IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HUGH EDMUNDSON, Plaintiff, v. THEOREM TECHNOLOGY, INC., Defendant.	C.A. No. 2026-0647-CDW

ORDER RESOLVING CROSS-MOTIONS FOR SUMMARY JUDGMENT ON ENTITLEMENT TO ADVANCEMENT

WHEREAS:

A. This is an advancement action.[1]

B. Plaintiff Hugh Edmundson ("Edmundson") is a co-founder and former director, Chief Executive Officer, and Chief Investment Officer of Theorem Technology, Inc.[2]

C. Defendant Theorem Technology, Inc. ("Theorem") is a Delaware corporation and an SEC-registered investment advisor that "specializes in consumer credit and has developed sophisticated machine learning models to analyze and price loans and evaluate loan origination platforms."[3]

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[1] *See* Verified Compl. for Advancement, Dkt. 1 ("Complaint" and cited as "Compl.").

[2] Compl. ¶ 1; *see also* Def. Theorem Tech., Inc.'s Ans. to Pl.'s Verified Compl. for Advancement ¶ 1, Dkt. 13 ("Answer" and cited as "Ans.").

[3] Compl. ¶ 13; *but see* Ans. ¶ 13 (Theorem stating it lacks knowledge and information sufficient to form a belief as to whether this characterization of its business is true).

D. Non-party Pagaya Technologies Ltd. ("Pagaya") is an Israeli "financial technology and investment management" company headquartered in New York City.[4]

E. In 2024, Pagaya acquired Theorem.[5] The acquisition was effectuated through a merger between Theorem and an indirect, wholly-owned subsidiary of Pagaya, and documented by an Agreement and Plan of Merger.[6] Edmundson was heavily involved in the various agreements related to the acquisition. For example, Edmundson signed the Merger Agreement on Theorem's behalf as its Sole Director.[7]

F. First, Edmundson and Ryan Podolsky, Theorem's former Chief Executive Officer,[8] are parties to the Merger Agreement for purposes of two sections.[9] Section 5.17 of the Merger Agreement contains several restrictive covenants binding Edmundson and Ryan Podolsky.[10] One of its subsections

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[4] Compl. ¶ 14; Ans. ¶ 14; Pagaya Techs. Ltd., Ann. Rpt. (Form 10-K/A) 1 (June 1, 2026).

[5] Compl. ¶ 14; Ans. ¶ 14.

[6] *Id.*; Agreement and Plan of Merger, July 27, 2024, Compl. Ex. D ("Merger Agreement").

[7] *Id.*, Third Signature Page.

[8] *Pagaya Techs. Ltd. v. Edmundson*, ICC Case No. 29646/ICA5, Statement of Claim (June 26, 2026), Pl.'s Ex. 4, at 5, Dkt. 21 ("Statement of Claim").

[9] Merger Agreement, Second Signature Page.

[10] *Id.* § 5.17.

prohibits Edmundson and Podolsky, for four years after closing, from doing any of the following:

> (i) contact[ing], communicat[ing], solicit[ing] or transact[ing] any business with, or assist[ing] any third party in contacting, communicating, soliciting or transacting any business with (A) any of the customers or clients of the Company Group,[11] (B) any prospective customers or clients of the Company Group, or (C) any individual or entity who or which is then (or was at any time within the preceding twelve (12) months) a customer or client of the Company Group, in each case for the purpose of inducing such customer or client or prospective customer or client to diminish its or their business relationship with the Company Group;
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> (ii) directly or indirectly solicit[ing], induc[ing], or assist[ing] any third party in soliciting or inducing, any individual or entity who or which is then (or was at any time within the preceding twelve (12) months) an employee, consultant, independent contractor or agent of the Company Group to leave the employment or engagement of the Company Group or cease performing services for the Company Group; or
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> (iii) solicit[ing], induc[ing], or assist[ing] any third party in soliciting or inducing, any other person or entity (including, without limitation, any third-party service provider or distributor) to diminish their or its relationship with the Company Group or otherwise interfere with such relationship.[12]

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[11] The Merger Agreement defines "Company Group" as Theorem and "each of its Subsidiaries, including Theorem LLC." *Id.* § 1.1.

[12] *Id.* § 5.17(b)(i)–(iii).

G. Section 5.17(b) goes on to define two terms used in the subsection. A "customer or client" is "any customer or client of the Company Group with whom or which such Key Stockholder had contact (or for whose relationship with the Company Group such Key Stockholder was responsible) during the twelve (12) months preceding the Closing Date[.]"[13] And a "prospective customer or client" is "any individual or entity with respect to whom or which the Company Group was engaged in a solicitation at any time during the twelve (12) months preceding the Closing Date."[14]

H. The other, Section 5.18, sets forth an irrevocable written consent by Edmundson and Podolsky, as Key Stockholders, adopting and approving the transaction.[15]

I. As part of the acquisition, Pagaya also required Edmundson to enter into two additional agreements. First, "as an inducement to [Pagaya]" to acquire Theorem, Edmundson entered into an employment agreement with Theorem to continue his role as Theorem's Chief Investment Officer.[16] And the Merger Agreement required Edmunson to (and he did) enter into an

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[13] *Id.* § 5.17(b).

[14] *Id.*

[15] *Id.* § 5.18.

[16] *Id.* 2; Comp. Ltr. Agreement, (July 27, 2024), Pl.'s Ex. 2, Dkt. 16.

indemnification agreement "in form and substance reasonably satisfactory to [Pagaya.]"[17]

J. On April 27, 2025, Theorem terminated Edmundson.[18] Edmundson alleges Theorem terminated him in retaliation for reporting Pagaya's violations of federal securities laws.[19] Ten weeks later, on July 8, Pagaya, Theorem, and another Pagaya subsidiary (collectively, "Claimants") filed an arbitration demand against Edmundson in the Court of Arbitration of the International Chamber of Commerce ("Arbitration").[20]

K. The Arbitration Demand alleges Edmundson engaged in a "deliberate, bad-faith campaign to sabotage the very investor relationships Pagaya paid to acquire" by "reach[ing] out to Theorem's customers and prospects following his termination with the sole purpose of eroding their trust and confidence in Theorem as a fiduciary and, by extension, Pagaya."[21] The Arbitration Demand alleges Edmundson "disparage[d] Claimants' management and urge[d] [Theorem investors] to redeem or reduce their commitments,"[22]

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[17] Merger Agreement § 2.8(d)(vii); *see also* Indemnification Agreement, (Oct. 22, 2024), between Theorem Tech., Inc. and Hugh Edmundson, Compl. Ex. B ("Indemnification Agreement").

[18] Compl. ¶ 14; Ans. ¶ 14.

[19] Compl. ¶ 20.

[20] *Id.* ¶ 21; Ans. ¶ 21; *see also Pagaya*, ICC Case No. 29646/ICA5, Req. for Arb. (July 8, 2025), Compl. Ex. E ("Arb. Demand").

[21] Arb. Demand ¶ 2.

[22] *Id.* ¶ 9.

and thus breached the Merger Agreement's restrictive covenant "barring any contact meant to weaken [Theorem's investor] relationships."[23]

L. On August 28, Edmundson sent a letter demanding indemnification and advancement of legal expenses from Theorem incurred in his defense of the Arbitration.[24] The letter asserts advancement is required under both Theorem's certificate of incorporation and the Indemnification Agreement.[25]

M. Theorem rejected the demand on September 4.[26] According to Theorem, the Arbitration is not a covered proceeding for which Edmundson is entitled to indemnification and advancement because the Arbitration is not brought against Edmundson "by reason of [his] Corporate Status" but is "relate[d] to [his] misconduct in his personal capacity 'following his termination.'"[27]

N. On September 15, Edmundson filed his Answer and Counterclaims in the Arbitration.[28] The Arbitration Counterclaims assert two claims against

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[23] *Id.* ¶ 2.

[24] Compl. ¶ 32; Ans. ¶ 32; *see also* Ltr. from D. Doolittle to K. Smith, (Aug. 28, 2025), Compl. Ex. C.

[25] Demand Ltr. 1.

[26] Ltr. from O. Snyder to D. Doolittle, (Sept. 4, 2025), Compl. Ex. H.

[27] *Id.* 2.

[28] Compl. ¶ 24; Ans. ¶ 24; *see also Pagaya*, ICC Case No. 29646/ICA5, Ans. to Req. for Arb. & Countercls. (Sept. 15, 2025), Compl. Ex. F ("Arbitration Counterclaims" and cited as "Arb. Countercls.").

Pagaya: for breach of the Merger Agreement "by acting with intent to prevent maximum contingent consideration, a deferred payment to Theorem's stockholders under the Merger Agreement";[29] and for fraudulent inducement "by misrepresenting that Theorem would retain its independence."[30]

O. On October 3, Edmundson responded to the demand rejection.[31]

P. On April 26, 2026, the arbitration panel issued a procedural order setting a schedule and establishing procedures for the Arbitration.[32] The next day, Edmundson renewed his advancement and indemnification demand for his Arbitration fees and expenses (including those related to the Arbitration Counterclaims) and attached his counsel's invoices.[33] Theorem rejected the renewed request on May 4.[34]

Q. On May 20, Edmundson filed the Complaint. The parties stipulated to cross-motions for summary judgment and oral argument on the issue of Edmundson's entitlement to advancement.[35] On June 26, while briefing was underway, Claimants filed their formal Statement of Claim in the

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[29] Arb. Countercls. ¶¶ 28–35 ("Breach of Contract Counterclaim").

[30] *Id.* ¶¶ 36–38 ("Fraudulent Inducement Counterclaim").

[31] Ltr. from D. Doolittle to O. Snyder, (Aug. 28, 2025), Compl. Ex. I.

[32] *See Pagaya*, ICC Case No. 29646/ICA5, Procedural Order No. 1 (Apr. 26, 2026), Compl. Ex. G.

[33] Ltr. from D. Doolittle to O. Snyder, (April 27, 2026), Pl.'s Ex. 3, Dkt. 16.

[34] Ltr. from O. Snyder to D. Doolittle, (May 4, 2026), Compl. Ex. J.

[35] Scheduling Order, Dkt. 10.

Arbitration, setting out in detail Claimants' breach of contract claim against Edmundson ("Arbitration Claim").[36] The court heard oral argument on July 28 on the cross-motions and took the matter under advisement.[37]

IT IS ORDERED, this 14th day of September, 2026, that:

1. The parties have cross-moved for summary judgment under Court of Chancery Rule 56.[38] Under this rule, "the Court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to a judgment as a matter of law." Ct. Ch. R. 56(a).[39]

2. "Summary judgment is an appropriate way to resolve advancement disputes because 'the relevant question turns on the application of the terms of the corporate instruments setting forth the purported right to advancement and the pleadings in the proceedings for which advancement is sought.'" *Rhodes v. bioMerieux, Inc.*, 2024 WL 669034, at *7 (Del. Ch. Feb. 19, 2024) (quoting *Senior Tour Players 207 Mgmt. Co. LLC v. Golftown 207 Hldg. Co., LLC*, 853

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[36] *See* Statement of Claim.

[37] Judicial Action Form, Dkt. 24.

[38] *See* Dkts. 18, 21, 22.

[39] Court of Chancery Rule 56 was amended after this case was filed. *See* Order Amending Rules 46, 54–65.1, 67, 69–72, 77–78, 81–83, 85–88, and 100 of the Court of Chancery Rules, https://courts.delaware.gov/forms/download.aspx?id=328858. According to the comment accompanying amended Rule 56, the revisions are intended to align Rule 56 "to the extent possible" with its counterpart in the Federal Rules of Civil Procedure, and "[e]xcept as noted, no substantive change in the interpretation of the rule [is] intended, and prior Delaware authorities interpreting the rule remain applicable." *Id.* at 8.

A.2d 124, 126–27 (Del. Ch. 2004)). "In determining whether to award advancement, the [c]ourt will look to the plain meaning of the advancement provisions in the governing instruments." *Id.* (citation modified).

3. Edmundson asserts a mandatory advancement right for fees and expenses incurred in the Arbitration through two sources: Theorem's Second Amended and Restated Certificate of Incorporation[40] and the Indemnification Agreement.

4. Article Ninth of the Certificate grants advancement and indemnification rights to "[e]ach person who is or was or had agreed to become a director, employee, agent or officer of [Theorem]," or who served in similar roles for other entities at Theorem's request, "shall be indemnified and advanced expenses by [Theorem] to the fullest extent permitted from time to time by applicable law."[41]

5. The Indemnification Agreement grants broad advancement rights to Edmundson independently of the Certificate. It obligates Theorem to advance all reasonable fees and customary expenses incurred by or on behalf of Edmundson in connection with any "Proceeding" by reason of his "Corporate Status."[42] A "Proceeding" includes "any threatened, pending[,] or completed

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[40] Compl. Ex. A ("Certificate").

[41] *Id.*, art. Ninth.

[42] Indemnification Agreement § 5. Section 5 uses the term "Expenses," which is defined in Section 12. *See* Indemnification Agreement § 12(d).

action, . . . counterclaim, . . . [or] arbitration, . . . whether brought by or in the right of [Theorem] or otherwise . . . by reason of [Edmundson's] Corporate Status . . . whether or not [Edmundson] is acting or serving in any such capacity at the time any liability or expense is incurred[.]"[43] And "Corporate Status" is "the status of a person who is or was a director, officer, employee, agent or fiduciary of [Theorem] or of any . . . other enterprise that such person is or was serving at the request of [Theorem]."[44]

Advancement is Warranted for the Arbitration Claim

6. The parties agree that the Certificate incorporates the "by reason of the fact" standard in Section 145 of the Delaware General Corporation Law.[45] The Indemnification Agreement uses "by reason of the fact" explicitly.[46] Accordingly, the parties have argued Edmundson's entitlement to advancement under both the Certificate and the Indemnification Agreement based on this standard.

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[43] *Id.* § 12(f).

[44] *Id.* § 12(a).

[45] *See* Pl. Hugh Edmundson's Opening Br. in Support of His Mot. for Summ. J. 21–22, Dkt. 16 ("Edmundson Opening Br."); Def. Theorem Tech., Inc.'s Opening Br. in Support of its Cross-Mot. for Summ. J. and Answering Br. in Opp'n to Pl.'s Mot. for Summ. J. 14–16, Dkt. 18 ("Theorem Opening Br."); Pl. Hugh Edmundson's Reply Br. in Support of His Mot. for Summ. J. 7–8, Dkt. 21 ("Edmundson Reply Br."); Def. Theorem Tech., Inc.'s Reply Br. in Further Support of its Cross-Mot. for Summ. J., 3–4, Dkt. 22 ("Theorem Reply Br.").

[46] Indemnification Agreement § 5.

7. An advancement claim arises "by reason of the fact" of an individual's corporate capacity "if there is a nexus or causal connection between any of the underlying proceedings . . . and [their] official corporate capacity . . . without regard to [their] motivation for engaging in that conduct." *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 214 (Del. 2005). The requisite nexus or causal connection "is established if the corporate powers were used or necessary for the commission of the alleged misconduct." *Bernstein v. TractManager, Inc.*, 953 A.2d 1001, 1011 (Del. Ch. 2007).

8. It "can include post-separation conduct if it is rooted in pre-separation responsibilities." *Barr v. Genesis GMG Hldgs., LLC*, 2025 WL 3720720, at *5 (Del. Ch. Dec. 23, 2025). One example of this is when claims in the underlying proceeding concern "allegations relating to post-separation use of confidential information learned pre-separation." *Ephrat v. medCPU, Inc.*, 2019 WL 2613281, at *7 (Del. Ch. June 26, 2019). "By reason of the fact" is interpreted "broadly and in favor of indemnification and advancement," *Alalfi Fam. Tr. v. Cohen*, 2020 WL 13854374, at *3 (Del. Ch. Feb. 19, 2020), and "the line between being sued in one's personal capacity and one's corporate capacity generally is drawn in favor of advancement with disputes as to the ultimate entitlement to retain the advanced funds being resolved later at the indemnification stage," *Holley v. Nipro Diags., Inc.*, 2014 WL 7336411, at *9 (Del. Ch. Dec. 23, 2024).

9. Considering the pleadings from the Arbitration in light of this standard,[47] I find that the Arbitration Claim is asserted against Edmundson "by reason of the fact" of his Corporate Status with Theorem, for two reasons.

10. First, Claimants allege in the Statement of Claim that Edmundson reached out to existing Theorem clients after his termination to offer to answer "any questions" about internal post-acquisition issues at Theorem, and shortly after that Theorem clients began reaching out to Pagaya "echoing" an allegation about Theorem's internal operations that Edmundson himself had previously raised.[48] Claimants argue these contacts breached the Merger Agreement because the referenced Theorem investors "are plainly 'customer[s] or client[s]' within the meaning of Section 5.17(b)."[49]

11. As previously noted, a "customer or client" under Section 5.17(b) of the Merger Agreement is not simply anyone already doing business with Theorem at the time of the acquisition. Rather, a "customer or client" is someone with whom Edmundson "had contact" or "for whose relationship with the Company Group" Edmundson was responsible "during the twelve (12)

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[47] *See Marino v. Patriot Rail Co.*, 131 A.3d 325, 332 (Del. Ch. 2016) ("The scope of an individual's advancement rights normally turns on the pleadings in the underlying litigation that trigger the advancement right."); *Weaver v. ZeniMax Media, Inc.*, 2004 WL 243163, at *4 (Del. Ch. Jan. 30, 2004) ("The Court must seek to discern the nature of the claims which [the party seeking advancement] is called upon to defend by reading the [pleading] as a whole and providing a reasonable interpretation of the substance of the allegations of each count.").

[48] *See* Statement of Claim ¶¶ 30–40.

[49] *Id.* ¶ 47 (italics removed).

months" before the merger's closing.[50] Claimants thus cannot establish the violation of Section 5.17(b)(i) of the Merger Agreement in the Arbitration unless they can show Edmundson maintained contact or was responsible for the relationships with a customer or client of Theorem while he was an officer, director, and employee of Theorem. In other words, a violation of Section 5.17(b)(i) is "inextricably intertwined"[51] with Edmundson's pre-separation responsibilities because Edmundson could not have breached Section 5.17(b)(i) "without the aid of his prior . . . status with [Theorem]." *Charney v. Am. Apparel, Inc.*, 2015 WL 5313769, at *18 (Del. Ch. Sept. 11, 2015).

12. Second, I find advancement is also required because a fair reading of the Statement of Claim shows Claimants alleging Edmundson used confidential, proprietary information learned or obtained pre-separation when he purportedly had the prohibited communications. The Statement of Claim, as previously noted, alleges that shortly after Edmundson reached out to Theorem clients, Theorem clients began reaching out to Pagaya "echoing" statements about Theorem's operations that Edmundson himself had previously made

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[50] Merger Agreement § 5.17(b).

[51] *Pontone v. Milson Indus.*, 100 A.3d 1023, 1051 (Del. Ch. 2014) ("*Pontone II*"); *Barr*, 2025 WL 3720720, at *6.

internally.[52] The clear implication of this allegation is that Edmundson conveyed non-public information about Theorem to those clients and, as a result, Claimants allege Edmundson breached Section 5.17(b)(i) of the Merger Agreement because he conveyed that information for a prohibited purpose.[53]

13. Theorem insists this is not an advancement case involving the misuse of confidential information because Claimants do not allege misuse of confidential information in the Arbitration.[54] Edmundson was not completely clear on this in his briefing.[55] It is true the Statement of Claim does not assert

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[52] *See* Statement of Claim ¶¶ 37 ("[S]everal investors . . . reached out to Pagaya" asserting "a claim that [Theorem's new Chief Investment Officer] understand[s] Mr. Edmundson had previously made to Pagaya[.]"); 39 ("As Theorem Investors began echoing Mr. Edmundson's allegation . . . , Theorem's and Pagaya's management was forced to devote substantial time and resources to addressing their queries and requests in an effort to retain the very investors and goodwill [Pagaya] had acquired in the Merger.").

[53] Theorem considers all non-public information about its operations to be confidential. *See* Confidentiality, Non-Competition, Non-Interference, Non-Solicitation and Invention Assignment Agreement § I.1.(A), Empl. Agreement Ex. C ("Confidentiality Agreement") ("During the course of his employment, Key Employee has been and will continue to be provided with access to Confidential Information . . . . 'Confidential Information' includes all non-public information that relates to the actual or anticipated business . . . of Employer and/or the Company Group, . . . including . . . clients and customers (including clients and customers of Employer on whom Key Employee called or with whom Key Employee became acquainted during the term of Key Employee's employment)[.]").

[54] *See, e.g.*, Theorem Opening Br. 28–29 ("[T]he relevant question is not whether Edmundson had access to confidential information; it is whether the Arbitration Claim alleges that he used it in connection with his breach of Section 5.17(b) . . . . [T]he Arbitration Claim contains no such allegation[.]"); Theorem Reply Br. 10–11 ("[T]he underlying Arbitration Claim does not allege Edmundson misused confidential information[.]").

[55] *Contrast* Edmundson Reply Br. 15 ("[Claimants] do not expressly allege misuse of confidential information[.]"), *and* Edmundson Reply Br. 16 ("[Edmundson] is not

an individual count for misappropriation or for breach of the Confidentiality Agreement,[56] but that is not required for the court to find advancement is mandated. The test, as previously noted, is whether the substance or "true nature" of the allegations in an underlying action's pleadings demonstrates the required nexus or causal connection to pre-separation powers.[57] The court has consistently rejected the argument that advancement under the "by reason of the fact" standard turns on whether specific claims are asserted in the underlying proceeding.[58] Here, the Arbitration alleges use of information by

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arguing that he should be entitled to advancement for allegations of misuse of confidential information[.]"), *with* Edmundson Reply Br. 15 ("[Claimants] expressly allege misuse of investor relationships and information regarding those relationships that Edmundson could only have learned in his covered capacities[.]"), *and* Edmundson Reply Br. 17 ("Theorem's allegations rest on the alleged misuse of information gained in Edmundson's role as an officer and director[.]"). Edmundson's oral argument presentation falls into the latter camp. *See* Presentation Materials 22, Dkt. 29 ("Theorem also expressly alleges use of its proprietary information.") (citing Statement of Claim ¶¶ 34–39).

[56] The Confidentiality Agreement commits all disputes to mandatory arbitration under the JAMS Comprehensive Arbitration Rules and Procedures. *See* Confidentiality Agreement § V.7.(A).

[57] *See Imbert v. LCM Int. Hldg. LLC*, 2013 WL 1934563, at *6 (Del. Ch. May 7, 2013) ("The Court must seek to discern the true nature of the [Arbitration] claims that Mr. [Edmundson] is called upon to defend rather than rely on clever labeling or wordsmithing in the pleadings.") (citing *Brown v. LiveOps, Inc.*, 903 A.2d 324, 329 (Del. Ch. 2006)); *Weaver*, 2004 WL 243163, at *4 ("The Court must seek to discern the nature of the claims which [the party seeking advancement] is called upon to defend by reading the [pleading] as a whole and providing a reasonable interpretation of the substance of the allegations of each count."); *Rose v. Berkeley Compute, Inc.*, 2026 WL 700385, at *5 ("The Court must look to the substance of the claim, as opposed to the words a plaintiff has chosen to use in the pleading.").

[58] *See, e.g.*, *Pontone II*, 100 A.3d at 1051 ("[A]lthough it is true that the Pennsylvania Plaintiffs have not brought an express count for breach of fiduciary duty against Scott Pontone, the claims they asserted against him . . . are nonetheless inextricably

Edmundson to breach Section 5.17 of the Merger Agreement that he could only have learned by reason of his former status. This establishes the nexus or causal connection required for advancement.

14. In reaching these conclusions, I reject Theorem's argument that advancement is not warranted because Edmundson purportedly agreed to Section 5.17 of the Merger Agreement only in his personal capacity as a selling stockholder.[59] The Merger Agreement does not say Edmundson (and Podolsky) are agreeing to Section 5.17 only in their personal capacities as stockholders, it simply uses the term "Key Stockholder" as the defined term to refer to them.[60] This is not, by itself, a clear expression of intent by sophisticated, well-represented parties to limit the capacity in which Edmundson and Podolsky are obligated under Sections 5.17 of the Merger Agreement.[61]

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intertwined with and based on his former role as an officer of New Milson."); *Bernstein*, 953 A.2d at 1011 ("[T]he requisite nexus can be established even if the cause of action does not specify a claim of breach of fiduciary duty owed to the corporation."); *Reddy v. Elec. Data Sys. Corp.*, 2002 WL 1358761, at *6 (Del. Ch. June 18, 2002) (rejecting argument that "[b]ecause [the underlying proceeding] did not specifically allege that [plaintiff] had committed a breach of fiduciary duty, . . . the [underlying proceeding] is not a proper subject of advancement.").

[59] Theorem Opening Br. 20–25; Theorem Reply Br. 4–10.

[60] Merger Agreement 1.

[61] Indeed, the restrictions in Section 5.17 make more sense if they apply to Edmundson and Podolsky in any (or all) capacities. The court doubts Theorem's interest in restricting the activities of its former Chief Investment Officer and Chief Executive Officer is only because they were significant stockholders. A former senior officer's knowledge of the company and its business and contacts with its

Advancement is Warranted for the Breach of Contract Counterclaim But Not the Fraudulent Inducement Counterclaim

15. Having found Edmundson is entitled to advancement of his fees and expenses for his defense of the Arbitration Claim, I now consider his entitlement to advancement for the Arbitration Counterclaims.

16. Edmundson says advancement for the Arbitration Counterclaims is owed under both the Certificate and the Indemnification Agreement. For the Certificate, Edmundson argues he is entitled to advancement of expenses incurred in connection with *any* counterclaim, whether raised offensively or defensively, as long as the counterclaim is brought "by reason of" any of his former covered statuses at Theorem.[62] He also argues that even if advancement under the Certificate requires a defensive capacity, the Arbitration Counterclaims qualify under the two-part test established under *Citadel Holding Corp. v. Roven*.[63] For the Indemnification Agreement, Edmundson argues that Sections 5 and 9(c) when read together "expressly require[]

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clients is likely to be of far greater interest to a buyer than a former stockholder's. *See* Jackson M. Payne, *Goodwill as Part of a Corporate Asset Sale*, THE TAX ADVISER (May 1, 2014), https://www.thetaxadviser.com/issues/2014/may/payne-may2014/ [https://perma.cc/5HA7-LFJU] (distinguishing passive investors from individuals whose knowledge, expertise, and customer relationships contribute to a business's value). In contrast, Theorem's interest in Edmundson and Podolsky for purposes of Section 5.18 is clearly related to their stockholder status.

[62] Edmundson Opening Br. 27–28 (citing *Rhodes*, 2024 WL 669034, at *11; Edmundson Reply Br. 28.

[63] Edmundson Opening Br. 30–33 (discussing *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818 (Del. 1992) ("*Roven*"); Edmundson Reply Br. 30–40.

advancement for 'any mandatory counterclaim . . . brought or raised by [Edmundson] in any Proceeding (or any part of any Proceeding).'"[64]

17. Theorem says neither instrument permits advancement for the Arbitration Counterclaims, for two reasons. First, Theorem repeats its position that the Arbitration Claim is not asserted against Edmunson by reason of the fact of his former service to Theorem.[65] Second, Theorem argues the Arbitration Counterclaims are not advanceable under either the Certificate or the Indemnification Agreement because they are offensive counterclaims, and that even if they are defensive they are not advanceable because they do not meet *Roven*'s two-part test: they are not compulsory counterclaims[66] because they are not part of the same dispute, and Edmundson is not asserting them to defeat or offset Theorem's claims.[67]

18. Under the two-part *Roven* test, a counterclaim is advanceable if it is "(1) 'necessarily part of the same dispute,' in the sense that it qualifies as a compulsory counterclaim under the prevailing Delaware and federal procedural

[64] Edmundson Opening Br. 29.

[65] Theorem Opening Br. 30. Having already held the Arbitration is a covered proceeding earlier in this order, *see supra* ¶¶ 6–14, I do not discuss this argument further.

[66] The Indemnification Agreement uses the term "mandatory counterclaim" instead of "compulsory counterclaim," but that is a meaningless difference. *See Compulsory*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Required or compelled; mandated by legal process or by statute[.]"); *Compulsory*, MERRIAM-WEBSTER.COM DICTIONARY, https://www.merriam-webster.com/dictionary/compulsory ("mandatory, enforced"). The parties do not argue otherwise.

[67] Theorem Opening Br. 31–38; Theorem Reply Br. 23–32.

standard, and (2) ‘advanced to defeat, or offset’ the affirmative claims.” *Pontone II*, 100 A.3d at 1055 (quoting *Roven* and discussing other authorities).

19. As to the first part of the *Roven* test, “[a] counterclaim is compulsory if it, among other requirements, ‘arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim.’” *Id.* (quoting Fed. R. Civ. P. 13(a)(1) and citing Ct. Ch. R. 13(a)). “The test used to determine whether a claim and counterclaim arise out of the same ‘transaction or occurrence’ is whether the two bear a ‘logical relationship.’” *Id.* at 1056–57 (citing authorities). The “logical relationship” requirement is “viewed liberally to promote judicial economy,” *Transamerica Occidental Life Ins. Co. v. Aviation Off. of Am., Inc.*, 292 F.3d 384, 389 (3d Cir. 2002), and is “informed by considerations such as whether [the claim and counterclaim] share issues of fact and law in common or would involve presentation of the same evidence,” *Pontone II*, 100 A.3d at 1057 (citing authorities).

20. As to the second part of the *Roven* test, the term “offset” for advancement of compulsory counterclaims “should be read broadly.” *Krauss v. 180 Life Sci. Corp.*, 2022 WL 665323, at *9 n.81 (Del. Ch. Mar. 7, 2022) (citing *Pontone v. Milso Indus. Corp.*, 2014 WL 2439973, at *4–5 (Del. Ch. May 29, 2014) (“*Pontone I*”). In *Pontone I*, the court explained the Supreme Court’s ruling in *Roven* as holding that a compulsory counterclaim for “illegal corporate control” was advanceable because “any recovery on that

counterclaim presumably would have offset the director's liability on the [Securities Exchange Act of 1934] Section 16(b) claim," even though it "could [not] have negated or defeated the claim." *Pontone I*, 2014 WL 2439973, at *5.[68] The court reaffirmed this point in *Pontone II*, stating that if success on a compulsory counterclaim could "produce an offsetting damages award," then it qualifies for advancement. 100 A.3d at 1056.

21. Applying the two-part *Roven* test here,[69] I conclude the Breach of Contract Counterclaim is advanceable but the Fraudulent Inducement Counterclaim is not. I address them in that order.

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[68] *See also Pontone I*, 2014 WL 2439973, at *5 (noting a broad reading of offset "comports with Delaware public policy in favor of advancement") (citations omitted).

[69] I reject Edmundson's argument that the *Roven* test does not apply because the Certificate's advancement language is so broad as to grant advancement to Edmundson even for permissive counterclaims. *See* Edmundson Opening Br. 28 ("The omission of 'in defending' language in [the Certificate] means that Edmundson is entitled to advancement for expenses incurred in connection with any claim or counterclaim, raised offensively or defensively, that is by reason of his former director, officer, or employee status[.]") (citing *Rhodes*, 2024 WL 669034, at *11). "Delaware courts have repeatedly held that the baseline requirement for a counterclaim to be advanceable is that it qualify as compulsory." *Krauss*, 2022 WL 665323, at *8 n.74 (quoting *Pontone I*, 2014 WL 2439973, at *4). In *Krauss*, the advancement language was not limited to expenses incurred "in defending" a covered proceeding. *See id.*, at *2 (explaining that the defendant's bylaws granted advancement for expenses "incurred in defending *or otherwise participating*" in a covered proceeding "in advance of its final disposition") (emphasis added). Notwithstanding Edmundson's reliance on *Rhodes*, I do not believe *Rhodes* is inconsistent with *Krauss*. *Rhodes* interpreted different language in the defendant's bylaws, and it was not addressing if counterclaims have to be compulsory to be advanceable, it was addressing the plaintiff's entitlement to advancement for his affirmative, preemptive declaratory judgment action against the defendant. *See Rhodes*, 2024 WL 669034, at *5, *8-11 (finding no entitlement to advancement because the governing instruments "unambiguously eliminate advancement rights for

22. As to the Breach of Contract Counterclaim, I find it satisfies both parts of the *Roven* test because it is a compulsory counterclaim to and is being asserted to defeat or offset the Arbitration Claim. First, the Breach of Contract Counterclaim meets the first part of the *Roven* test because there is a logical relationship between it and the Arbitration Claim and thus it is a compulsory counterclaim. The two claims have issues of fact and law in common, will involve presentation of the same evidence, and both relate to Edmundson's employment with and termination from Theorem.[70]

23. Section 5.17(b)(i) of the Merger Agreement, the centerpiece of the Arbitration Claim, is not a flat "no-contact" restrictive covenant. It is intent-based,[71] meaning why Edmundson did what he is alleged to have done post-termination, and why Theorem clients who diminished their relationship with Pagaya and Theorem did so, are questions the arbitrators will need to determine. The Breach of Contract Counterclaim alleges Pagaya interfered with the Theorem Investment Committee,[72] while the Arbitration Claim alleges

proceedings initiated by Plaintiff, regardless of whether Plaintiff initiated those proceedings in response to Defendants' threats of litigation").

[70] *Compare* Arb. Demand ¶¶ 2, 8, 20, 26, 30, 31, *and* Statement of Claim ¶¶ 23–24, *with* Arb. Countercls. ¶¶ 23, 37.

[71] *See* Merger Agreement § 5.17(b)(i) (". . . in each case for the purpose of inducing such customer or client or prospective customer or client to diminish its or their business relationship with the Company Group").

[72] *See, e.g.*, Arb. Countercls. ¶¶ 31, 34, 37.

Edmundson wrongfully disclosed that very same dispute to prohibited Theorem clients.[73]

24. Similarly, the Arbitration Claim alleges Edmundson damaged Pagaya's relationships with Theorem's investors (*i.e.*, Theorem's "goodwill") in retaliation for his termination,[74] while the Breach of Contract Counterclaim alleges Pagaya damaged its relationships with Theorem investors through its "unlawful meddling in violation of the Merger Agreement" including by deliberately suppressing fund performance in breach of the Merger Agreement.[75] Holding separate trials or arbitration proceedings on the Arbitration Claim and the Breach of Contract Counterclaim would risk an unnecessary duplication of effort and time.

25. Second, the Breach of Contract Counterclaim meets the second part of the *Roven* test because success on the Breach of Contract Counterclaim could "produce an offsetting damages award." *See Pontone II*, 100 A.3d at 1056. "Offset" under *Roven*'s second element need not entirely defeat the Arbitration Claim,[76] nor is its reach by limited to the doctrine of recoupment, as Theorem argues.[77]

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[73] *See, e.g.*, Statement of Claim ¶¶ 37–38, 54.

[74] *Id.* ¶ 54.

[75] Arb. Countercls. ¶¶ 27–35.

[76] Theorem relies on the court's opinion in *Zaman v. Amedeo Holdings* for this proposition. *See* Theorem Opening Br. 38 (citing *Zaman*, 2008 WL 2168397, at *35 (Del. Ch. May 23, 2008)). The court in *Pontone I* rejected, as inconsistent with

26. Turning to the Fraudulent Inducement Counterclaim, I find it fails under *Roven*'s first prong because there is no logical relationship between it and the Arbitration Claim.[78] A fraudulent inducement counterclaim is compulsory where the affirmative claim and counterclaim are logically related through overlapping operative facts and issues. The mere fact that alleged pre-contractual fraud induced the agreement later sued upon does not, standing alone, create a logical relationship. Here, the Fraudulent Inducement Counterclaim is temporally and substantively distinct from the Arbitration Claim—the facts do not overlap so far as the court can discern.[79] Edmundson's briefing tacitly confirms this—Edmundson never treats the Arbitration

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Roven, any reading of *Zaman* that "make[s] compulsory counterclaims that offset, but cannot defeat, affirmative claims ineligible for advancement[.]" 2014 WL 2439973, at *6 (discussing *Zaman*, 2008 WL 2168397, at *35).

[77] *See* Theorem Opening Br. 37–38; Theorem Reply Br. 30–31. The recoupment doctrine requires a more exacting, tighter connection than does advancement for compulsory counterclaims. *Contrast Finger Lakes Cap. P'rs, LLC v. Honeoye Lake Acquis., LLC*, 151 A.3d 450, 454 (Del. 2016) ("[T]he transactional nexus requirement under recoupment [is] tightly constrained."), *with Krauss*, 2022 WL 665323, at *9 n.81 (stating the "offset" for advancement of compulsory counterclaims "should be read broadly") (citing *Pontone I*, 2014 WL 2439973, at *4–5). Recoupment requires this because of public policy considerations that do not exist here: "great care should be used before allowing a party to assert a stale claim as a basis to reduce its liability for a judgment in a suit brought by a party asserting timely claims." *Finger Lakes*, 151 A.3d at 454 (discussing *TIFD III–X LLC v. Fruehauf Prod. Co., L.L.C.*, 883 A.2d 854, 865 (Del. Ch. 2004)).

[78] Because I find the Fraudulent Inducement Counterclaim fails under *Roven*'s first prong, I do not address the second.

[79] *Compare* Statement of Claim ¶¶ 20, 21, 31 *with* Arb. Countercls. ¶¶ 36–38 (concerning alleged post-termination breaches by Edmunson and alleged pre-contractual fraud by Pagaya respectively).

Counterclaims separately, and the facts and issues he cites to show a logical relationship relate more readily to the Breach of Contract Counterclaim, not the Fraudulent Inducement Counterclaim.[80]

Edmundson is Entitled to Fees on Fees and Interest

27. Edmundson is entitled to fees on fees to the extent of his success on the merits of his advancement suit. This is the default rule in Delaware, and Theorem did not provide otherwise in the Certificate. *See Leiske v. Kidd*, 2026 WL 265493, at *5 (Del. Ch. Feb. 2, 2026) (citing *Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 561–62 (Del. 2002)); *see also Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 178, 182–83 (Del. Ch. 2003). Fees on fees are also required under the Indemnification Agreement, which states Theorem's intent that Edmundson "not be required to incur legal fees or other Expenses associated with the interpretation, enforcement[,] or defense of [his] rights under this Agreement."[81]

[80] *See, e.g.*, Edmundson Opening Br. 31–32 (arguing there is a logical relationship because "the Counterclaims" require "analysis of the same investor relationships as managed by Edmundson, Pagaya, and Theorem" and "analysis of the validity of Edmundson's termination," even though neither analysis appears to be relevant to the Fraudulent Inducement Counterclaim); Edmundson Reply Br. 35 (arguing Edmundson's termination and the alleged investor are at issue in the "Counterclaims" without distinguishing between the two Arbitration Counterclaims).

[81] Indemnification Agreement ¶ 7(e).

28. Edmundson is also entitled to prejudgment interest at the legal rate.[82] Prejudgment interest is ordinarily awarded as a matter of right. *See Roven*, 603 A.2d at 826. "A party from whom advancement is improperly withheld 'is entitled to interest computed from the date of demand,' defined as the date on which the party 'specified the amount of reimbursement demanded and produced his written promise to pay.'" *Pontone II*, 100 A.3d at 1058 (quoting *Roven*, 603 A.2d at 826 & n.10).[83]

* * *

29. This is a Report under Court of Chancery Rule 144. Under Rule 144(d)(2) and the Chancellor's assignment letter,[84] any party wishing to take exception to this Report must file a notice of exceptions by September 17, 2026.

30. If no exceptions are taken by September 17 , or the Chancellor or a Vice Chancellor affirms this Report after exceptions, then within five business days of the expiration of the exceptions deadline or the issuance of an affirming

[82] *See* 6 *Del. C.* § 2301(a).

[83] The court has also considered Theorem's seven affirmative defenses. *See* Ans. 24–26. The first five are addressed by the court's ruling that Edmundson is entitled to advancement for the Arbitration Claim and the Breach of Contract Counterclaim and thus fail on their merits. *See supra* ¶¶ 6–25. Theorem's Sixth Defense, that any award of fees and expenses must be reasonable, is not relevant to the current entitlement dispute. *See Danenberg v. Fitracks*, 58 A.3d 997–98 (Del. Ch. 2012). The Seventh Defense, that any award of fees on fees must be proportionate to Edmundson's success on advancement, is addressed in paragraph 27.

[84] Dkt. 2.

decision from a constitutionally appointed officer of this court, the parties must meet and confer and submit a proposed order implementing this decision that includes a plan for resolving fee disputes similar to the plan laid out in *Danenberg v. Fitracks, Inc.*[85]

/s/ *Christian Douglas Wright*
Magistrate in Chancery

[85] 58 A.3d at 1003–04.