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IN THE SUPREME COURT OF THE STATE OF DELAWARE

KT4 PARTNERS LLC, Plaintiff Below, Appellant, v. PALANTIR TECHNOLOGIES, INC., Defendant Below, Appellee.	No. 281, 2018 On Appeal from the Court of Chancery of the State of Delaware in C.A. No. 2017-0177-JRS

APPELLANT'S OPENING BRIEF

OF COUNSEL:

Barry S. Simon
Jonathan B. Pitt
Stephen L. Wohlgemuth
WILLIAMS & CONNOLLY LLP
725 Twelfth Street NW
Washington, DC 20005
(202) 434-5000 (telephone)
(202) 434-5029 (facsimile)

DALTON & ASSOCIATES, P.A.

Bartholomew J. Dalton, Esq. (#808)
Michael C. Dalton, Esq. (#6272)
Cool Spring Meeting House
1106 West 10th Street
Wilmington, Delaware 19806
(302) 652-2050 (telephone)
(302) 652-0687 (facsimile)
bdalton@bdaltonlaw.com
mdalton@bdaltonlaw.com

Attorneys for Plaintiff Below, Appellant KT4 Partners LLC

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NATURE OF PROCEEDINGS

This appeal arises out of a books-and-records case that Plaintiff-Appellant KT4 Partners LLC filed under 8 *Del. C.* § 220 against Defendant-Appellee Palantir Technologies Inc. After a one-day trial, the Court of Chancery concluded that Palantir appeared to have engaged in serious wrongdoing, including by failing to provide its stockholders with "basic information" about their investment, committing "serial" violations of Delaware law by never holding a stockholder meeting, "pull[ing] the rug" out from under KT4 when it sought information about Palantir under an Investors' Rights Agreement ("IRA"), routinely ignoring its stockholders' contractual rights with respect to the purchase of stock, and "eviscerat[ing]" its stockholders' rights to information by retroactively amending the IRA. *See* Ex. A ("Op."). The Court granted KT4's requests to inspect Palantir's books and records relating to these issues.

The Court also held that Palantir appeared to breach the IRA when it issued new rounds of financing without giving KT4 notice and without honoring KT4's right of first offer—*i.e.*, without offering KT4 the ability to participate in the financings. But despite finding evidence of potential wrongdoing, the Court did not grant KT4's request to inspect books and records related to KT4's right of first offer. Instead, the Court limited inspection to the notices that Palantir may have provided to other stockholders in connection with the financings.

Finally, the Court held that KT4's Section 220 Demand (the "Demand") failed to state that KT4 had a valuation purpose and that KT4 could not cure any ambiguity in the Demand in litigation, despite the fact that—in addition to stating, in the Demand, that KT4 was investigating whether Palantir had improperly deprived it of the information "necessary to assess the value of [its] investment" in Palantir—KT4 also articulated a valuation purpose under oath in its verified complaint, in its answers to interrogatories, at the deposition of its managing member, and at trial (as well as in multiple unsworn briefs). Op. 21-26. The Court therefore denied KT4's requests for valuation information. *Id.* at 26.

The Court of Chancery entered its Final Order and Judgment on March 20, 2018. *See* Ex. B ("Order"). The Order included a provision that required KT4 to bring any suit against Palantir arising out of its investigation in the Court of Chancery in the first instance, and in all events barred KT4 from filing suit outside Delaware (referred to herein as the "Jurisdictional Limitation"). *See* Order ¶ 12. The Court did not discuss any case-specific factors justifying the Jurisdictional Limitation—it imposed it without comment. The Order also required that Palantir produce certain electronic documents, but not emails. Order ¶ 1 n.1.

KT4 then moved for limited reargument on whether Palantir should have to produce emails relating to its conduct in retroactively amending the IRA and in ignoring investor contractual rights. On May 1, 2018, the Court of Chancery

denied that motion. *See* Ex. C ("Reargument Order") ¶ 6. The Court held that KT4's Demand did not request inspection of emails, even though the Demand sought inspection of "all books and records," including "electronic documents and information." *See id.* ¶ 4. The Court also held that emails were not essential to KT4's investigation, finding that board-level materials were sufficient. *Id.* ¶ 5.

This appeal followed.

SUMMARY OF THE ARGUMENT

1. The Court of Chancery erred by holding that the Demand did not state a valuation purpose. The Demand stated that KT4 was investigating whether Palantir had improperly deprived certain of its investors, including KT4, of the information "necessary to assess the value of their investments." A1648 (part C.4). That language was specific enough to enable Palantir to determine that KT4 wanted information to value its shares—as evidenced by the fact that Palantir twice offered KT4 documents for the purpose of valuing its shares. The circumstances surrounding the Demand further support this conclusion. KT4's Section 220 Demand was not the first time it sought books and records for the purpose of valuing its shares. KT4 first sought valuation information under the IRA, but Palantir responded to that contractual request by purporting to retroactively amend the IRA to strip KT4 of its rights. The Section 220 Demand was KT4's second attempt to obtain valuation information, and was necessary only because Palantir wrongfully thwarted its first attempt. The Demand should be interpreted in light of this history.

But even assuming that the Demand was ambiguous, the Court of Chancery erred by holding that ambiguity to be incurable. If KT4's valuation purpose was vaguely worded, it was clarified when KT4 clearly stated a valuation purpose in its

verified complaint, again in interrogatory responses, again in deposition and trial testimony, and yet again in all pre- and post-trial memoranda.

2. The Court of Chancery also erred by imposing the Jurisdictional Limitation. The Court imposed the Jurisdictional Limitation without considering any case-specific circumstances, including the fact that the Limitation could prevent KT4 from remedying the wrongs it sought to investigate. For example, KT4 is investigating Palantir's non-compliance with a First Refusal and Co-Sale Agreement ("FRCSA"). It appears that Palantir allowed certain of its directors—who also were the company's Founders—to secretly sell over 100 million shares of stock in violation of the FRCSA. In any breach-of-contract suit arising out of those sales, both Palantir and the Founders will be necessary parties. It is unclear, however, whether Delaware courts will have personal jurisdiction over the Founders (all of whom live in California), at least with respect to these contract claims. If a Delaware court ultimately concludes that it lacks personal jurisdiction over the Founders, KT4 would be unable to re-file suit in any other jurisdiction, and the Limitation would shield both Palantir and the Founders from being held to account for their misconduct. Similarly, the Jurisdictional Limitation could preclude KT4 from pursuing claims against entities controlled by the Founders/directors who violated KT4's contractual rights, or which acted as joint tortfeasors with the Founders/directors.

The Jurisdictional Limitation may also strip KT4 of its constitutional right to a jury trial: it requires KT4 to file all of its claims, even its common-law claims, in the Court of Chancery, where a party is not entitled to a jury trial as a matter of right. These harms to KT4's interests far outweigh any benefit Palantir may receive from this restriction—in fact, Palantir has never offered any legitimate interest that is furthered by the Jurisdictional Limitation. Instead, it claimed only that the Limitation is "the norm in the Court of Chancery." A3422.

3. The Court of Chancery also erred by denying KT4's inspection of books and records necessary to investigate Palantir's misconduct under the Investors' Rights Agreement. As the Court correctly noted, Palantir's apparent wrongdoing under the IRA was two-fold: (a) it failed to give KT4 notice of seven new rounds of financing and (b) it failed to honor KT4's right of first offer with respect to stock sold in those rounds. Although the Court recognized both categories of wrongdoing, it only granted inspection as to one of those issues. Specifically, the Court ordered Palantir to produce any notices that it provided to other stockholders, but it did not require Palantir to produce books and records relating to the actual sales of stock that should have been offered to KT4. KT4 needs these books and records to conduct its investigation with respect to violations of the IRA: without knowing the terms of the sales, whether (and why) they were approved by Palantir's board, and how (if at all) Palantir received the

required approval of Palantir stockholders for those new rounds of financing, KT4 cannot determine what claims it and other stockholders might have, who those claims might be brought against, why some investors were allowed to participate in the financings while KT4 was excluded, and how many shares KT4 should have been able to purchase pursuant to the right of first offer and at what price.

4. Finally, the Court of Chancery erred by denying KT4's request to inspect emails relating to Palantir's conduct in amending the IRA and violating KT4's contractual rights. First, the Court erred by holding that the Demand's request to inspect "all books and records," including "electronic documents and information," did not sufficiently state a request to inspect emails because the Demand did not specify that it was seeking "emails," in addition to "all books and records." But nothing in Section 220 requires a stockholder to spell out each and every type of book or record it seeks—requesting "all" books and records is sufficient. Second, the Court further erred by holding that only board-level materials, and not emails, were essential to KT4's investigation. Limiting inspection to board materials may allow Palantir to shield its worst misconduct: there is no indication that the board was even involved in the amendments, and the best (and perhaps only) evidence of Palantir's misconduct likely will be in emails.

STATEMENT OF FACTS

A. KT4 invests in Palantir, and Palantir grants KT4 and other stockholders contract rights.

In 2003, KT4's managing member, Marc Abramowitz, began investing in Palantir through various entities, including KT4. A3496-97 (Tr. 27:6-28:19). Over the next several years, Abramowitz maintained a good relationship with Palantir: he had a "cordial and amicable relationship" with Palantir's CEO, Alex Karp, who considered Abramowitz to be a "trusted advisor." Op. 5-6. During this time, Abramowitz increased his investment in Palantir such that KT4 is now the record holder of over 5.5 million shares of Palantir common and preferred stock. Op. 4-5.

As an inducement for these investments, Palantir and its Founders granted KT4 and other stockholders certain contract rights, including rights under the IRA and FRCSA. Under the IRA, KT4 had the right to inspect Palantir's books and records and to discuss Palantir's "affairs, finances and accounts" with management. A197 (§ 2.2, § 2.3). The IRA also included a right of first offer, which gave KT4 and other "Major Investors" the right to participate in new issuances of Palantir stock.[1] A198 (§ 2.4). Specifically, Section 2.4 of the IRA provides that if Palantir issues new rounds of financing, it must first provide KT4

[1] Under Section 2.1 of the IRA, a "Major Investor" is one that holds a certain amount of stock. Until the purportedly retroactive September 2016 IRA amendments, KT4 held enough stock to qualify as a "Major Investor." Op. 7-8.

and other Major Investors notice of the financing and the right of first offer, which is an opportunity to purchase a "portion" of the new shares in an amount proportionate to the Major Investor's existing ownership. *Id.* (§ 2.4(b)). The "price and . . . the terms" available to the Major Investor depended on the price and the terms offered to other investors in the round. *Id.*

The FRCSA—which was signed by both Palantir and the Founders—gave KT4 rights over the Founders' sales of stock. Except in narrow circumstances, any time a Founder sold common stock on the secondary market, the FRCSA gave KT4 (and all other preferred stockholders) a right of first refusal over the Founder's shares and the right to sell its shares alongside the Founder (*i.e.*, the right of "co-sale") on a proportionate basis. A237 (§ 2.1(d)) (first refusal); A238-39 (§ 2.2) (co-sale).

Although Abramowitz did not know it at the time, Palantir was not honoring KT4's rights. Even though the IRA gave KT4 the right to participate in new rounds of financing, Palantir last allowed KT4 to participate in its Series E issuance. Op. 39. It turns out, however, that Palantir had issued seven rounds of financing since then. *Id.* KT4 did not have an opportunity to exercise its right of first offer in <u>any</u> of those seven rounds. *Id.*

Palantir and its Founders also ignored KT4's rights under the FRCSA. Beginning in at least 2009, the Founders secretly sold over 100 million shares of

common stock without once honoring KT4's rights of first refusal or co-sale. *Id.* at 36 & n.135. The below chart shows the minimum number of shares sold by each Founder from 2009 through 2017[2]:

Founder	2009 Common Holdings	2017 Holdings	Minimum Number of Shares Transferred
Nathan Gettings	46.5 million shares	0 shares	46.5 million shares
Peter Thiel	49 million shares	16 million shares	33 million shares
Alexander Karp	61 million shares	40 million shares	21 million shares
Joseph Lonsdale	30.7 million shares	12.4 million shares	18.3 million shares
Stephen Cohen	21.6 million shares	18.5 million shares	3.1 million shares

B. The relationship between Abramowitz and Palantir breaks down.

The relationship between Abramowitz and Palantir soured in the summer of 2015, when CEO Karp accused Abramowitz of stealing Palantir's confidential information, in a manner that Abramowitz described as "abus[ive]," "irrational," and "somewhat unhinged." A3480 (Trial Tr. 11:9-19). At that point, Abramowitz "lost faith in management" and determined he could "not . . . stay a shareholder." A3840-41 (Trial Tr. 11:22-12:4). In late-2015, KT4 therefore arranged to sell all of its shares to Brooklands Capital Strategies, a special purpose vehicle that was

[2] This chart compiles information located at A2869 and A2284. *See also* Op. 36 & n.135 (compiling same information). KT4 did not become aware of these sales until Palantir produced a stock list with current total share ownership as an exhibit for trial. A2284 (JX194). These numbers do not include the Founders' disposing of their options to purchase common stock. KT4 has requested this information, but Palantir has refused to provide it.

representing CDH Investments, a Chinese entity.[3] A3524-35 (Trial Tr. 55:17-56:2). KT4 (along with other shareholders selling stock to Brooklands/CDH in the same deal) then gave Palantir notice of the sale. A3527-28 (Trial Tr. 58:19-59:8); A1443-44. After learning of CDH's identity, Palantir instructed its broker, Disruptive Technology Advisers, to offer CDH an opportunity to buy shares from Palantir directly, cutting out the Selling Group. DTA's CEO sent a message to CDH's managing director:

> Sorry to reach out to you this way but I'm not sure exactly how best to reach out or who to at your firm. I represent Palantir Technologies in Palo Alto and have been asked by the company to reach out to your firm as you guys demonstrated a level of interest in the company through a third party. If this is not the case, I apologize. In any event, I would appreciate a response back at your convenience so I can discuss the current offering, process and timing.

A2327. After receiving that offer from DTA on behalf of Palantir, CDH abandoned the transaction with the Selling Group.[4] A3482 (Trial Tr. 13:7-16).

C. KT4 requests information under the IRA, and Palantir responds by purporting to "retroactively amend" the IRA and filing a lawsuit.

At that point, Palantir's conduct rendered Abramowitz "an involuntary investor." A3490 (Tr. 21:11-15). Because Palantir had thwarted his efforts to sell

[3] All told, KT4 and another entity, the Marc Abramowitz Irrevocable Trust No. 7, had arranged to sell their stock for over $60 million.

[4] Palantir has claimed that CDH did not ultimately buy shares from Palantir. A2008 (Palantir answer).

his shares, and because he no longer trusted Palantir's management, Abramowitz needed to "manage[] and watch[]" his "significant investment." A3490 (Trial Tr. 21:11-15). Abramowitz sought to do so "by finding out information and determining what [his] course of action should be with that asset, keep it, sell it, protect [his] rights, discuss it with other shareholders." A3489 (Trial Tr. 20:18-23). But Palantir had provided KT4 with "virtually nothing" by way of information about its governance or financial performance. A3490 (Trial Tr. 21:1-2). Indeed, Palantir had never even held a single stockholder meeting during its entire existence. Op. 32.

Because KT4 had so little information about Palantir, it authorized its attorney to send an information request under the IRA in August 2016. A1582. The request sought financial and governance information such as financial reports, income statements, budgets, business plans, as well as information concerning compliance with KT4's rights of offer, refusal, and co-sale of Palantir stock; it also sought, as was its right, an opportunity to interview Palantir executives about the company's "financial performance" and "the value of Palantir's equity." A1583. The IRA request also sought information about Palantir's interference with the CDH deal and other wrongdoing. A1583-84.

After receiving the IRA request, one of Palantir's in-house lawyers sent an email to KT4's counsel stating that "Palantir [was] reviewing [KT4's] request and

will respond . . . soon." A1586. But Palantir was not preparing a response to the IRA request; it was instead preparing amendments that purported to retroactively eliminate KT4's contractual rights to information altogether. A1587-1620. The amendments were purportedly signed by CEO Karp on behalf of Palantir on September 1, 2016.[5] *Id.*

That same day, Palantir sued Abramowitz and KT4 in California state court, alleging that Abramowitz misappropriated Palantir's trade secrets. A1621 (complaint). The California suit, which was filed without any prior notice or demand, is based on Karp's allegations to Abramowitz in 2015, which were made at least a year earlier. A3484 (Trial Tr. 15:1-20). As this Court can judicially notice, although Palantir filed the California suit in September 2016, discovery has yet to begin because Palantir has been unable to describe the supposed "trade secrets" that Abramowitz allegedly "stole." *See* Cal. C. Civ. P. § 2019.210 (providing that discovery shall not begin until the plaintiff describes its alleged trade secrets with "reasonable particularity"); *see also* A3834 (Tr. 10:6-11) (Judge Arand of the California Superior Court stating: "This [Palantir's trade-secrets disclosure] . . . has a lot of words that don't necessarily, to me, say a lot. And I think this doesn't disclose anything secret.").

[5] These documents purported to govern KT4's rights as a stockholder but were not disclosed to KT4 and were not provided—despite repeated requests—until KT4 filed this action. A1694 (¶ 4).

D. KT4's Section 220 Demand

After KT4 learned of the purported retroactive amendment,[6] it withdrew its IRA request and submitted a Demand under Section 220. A1645; A1657. The Demand sought 22 categories of information, including information necessary to investigate possible wrongdoing and information necessary to value KT4's shares (*e.g.*, audited financial statements, unaudited financial statements, and internal valuations). A1645-47. The Demand also sought "all books and records"—which was defined to include "electronic documents and information"—relating to the retroactive IRA amendments. A1647 (request 19). The Demand also sought "all books and records relating [to] the Corporation's . . . actual and potential sales of shares of . . . Palantir capital stock from 2011 through the present," which included documents relating to rounds of financing in which KT4 should have had a right of first offer under the IRA. A1646 (request 11).

The Demand also listed KT4's purposes for inspection, which included KT4's intent to investigate wrongdoing related to six issues. A1648-49. These issues included Palantir's compliance with stockholder contracts, its failure to hold an annual meeting, the retroactive IRA amendments, corporate waste, and the Brooklands/CDH deal. *Id.* One of these issues raised KT4's desire to value its

[6] When Palantir produced the amendments as exhibits in this case, it turned out that there were two, not one, both effective as of September 1, 2016. A1587; A1604.

shares. It stated that KT4 wanted to investigate Palantir's disparate treatment of its stockholders, including whether Palantir or its insiders:

> improperly prevented disfavored investors from realizing the value of their investments by, among other things, improperly depriving such investors of information necessary to assess the value of their investments (including, without limitation, by failing to hold annual shareholder meetings, by refusing to provide information regarding the financial performance of [Palantir], and by purportedly retroactively amending the [IRA] for the purpose of depriving disfavored investors of any information regarding the financial performance of [Palantir]).

A1648.

Five days later, Palantir rejected the Demand wholesale, citing, among other things, Karp's baseless allegations about theft of trade secrets. A1652. Months later, but before KT4 filed suit under Section 220, Palantir offered to provide KT4 with its "audited consolidated financial statements" and a "summary capitalization table," both of which were meant to address KT4's stated desire to value its shares. A1473. KT4 rejected the offer because it was conditioned on KT4 dropping all of its other requests and on KT4 agreeing to a non-disclosure agreement that would have barred KT4 from using the information in a lawsuit or disclosing it to a potential buyer. A1472; Op. 19.

E. Procedural history

After the parties tried to resolve their differences without litigation (A1472, A3821), KT4 filed a verified complaint under Section 220. KT4's complaint

alleged that the Demand's purposes were to investigate wrongdoing and value KT4's shares. A1739 (¶ 87). Palantir filed an answer that included a lengthy "Preliminary Statement," which repeated Karp's trade-secrets allegations, claiming that Abramowitz was a "bad actor" who had stolen Palantir's information, A2007; it also asserted a defense of "unclean hands," A2057 (tenth defense). But once KT4 requested discovery on those matters, Palantir dropped its "bad actor" defense and refused to produce any evidence on the subject. A3018.

Before trial, Palantir again offered KT4 minimal books and records in an effort to "resolve th[e] litigation." Op. 18. Like the first offer, the second offer included information that Palantir claimed was sufficient to enable KT4 to value its shares (such as Palantir's audited financial statements, a list of officers and directors, and current versions of the FRCSA and the IRA). *Id.*; *see also* A3955 (Palantir brief claiming that this offer was "sufficient to value KT4's shares"). KT4 rejected the offer because it was not a "complete response" to any of KT4's requests and was conditioned on an unacceptable confidentiality agreement. A2307.

Throughout the litigation, KT4 consistently stated a valuation purpose. KT4's verified complaint alleged that one of the Demand's purposes was to obtain information "necessary for KT4 to . . . ascertain the value of its investment in Palantir." A1739 (¶ 87). Similarly, KT4's interrogatory responses stated that KT4

"seeks the information requested in the [Demand] to value its investment in Palantir." A2233; *see also* A2240-2272 (appendix explaining the purpose of each request). Abramowitz testified the same way at trial and in his deposition, stating that he needed information "to enable me to evaluate and value my shares." A3479 (Trial Tr. 10:3-9); *see also* A4013 (Dep. Tr. 73:11-24). KT4's briefing also repeatedly explained that KT4 had a valuation purpose. A3897-99 (pre-trial brief); A3167-70 (post-trial brief); A3299-3301 (post-trial reply brief)

F. The Court of Chancery's rulings

After a one-day trial, the Court of Chancery issued a Memorandum Opinion that "entered [judgment] in favor of KT4." Op. 49. As to KT4's investigative purpose, the Court found that KT4 had shown a credible basis to justify further investigation into three areas.

First, the Court held that Palantir's "serial failures" to hold annual meetings in violation of the DGCL was "problematic" because stockholders may have been denied "the opportunity to participate in decision making" and may lack "basic information" about the company. *Id.* at 32. To ensure that KT4 had "basic information about [its] investment[]," the Court ordered Palantir to produce: (1) the identities of the company's directors and officers; (2) books and records relating to Palantir's annual stockholder meetings; and (3) Palantir's audited financial statements from 2011 through the present. *Id.* at 47.

Second, the Court found that Palantir wrongfully "eviscerated" KT4's rights to information under the IRA, allowing Palantir to "pick and choose" which stockholders would receive material information. *Id.* at 33-34 (quotation marks omitted). Palantir tried to justify this conduct by claiming that it was protecting its "confidential information" from Abramowitz, but the Court found this explanation disingenuous: "Had Palantir been primarily concerned with Abramowitz obtaining confidential information, it could have denied certain requests and at least made an effort to provide information regarding the non-sensitive topics." *Id.* at 34. Instead, Palantir led "KT4 to believe that it was considering KT4's information request, and then pulled the rug out from under KT4 . . . by eviscerating its contractual rights to seek information." *Id.* at 34-35. Because of this conduct, the Court ordered Palantir to produce "books and records related to the September 2016 IRA Amendments." *Id.* at 47.

Third, the Court found that Palantir appeared to have violated both the IRA and the FRCSA. *Id.* at 35-39. As to the IRA, the Court found that it was possible that Palantir had committed wrongdoing by issuing several rounds of financing without giving KT4 notice of the rounds and without honoring KT4's right of first offer. *Id.* at 38-39. As to the FRCSA, the Court found that it was possible that Palantir had committed wrongdoing when its Founders sold over 100 million shares of stock without honoring KT4's rights of first refusal or co-sale. *Id.* at 36

& n.135. Because of this apparent wrongdoing, the Court ordered Palantir to produce: (1) its stock ledger; (2) its stockholders list; (3) "books and records relating to each Founders' . . . actual and potential sales of . . . Palantir capital stock from 2011 through the present"; and (4) any notices of new financings provided to stockholders under the IRA. *Id.* at 49. The Court did not, however, grant KT4's request to inspect books and records relating to Palantir's actual or potential sales of stock in the new financings. *Id.*

As for the Brooklands/CDH deal, the Court concluded that it related to "a claim personal to Abramowitz that is unrelated to KT4's interests as a stockholder" and was not a proper subject of a Section 220 investigation.[7] *Id.* at 42. The Court also concluded that KT4 had not established a credible basis to investigate corporate waste or the failure to return liquidity to stockholders. *Id.* at 42-44.

The Court also denied inspection of valuation materials, finding that the Demand made "absolutely no mention of a valuation purpose." *Id.* at 23. And because the Court believed that the Demand did not state "a valuation purpose in any form," it refused to allow KT4 to cure any ambiguity in litigation. *Id.* at 26.

After meeting and conferring on a form of order, the parties presented two issues pertinent to this appeal in letters to the Court. First, the parties disagreed

[7] KT4 has since filed suit against Palantir and DTA in Superior Court, alleging tortious interference and a civil conspiracy. *See KT4 Partners LLC, et al. v. Palantir Technologies, Inc., et al.*, C.A. No. N17C-12-212 EMD CCLD.

about whether Palantir was obligated to produce responsive emails. KT4 argued that emails constituted "books and records" under Section 220 and were essential to its investigations because "[m]uch of the potential wrongdoing here likely occurred over email." A3393. Palantir argued that KT4 had not made a "particularized showing" that emails were essential to its investigation. A3419.

Second, the parties disagreed about whether a suit arising out of KT4's investigation must be brought in the Court of Chancery or, if that Court declined jurisdiction, in another Delaware court. KT4 agreed to bring any future suit in a Delaware court but argued that if every defendant in such a suit did not "submit to jurisdiction in Delaware, KT4 should be able to pursue its claim in a jurisdiction where such party is subject to jurisdiction." A3391. KT4 also argued that it should be able to bring a subsequent suit in a way that safeguards "its jury-trial rights." *Id.* Palantir argued that the Jurisdictional Limitation was "the norm in the Court of Chancery." A3422.

The Court of Chancery's Final Order and Judgment denied inspection of emails and adopted the Jurisdictional Limitation. Order ¶¶ 1 n.1, 12.

Shortly after the Court entered its Final Order and Judgment, KT4 filed a motion for limited reargument, seeking inspection of emails related to Palantir's conduct in retroactively amending the IRA and violating KT4's contractual rights. The Court held that the Demand did not request emails because, despite the request

for "all books and records" including "electronic documents," it did not use the word "emails." Reargument Order ¶ 4. The Court also held that inspection of emails was not necessary because "board-level" materials were sufficient for KT4's investigation. *Id.* at ¶ 5.

Since then, although Palantir has produced certain books and records it was ordered to produce, KT4 believes that it has failed to adhere to the Court of Chancery's Order in numerous respects, which likely will be the subject of a motion to compel.

ARGUMENT

I. The Court of Chancery erred in holding that the Demand does not state a valuation purpose.

A. Question presented

Whether the Demand stated a valuation purpose or, in the alternative, whether KT4 cured any technical defect in the Demand by raising its valuation purpose throughout the litigation. A1739 (¶ 87) (complaint); A2233 (interrogatories); A3897-99 (pre-trial brief); A3167-70 (post-trial brief); A3299-3301 (post-trial reply brief).

B. Standard of review

Whether a Section 220 demand states a purpose presents a question of law; questions of law are reviewed *de novo*. *See Thomas & Betts Corp. v. Leviton Mfg. Co.*, 681 A.2d 1026, 1030 (Del. 1996) ("*Thomas & Betts II*") (questions of law reviewed *de novo*); *N.W. Indus. v. B.F. Goodrich Co.*, 260 A.2d 428, 429 (Del. 1969) (appearing to review this issue *de novo*). Whether a stockholder can cure a demand alleged to be ambiguous also presents a question of law; questions of law are reviewed *de novo*. *See Thomas & Betts*, 681 A.2d at 1030.

C. Merits of argument

1. The Demand sufficiently states a valuation purpose.

Section 220 provides stockholders with the right to inspect a corporation's books and records. 8 *Del. C.* § 220(b). To invoke that right, a stockholder must,

among other things, submit a demand upon the corporation "stating the purpose thereof." *Id.* That purpose must be stated with enough specificity "to enable [the corporation], and the courts if necessary, to determine whether there was a reasonable relationship between its purpose . . . and [the stockholder's] interest as a stockholder." *N.W. Industries*, 260 A.2d at 429; *see also Thomas & Betts Corp. v. Leviton Mfg. Co.*, 685 A.2d 702, 708 n.3 (Del. Ch. 1995) ("*Thomas & Betts I*"). Although this standard requires "some minimal level of specificity," it does not "mandate a detailed articulation of the stockholders' intentions." Donald J. Wolfe & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 8.02[e][2] (2017). Even a demand that is "unspecific as to purpose" will satisfy the standard if its purpose is discernible "in the light of surrounding circumstances." *Weisman v. W. Pac. Indus.*, 344 A.2d 267, 269 (Del. Ch. 1975); *see also Henshaw v. Am. Cement Corp.*, 252 A.2d 125, 127 (Del. Ch. 1969) (making a "reasonable inference from the record" when interpreting a demand's stated purpose).

Under this standard, KT4's Demand sufficiently states a valuation purpose. One of the Demand's stated purposes was to investigate whether Palantir or its insiders "improperly prevented disfavored investors from realizing the value of their investments by . . . improperly depriving such investors of information necessary to assess the value of their investments." A1648 (part C.4). Although

this language is couched in terms of investigating wrongdoing, it was specific enough "to enable [Palantir] . . . to determine" that KT4 wanted information so that it could assess the value of its investment. *See N.W. Industries*, 260 A.2d at 429. Indeed, Palantir did in fact determine that KT4 wanted to value its investment, as evidenced by Palantir's offer of valuation materials on two occasions. *Supra* Statement of Facts, Part E.

The Demand's valuation purpose is all the more apparent in light of the "surrounding circumstances." *See Weisman*, 344 A.2d at 269.

- The Demand must be read in light of KT4's IRA request, which largely focused on valuation information such as financial statements and budgets. A1582-85. Indeed, one of the first issues KT4 wanted to discuss with Palantir's management was "the value of Palantir's equity." A1583.

- Palantir's reaction to the IRA request explains why KT4 couched its valuation purpose in terms of Palantir's wrongdoing. The Demand followed Palantir's purported retroactive "eviscerat[ion]" of KT4's contractual right to receive valuation information. Op. 35. It was only because of this evisceration that KT4 phrased its valuation purpose in terms of investigating Palantir's "depriving [disfavored] investors of information necessary to assess the value of their investments." A1648.

- The Demand's purposes must be read in light of the substance of its requests. Specifically, the Demand seeks Palantir's year-end financial statements, quarterly financial statements, and internal valuations—these requests clearly were made to further a valuation purpose. A1645-56 (requests 6, 7, 15).

In light of these surrounding circumstances, the Chancery Court erred by holding that the Demand did not sufficiently state a valuation purpose.

2. Even assuming that the Demand was not sufficiently specific, KT4 cured any defect in the wording.

Even assuming that the Demand did not properly state a valuation purpose, the Court of Chancery erred by holding that the defect could not be cured. Although this Court does not appear to have addressed the issue directly, it should hold that a demand that "lack[s] specificity" regarding its purpose can be "cured" throughout litigation. *Thomas & Betts I*, 685 A.2d at 708. Indeed, the Court of Chancery frequently allows a stockholder to "flesh[] out" a demand's purpose at trial. *Jacobs v. Pabst Brewing Co.*, 1981 Del. Ch. LEXIS 632, at *4 (Del. Ch. Nov. 18, 1981).[8] And for good reason: when a plaintiff in a Section 220 case has clearly stated its purpose in litigation—up to and including trial—the corporation has long been on notice of the plaintiff's purpose and has had a full opportunity to respond. As the Court of Chancery has put it: if a corporation "has long been fully aware of the reasons behind plaintiff's demand," a "technical defect" in a

[8] *See also SEPTA v. Abbvie Inc.*, 2015 WL 1753033, at *12 (Del. Ch. Apr. 15, 2015) (demand's vague purpose became "apparent enough from . . . oral argument"); *Thomas & Betts I*, 685 A.2d at 708 ("any arguable technical deficiency" in demand's purpose "was cured" at trial); *Nottingham Ptnrs. v. Trans-Lux Corp.*, 1987 Del. Ch. LEXIS 388, at *2-3 (Del. Ch. Feb. 4, 1987) (although demand was "vague and indefinite," plaintiff remedied that issue "at trial"); *Devon v. Pantry Pride, Inc.*, 1984 WL 8250, at *1 (Del. Ch. Nov. 21, 1984) ("[a]ny technical defect in the wording of the demands was cured at trial"); *Odysey Ptnrs. v. Trans World Corp.*, 1983 Del. Ch. LEXIS 423, *4 (Del. Ch. Mar. 29, 1983) ("the wording of the demand was supplemented at trial"); *Hatleigh Corp. v. Lane Bryant, Inc.*, 428 A.2d 350, 352 (Del. Ch. 1981) (plaintiff stated proper purpose only "[a]fter reviewing all the evidence").

demand's statement of purpose can be cured with evidence "adduced at trial." *See Skouras v. Admiralty Enter., Inc.*, 386 A.2d 674, 677 (Del. Ch. 1978).

The procedural posture is important: if a corporation argues that a plaintiff's demand is vague in a motion to dismiss or for summary judgment, courts may be reluctant to allow a plaintiff to cure the demand in subsequent litigation. If the court accepts the corporation's argument at that point (when the factual record is not fully developed), the plaintiff has the ability to amend its demand and complaint before trial. *See Tenaglia v. Psychiatric Hosps.*, 1986 Del. Ch. LEXIS 456, *2 (Del. Ch. 1986). But when the court addresses the issue after a case has gone through the pleading stage, written discovery, depositions, and a trial, the plaintiff would be forced to start from scratch with a fresh demand and a new complaint. That would be impractical: there is no reason for a court to ignore a record that has been developed through trial (potentially, as in this case, with live witnesses) when interpreting an allegedly vague demand.

Here, the Court of Chancery should have found that KT4 could cure any ambiguity in the Demand. But while the Court recognized that cure could be possible in some cases—it agreed that a stockholder who "stated a purpose in its initial demand" could "supplement or clarif[y] the stated purpose during the course of litigation," Op. 26—it found that this route was unavailable to KT4 because it found that the Demand did not state such a purpose "in any form." *Id.*

In so holding, the Court of Chancery overlooked the Demand's key language, which states that KT4 wanted to investigate whether Palantir or its insiders "improperly prevented disfavored investors from realizing the value of their investments by . . . improperly depriving such investors of information necessary to assess the value of their investments."[9] A1648 (part C.4). Even assuming this statement is vague, the Demand's purpose was "supplemented or clarified" when KT4 unambiguously stated a valuation purpose in its complaint (A1739 (¶ 87)), in its interrogatory responses, (A2233), and in Abramowitz's deposition and trial testimony (A3479 (Trial Tr. 10:3-9); A4013 (Dep. Tr. 73:11-24)). There can be no question but that any ambiguity in KT4's Demand was subsequently cured—many times over—in the Section 220 litigation.

The other cases the Court of Chancery cited do not demand a different result. *See* Op. 23-24. Each of these cases dealt with a stockholder who completely failed to address one of Section 220's form and manner requirements. *See, e.g.*, *Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 143-44 (Del. 2012) (demand failed to attach any evidence of beneficial ownership); *Seinfeld v. Verizon Commc'ns, Inc.*, 873 A.2d 316, 317 (Del. Ch. 2005) (demand failed to

[9] Instead of analyzing that language, the Court appears to have focused on references to valuation materials in the Demand's "document requests." Op. 24. But KT4 did not rely on the Demand's document requests as the sole means for inferring a valuation purpose. It also relied upon the above-quoted language, which comes from the purposes section of the Demand. A3299.

authenticate evidence of beneficial ownership). But KT4's Demand did not completely fail to address any of Section 220's requirements: it stated a purpose and, although that purpose may have been vaguely worded, that sort of deficiency should be curable. *See Thomas & Betts I*, 685 A.2d at 704.

II. The Court of Chancery abused its discretion by requiring KT4 to first file suit in the Court of Chancery and by barring KT4 from filing suit outside Delaware.

A. Question presented

Whether the Court of Chancery erred by requiring KT4 to bring any suit arising out of its inspection in the Court of Chancery in the first instance and in all events barring KT4 from filing suit outside Delaware. A3391 (letter brief); A3398-99 (KT4 proposed order ¶ 12).

B. Standard of review

The Court of Chancery has discretion "to condition a books and records inspection." *United Techs. Corp. v. Treppel*, 109 A.3d 553, 557 (Del. 2014). This discretion is, however, "inherently case-by-case and 'fact specific.'" *Id.* at 558. Failing to consider the relevant facts when exercising discretion constitutes an abuse of discretion. *See Roache v. Charney*, 38 A.3d 281, 288 (Del. 2012).

C. Merits of argument

The Court of Chancery erred by adopting the Jurisdictional Limitation instead of KT4's proposed provision, which would have (a) only permitted KT4 to sue outside of Delaware if the potential defendants to a future suit refused to consent to personal jurisdiction in Delaware and (b) allowed KT4 to bring suit in Delaware Superior Court. A3398-99 (¶ 12). Although the Court of Chancery has the discretion to restrict "the use of information garnered from an inspection by a shareholder . . . to a legal action in a Delaware court," the Court must exercise that

discretion in light of "case-specific factors." *United Techs.*, 109 A.3d at 554, 560. This Court has identified several such factors: (a) whether the stockholder has a "legitimate reason" for filing suit outside Delaware; (b) whether the corporation's bylaws have a forum selection clause; and (c) whether "there has been . . . prior litigation in" Delaware over the subject of inspection. *Id* at 560-61.

The Court of Chancery erred by imposing the Jurisdictional Limitation without analyzing these, or any other, case-specific factors, all of which cut against the Jurisdictional Limitation and in favor of KT4's proposed provision.

KT4 is investigating claims for breach of contract and other potential common-law claims,[10] and KT4 must be able to bring these claims in a court that has jurisdiction over all potential defendants.[11] For example, KT4 is investigating whether the Founders' secret sales of over 100 million shares of common stock violated the FRCSA. In any breach-of-contract claim arising out of that conduct, both Palantir and the Founders presumably would be necessary parties to the suit: both Palantir and the Founders are parties to the FRSCA, and a judgment would determine "their responsibilities and duties" as such. *Heritage Homes of De La Warr, Inc. v. Alexander*, 2005 WL 2173992, at *2 n.6 (Del. Ch. Sept. 1, 2005)

[10] KT4 also is investigating fraud claims against Palantir and its Founders for misrepresentations and omissions concerning KT4's rights under the FRCSA or the IRA. KT4's investigation is ongoing.

[11] Potential defendants may include Palantir, its officers and directors, the Founders, any joint tortfeasors, and others bound by the FRCSA.

(citing Court of Chancery Rule 19). But if KT4 is forced to bring its contract claim in Delaware, the Founders likely will argue that, because they are not Delaware residents, they are not amenable to personal jurisdiction in Delaware. And although KT4 believes that this argument should be rejected—10 *Del. C.* § 3114 allows for personal jurisdiction over directors and officers if they are "necessary or proper part[ies]" to a suit involving the corporation—it is possible that a court may resolve the issue differently. Should that occur, KT4 must have the ability to bring suit elsewhere—if it were barred from doing so, KT4 would be unable to remedy nearly a decade of wrongdoing, and Palantir and the Founders would be able to ignore stockholder contractual rights without consequence.

But there is another problem with the Jurisdictional Limitation: by forcing KT4 to file suit in the Court of Chancery in the first instance, the Order imperils KT4's constitutional right to a jury trial. The Delaware Constitution gives KT4 a right to trial by jury on common-law claims, including a breach-of-contract claim. *See, e.g.*, *Data Ctrs., LLC v. 1743 Holdings LLC*, 2015 WL 6662107, at *4 (Del. Super. Ct. Oct. 27, 2015). But if KT4 brings such a claim in the Court of Chancery, its right to a jury trial may not be honored, as the Court of Chancery has the discretion to "determine a factual issue without a jury," even when it "would ordinarily be tried by jury at law." *Getty Ref. & Mktg. Co. v. Park Oil, Inc.*, 385 A.2d 147, 150 (Del. Ch. 1978), *aff'd*, 407 A.2d 533, 535 (Del. 1979); *see also* 10

Del. C. § 369. KT4 should be able to file its suit in a way that unambiguously preserves this constitutional right.

These issues go to the heart of KT4's investigation and are of constitutional magnitude; they far outweigh any interest Palantir has in the Jurisdictional Limitation. In fact, Palantir has failed to identify any such interest, instead claiming only that the Limitation is "the norm in the Court of Chancery." A3422. Palantir's failure to identify any interest supporting the Jurisdictional Limitation should come as no surprise: it does not have one. First, Palantir has never claimed that its bylaws contain a forum selection clause (although KT4 is not certain of that, as Palantir has refused to provide KT4 with a current copy of its bylaws). *United Techs.*, 109 A.3d at 560-61. Second, there has not been any prior litigation concerning the subjects of KT4's inspection—thus, unlike the defendant in *United Technologies*, Palantir faces no risk of "inconsistent rulings" if KT4 were to file outside of Delaware, and it has not expended extensive resources while litigating these issues in Delaware. *Id.*

For these reasons, the Court of Chancery abused its discretion by imposing the Jurisdictional Limitation. To be clear, KT4 wishes to file its next suit in a Delaware court. But it needs to be able to do so in a way that (1) ensures that the court has personal jurisdiction over all defendants and (2) preserves KT4's right to a jury trial.

III. The Court of Chancery abused its discretion by not granting KT4 inspection of books and records relating to Palantir's apparent misconduct with respect to KT4's right of first offer under the IRA.

A. Question presented

Whether KT4 is entitled to inspect books and records relating to Palantir's compliance with KT4's right of first offer under the IRA, where the Court correctly found that there was a credible basis to infer that Palantir had not honored KT4's right of first offer. A3915-16 (pretrial brief); A3192 (post-trial brief); A3346-47 (post-trial reply brief).

B. Standard of review

This Court reviews the Court of Chancery's "determination of the scope of relief available in a Section 220 books and records action for abuse of discretion." *Wal-Mart Stores, Inc. v. Ind. Elec. Workers Pension Tr. Fund IBEW*, 95 A.3d 1264, 1271-72 (Del. 2014).

C. Merits of argument

A Section 220 plaintiff with a "proper purpose should be given access to all of the documents in the corporation's possession, custody, or control that are necessary to satisfy that proper purpose." *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 115 (Del. 2002). That is, the stockholder "should be given enough information to effectively address the problem." *Id.*

The Court of Chancery did not give KT4 "enough information to effectively address" Palantir's misconduct under the IRA. *See id.* Palantir's possible

wrongdoing under the IRA was clear from the evidence adduced at trial: the IRA gave KT4 the right to receive notice of Palantir's new rounds of financing, as well as a right of first offer over shares offered in those financings. Op. 38. And while KT4 last participated in the Series E financings, Palantir "had issued up to at least Series J preferred stock." *Id.* at 39. As the Court put it: "One need not strain to divine that several letters of the alphabet have gone missing between the last financing of which KT4 received notice and Palantir's most recent funding rounds." *Id.* The Court thus correctly held that that there was a credible basis to infer that Palantir breached the IRA by (a) not giving KT4 notice of these funding rounds and (b) not honoring KT4's right of first offer with respect to shares sold in those rounds. *Id.* at 38-39.

But the Court did not require Palantir to produce books and records relating to KT4's right of first offer, even though KT4 requested them. *See* A1646 (request 11).[12] Instead, the Court limited KT4's inspection to the notices that Palantir provided to other stockholders. Order ¶ 2(b). While those notices are certainly essential to KT4's investigation, they do not address Palantir's disregard of KT4's right of first offer—which effectively froze KT4 out of subsequent rounds of

[12] Request 11 sought books and records relating to Palantir's sales of stock in new rounds of financing. It also sought books and records relating to all other sales of Palantir stock, including sales by the Founders. The Court granted Request 11 only to the extent it covered sales by the Founders. Op. 49.

financing and diluted KT4's holdings. To investigate that issue, and all the claims that KT4 could bring in connection with that wrong, KT4 must be able to inspect books and records reflecting, among other things, the number of shares sold in each round of financing, what inducements Palantir provided in connection with those shares, the terms upon which the shares were offered, how Palantir received stockholder approval for the financings, and what actions the board took in connection with the financings. Only then can KT4 assess what claims it may have against which potential defendants and what other actions, such as a stockholder resolution, may be appropriate.

For example, as to a potential breach-of-contract claim, KT4 must know the details of each round of financing after Palantir's Series E issuance in order to calculate the "portion" of shares it should have been able to purchase and what the "price and . . . the terms" should have been. *See* A198 (§ 2.4(b)). As another example, KT4 needs to inspect board materials in connection with the rounds so that it can investigate whether certain favored investors were permitted to participate in the new financings, while others like KT4 were left out. Finally, KT4 also needs documents related to stockholder and board approvals of the financings to determine whether they were even appropriately authorized.

The Court of Chancery abused its discretion by not granting inspection on any of these issues, despite finding that there was a credible basis to infer that Palantir had committed wrongdoing. *See Saito*, 806 A.2d at 115.

IV. The Court of Chancery erred by not granting KT4 inspection of emails.

A. Questions presented

(1) Whether the Demand's request for inspection of "all books and records," including "electronic documents and information," is sufficient to request a specific type of book or record—namely, emails. A3911 (pretrial brief); A3189 (post-trial brief); A3349-50 (post-trial reply brief); A3392-93 (letter brief); A3454-59 (motion for limited reargument).

(2) Whether KT4 is entitled to inspect emails where Palantir's misconduct appears to have occurred at the officer, as opposed to the board, level; where evidence of Palantir's misconduct is most likely to exist in emails; and where some of Palantir's misconduct in fact occurred over email. A3911 (pre-trial brief); A3189 (post-trial brief); A3349-50 (post-trial reply brief); A3392-93 (letter brief); A3454-59 (motion for limited reargument).

B. Standard of review

(1) The issue of whether a Section 220 demand for "all books and records" includes a particular type of book or record presents a question of law; questions of law are reviewed *de novo*. *United Techs.*, 109 A.3d at 557 (questions of law are reviewed *de novo*).

(2) This Court reviews the Court of Chancery's "determination of the scope of relief available in a Section 220 books and records action for abuse of discretion." *Wal-Mart*, 95 A.3d at 1271-72.

C. Merits of argument

1. The Court of Chancery erred by finding that KT4's Demand did not request emails.

Section 220(b) gives stockholders the right to "make copies and extracts from . . . [a] corporation's . . . books and records." Both this Court and the Court of Chancery have held that the term "books and records" includes electronic documents such as emails. *Wal-Mart*, 95 A.3d at 1272 (ordering production of information on backup tapes); *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 792 (Del. Ch. 2016) (ordering production of emails); *Ind. Elec. Workers Pension Tr. Fund IBEW v. Wal-Mart Stores, Inc.*, 7779–CS, at 97–98 (Del. Ch. May 20, 2013) (Strine, C.) (TRANSCRIPT) (relevant pages attached as Exhibit D) (explaining why Section 220 extends to officers' and employees' personal email accounts when used for official business). For that reason, a demand requesting "all books and records" relating to a particular subject constitutes a request for electronic documents like emails—which are in the universe of "all books and records." *Yahoo! Inc.*, 132 A.3d at 792. This is especially so where, as here, the request makes explicit reference to electronic documents. Nothing in the text of

Section 220, or in the case law, requires a plaintiff to identify each particular subcategory of books and records, such as emails, by name.

KT4's Demand adequately requested emails. It sought inspection of "all books and records" relating to particular subjects like the retroactive IRA amendments. A1645-47. The Demand's introductory paragraph defined "books and records" to include "electronic documents and information." A1645. This is sufficient to request inspection of emails. *Yahoo! Inc.*, 132 A.3d at 792. The Court of Chancery erred by holding otherwise.

2. The Court of Chancery abused its discretion by holding that emails were not essential to KT4's investigation.

Both this Court and the Court of Chancery have awarded inspection of emails where they are "necessary and essential to determining whether and to what extent mismanagement [or wrongdoing] occurred." *Wal-Mart*, 95 A.3d at 1273[13]; *see also Yahoo! Inc.*, 132 A.3d at 792 (granting inspection of emails where emails would "provide otherwise unavailable information about and insight into [the wrongdoing]"). The point is not that inspection of emails is always warranted—often, board-level materials will be "sufficient for [the stockholder's] stated purpose." *In re Plains All Am. Pipeline, L.P.*, 2017 WL 6016570, at *5 (Del. Ch.

[13] The Supreme Court's opinion in *Wal-Mart* did not explicitly state that the books and records at issue were emails. But that fact is clear from the Court of Chancery's order. *Ind. Elec. Workers Pension Tr. Fund IBEW v. Wal-Mart Stores, Inc.*, 2013 WL 5636296, at *1 (Del. Ch. Oct. 15, 2013).

Aug. 8, 2017). If, for example, the board was "informed of facts relevant" to the apparent wrongdoing, *id.*, or if the board was directly involved in the apparent wrongdoing, *In re UnitedHealth Grp., Inc. Section 220 Litig.*, 2018 WL 1110849, at *9 (Del. Ch. Feb. 28, 2018), board materials may be enough. Here, however, board-level materials are not sufficient, for at least three reasons.

First, there is no indication that Palantir's board was even involved in the September amendments. The amendments were executed by Karp in his capacity as CEO, and they apparently did not require board approval. *See* A1587-1620. There is therefore no reason to believe that Palantir's board was formally "informed of" the amendments or that the board was formally involved in their execution. *See Plains All Am. Pipeline*, 2017 WL 6016570, at *5. If KT4's inspection were limited to board-level documents, Palantir likely would have nothing to produce beyond the IRA amendments themselves.[14]

Second, only inspection of contemporaneous emails will give KT4 "information and insight about" about Palantir's purpose for the amendments. *Yahoo! Inc.*, 132 A.3d at 792. Knowing what Palantir's intent was in the moment is critical: the most likely inference is that Palantir and its insiders were trying to thwart KT4's investigation into their misconduct. And Palantir's post hoc

[14] Indeed, Palantir has not produced any board materials related to the amendments thus far, despite KT4's specific request to produce any that exist.

explanation for the amendments, which the Court of Chancery found to be disingenuous, provides further reason to believe that Palantir's true motives were suspect. *See supra* Statement of Facts, Part F.

Third, the record already shows that some of Palantir's misconduct occurred over email. The misconduct that the Court of Chancery focused on—one of Palantir's in-house lawyers leading "KT4 to believe that it was considering KT4's information request"—occurred over email. Op. 34; A1586.

Given these circumstances, the Court of Chancery abused its discretion by not granting inspection of emails.[15]

[15] The Court of Chancery also held that KT4's request for emails was akin to seeking "broad plenary discovery." Reargument Order ¶ 5. But as shown above, both this Court and the Court of Chancery have permitted inspection of emails where, as here, emails are essential to a stockholder's purpose.

CONCLUSION

For the foregoing reasons, the Court of Chancery's Final Order and Judgment should be reversed in part to the extent it: (1) concluded that KT4's Demand did not state a valuation purpose; (2) imposed the Jurisdictional Limitation; (3) denied inspection of books and records relating to Palantir's misconduct under the IRA; and (4) denied inspection of emails.

DALTON AND ASSOCIATES, P.A.

/s/ Bartholomew J. Dalton
Bartholomew J. Dalton, Esq. (#808)
Michael C. Dalton, Esq. (#6272)
Dalton & Associates, P.A.
Cool Spring Meeting House
1106 West 10th Street
Wilmington, Delaware 19806
(302) 652-2050 (telephone)
(302) 652-0687 (facsimile)
bdalton@bdaltonlaw.com
mdalton@bdaltonlaw.com

Attorneys for Plaintiff Below, Appellant KT4 Partners LLC

OF COUNSEL:

Barry S. Simon
Jonathan B. Pitt
Stephen L. Wohlgemuth
WILLIAMS & CONNOLLY LLP
725 Twelfth Street NW
Washington, DC 20005
(202) 434-5000 (telephone)
(202) 434-5029 (facsimile)

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