). In *Rio Grande*, the plaintiff's stock interest was a **certificated** interest, but the defendant refused to issue the certificate or transfer the interest. *Id. Rio Grande* concerned the unlawful exercise of control over a certificated corporate stock—not a forfeiture of intangible LLC voting rights. Based on Hinds's pleading, his conversion claim based on forfeiture of his voting rights is legally baseless

¶58 The "economic loss rule generally precludes recovery in tort for economic losses resulting from a party's failure to perform under a contract when harm consists only of the economic loss of a contractual expectancy." *Chapman Custom Homes, Inc. v. Dall. Plumbing Co.*, 445 S.W.3d 716, 718 (Tex. 2014) (per curiam). Given its conclusion as to the unavailability of conversion liability here, the court does not reach whether the claim would be foreclosed by the economic-loss doctrine. The conversion claim is dismissed.

VI. Hinds's claim for tortious interference with business relations against Wegner is dismissed.

¶59 To support a cause of action for tortious interference with prospective business relationship, a pleading must establish "(1) there was a reasonable probability that the plaintiff would have entered into a business relationship with a third party; (2) the defendant either acted with a conscious desire to prevent the relationship from occurring or knew the interference was certain or substantially certain to occur as a result of the conduct; (3) the defendant's conduct was independently tortious or unlawful; (4) the interference proximately caused the plaintiff injury; and (5) the plaintiff suffered actual damage or loss as a result." *Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 923 (Tex. 2013).

¶60 Under well-settled law, in the context of a claim for tortious interference with existing contract, the plaintiff must prove "tortious interference against any third person (a stranger to the contract) who wrongly induces another contracting party to breach the contract." *Holloway v. Skinner*, 898 S.W.2d 793, 795 (Tex. 1995). "A party to a contract cannot tortiously interfere with its own contract." *Friendswood Dev. Co. v. McDade & Co.*, 926 S.W.2d 280, 283 (Tex. 1996). Courts have long applied this doctrine to similarly bar tortious-interference claims against the agents of the entity holding the prospective business relationship with the plaintiff. *See Tarleton State Univ. v. Rosiere*, 867 S.W.2d 948, 952–53 (Tex. App.—Eastland 1993, writ dism'd); *Am. Med. Int'l, Inc. v. Giurintano*, 821 S.W.2d 331, 335-38 (Tex. App.—Houston [14th Dist.] 1991, no writ); *Baker v. Welch*, 735 S.W.2d 548, 549 (Tex. App.—Houston [1st Dist.] 1987, writ dism'd).

¶61 Hinds pleads he had a "reasonable probability of continuing" his relationship with Sandman, but that Wegner maliciously interfered with it by orchestrating Hinds's expulsion. Pet. ¶¶ 99–100. As is clear from Hinds's petition, though, both Wegner and Hinds were in an existing contractual and business relationship with Sandman. Assuming without deciding that a tortious-interference claim for existing business relationships exists in Texas,[3] a tortious-interference claim is actionable against a **third party** to the relationship. *See Coinmach Corp.*, 417 S.W.3d at 923. Just as a party to a contract cannot tortiously interfere with its own contract, *Friendswood*, 926 S.W.2d at 283, a party to a business relationship cannot interfere with his own relationship. *E.g. Frontier NanoSystems, LLC v. Cleveland Terrazas PLLC*, 2023 WL 3737118, at *9 (Tex. App.—El Paso May 31, 2023, pet. denied) (emphasis omitted) (concluding plaintiff failed to plead prima facie claim for tortious interference with prospective business relationship where pleading did not "identify with specificity

[3] *See Boeing Co. v. Sw. Airlines Pilots Ass'n*, 716 S.W.3d 140, 151 (Tex. 2025) ("Texas law recognizes two types of tortious-interference claims: one based on interference with an existing contract and one based on interference with a prospective business relationship.") (internal quotations omitted).

any third party with whom he would have entered into a business relationship") (emphasis omitted).

¶62 Because Hinds pleads Wegner was a party, not a stranger, to Hinds's business relationship with Sandman, Hinds has no viable tortious-interference claim against Wegner for the alleged interference. The claim must be dismissed.

VII. The court declines to award attorneys' fees to any party under Rule 91a.

Rule 91a permits, but does not mandate, an award of attorney's fees and costs to the prevailing party. TEX. R. CIV. P. 91.7; *Sanchez v. Striever*, 614 S.W.3d 233, 248 n.10 (Tex. App.—Houston [14th Dist.] 2020, no pet.) ("any award of fees and casts is discretionary, not mandatory"). In their briefing and at the hearing, all parties appeared through counsel and presented good-faith arguments in support of their requests for relief at this stage of the suit. The court finds no basis for fee-shifting under Rule 91a in this case and declines to award fees or cost to any party.

CONCLUSION AND ORDER

For the reasons stated above, the court GRANTS IN PART Sandman's motion to dismiss and GRANTS IN PART Wegner's motion to dismiss.

It is therefore ORDERED that:

a. Hinds's claim for breach of contract against Sandman is dismissed with prejudice as to the breaches in Count I Paragraph 53(a), 53(b), 53(c), and 53(d).
b. Hinds's claim for breach of contract against Wegner is dismissed with prejudice as to Count II Paragraph 60(a).

c. Hinds's claim for breach of the implied covenant of good faith and fair dealing against Wegner (Count III) is dismissed with prejudice.

d. Hinds's claim for breach of fiduciary duty against Wegner as to Count IV Paragraph 71(a), (d), and (e) is dismissed with prejudice. Wegner's motion to dismiss is denied as to Hinds's remaining claims for breach of fiduciary duty (Counts IV and V) based on Wegner's alleged acts or omissions in the management of the Company constituting willful misconduct.

e. Hinds's claim for fraudulent concealment against Wegner (Count VI) is dismissed with prejudice.

f. Hinds's claim for constructive fraud against Wegner (Count VII) is dismissed with prejudice.

g. Hinds's claim for conversion against Sandman and Wegner (Count VIII) is dismissed with prejudice.

h. Hinds's claim for tortious interference with prospective business relationships against Wegner (Count X) is dismissed with prejudice.

In all other respects, Defendants' motions to dismiss are DENIED.

SO ORDERED.

Stacy Rogers Sharp

STACY ROGERS SHARP
Judge of the Texas Business
Court, Fourth Division

SIGNED ON: September 14, 2026