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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, C.A. No. 2017-0177-JRS

APPELLEE'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

At every stage in this action under 8 *Del. C.* § 220, Plaintiff-Appellant KT4 Partners LLC has disregarded the focused scope that is required for stockholder inspections of corporate books and records. This appeal is no exception. Because KT4 has failed to identify any grounds for reversing matters within the discretion of the court below, and because KT4 has already received documents that are more than sufficient for the narrow purposes of KT4's permitted inspection, the decision of the Court of Chancery should be affirmed.

This Section 220 proceeding is just one piece of the litigation landscape involving Defendant-Appellee Palantir Technologies Inc. and KT4's managing member, Marc Abramowitz. That landscape (and the history of this litigation itself) provides context for this appeal. In the summer of 2015, what once was a close relationship between Palantir and Abramowitz broke down when Palantir's CEO confronted Abramowitz about his theft of Palantir's trade secrets. After Palantir sued Abramowitz and others in California state court related to this theft, KT4 made a Section 220 inspection demand (the "Demand") and later brought the instant action in the Court of Chancery. Even as the parties were awaiting decision in this matter, KT4 filed a separate lawsuit in Delaware Superior Court related to a purported stock sale. And after the Court of Chancery denied most of KT4's

inspection requests, KT4 made a renewed demand to inspect many of the same materials and has filed yet another action under Section 220.

Even this proceeding for the inspection of books and records has itself had two lives. Initially, its centerpiece was an allegation that Palantir tortiously interfered with a supposed stock sale, to which KT4 devoted much of its Complaint (*see* A1710-18 (¶¶ 24-42)), and which Abramowitz "previewed at length" at trial. (Trans. ID 62242974 ("KT4 Br."), Ex. A ("Op."), at 2.) KT4's allegations were thinly supported by what the Court of Chancery recognized as "hearsay, double hearsay and, at times, triple hearsay," mostly reported by Abramowitz himself. (Op. 2.) Abramowitz also contradicted key allegations along the way. (*Compare, e.g.*, A1714 (¶ 32) ("The parties had negotiated and agreed upon the purchase price and all material terms and conditions of the sale."), *with* A3638 (Tr. 169:4-6) ("Q. [Y]ou don't know if they ever agreed to a price with [another purported participant]; correct? A. I don't know.").) The Court of Chancery ultimately found that investigating KT4's tortious interference allegations was not a proper purpose for inspection under Section 220, but instead reflected "Abramowitz's personal desire to gain either litigation leverage or advanced discovery in litigation that he intends to pursue on his own behalf unrelated to his interests as a stockholder." (Op. 28.)

Once it was clear that KT4's primary purpose in bringing this Section 220 action was not proper, and that its supposed "evidence" was nothing more than inadmissible (and often contradictory) hearsay, KT4 made a post-trial pivot to focus on Palantir's purported noncompliance with contracts and Delaware statutes. KT4 argued that Palantir had committed wrongdoing by failing to hold annual stockholder meetings, despite the fact that Delaware law allows stockholders to act in lieu of an annual meeting by written consent. KT4 also argued that Palantir committed wrongdoing by denying the contractual rights of certain Palantir investors, despite the fact that the relevant agreements expressly set forth that their provisions can be amended or waived. In shifting its strategy, KT4 abandoned many assertions that Abramowitz previously swore to under oath, including (for example) that:

- the parties involved in the purported CDH transaction "agreed that the sale had been fully negotiated" (A1714 (¶ 32));
- Palantir Founder Peter Thiel interfered with a transaction involving Abramowitz and Steven Loughlin (A3885);
- "Palantir refused to provide financial information in connection with the sale of Palantir stock other than through" a third party, and required stockholders to use this third party to sell their shares (A1718-19 (¶ 44)); and
- Palantir provides its CEO with "armed escorts" and "an unreasonably large number of executive assistants" (A1733-34 (¶ 73)).

Following KT4's last-minute pivot, the Court of Chancery properly denied most of KT4's inspection requests. It ordered limited inspection with respect to three

narrow topics: Palantir's annual stockholder meetings, two amendments to an investor agreement and Palantir's compliance with certain rights provided in contracts with its investors. (Op. 31-39.)

Now, even though KT4 has received documents that are more than sufficient to satisfy those limited purposes of inspection, KT4 again seeks to inspect broad categories of Palantir's books and records that the Court of Chancery has in its discretion rejected—in one case twice, and in another three times. It also seeks the ability to use these materials to extract maximum litigation leverage. KT4's appeal is without basis, and for the reasons set forth below it should be denied.

SUMMARY OF ARGUMENT

1. **Denied.** The Court of Chancery did not abuse its discretion in concluding that the Demand did not state a valuation purpose. The only purpose that KT4 stated in the Demand was KT4's desire to investigate allegations of purported wrongdoing. (A1648 (§ C).) If KT4 also sought to value its shares, stating a valuation purpose is simple. However, KT4's Demand was not specific enough to meet the clear requirement of Section 220 for a stockholder to identify its inspection purpose.

2. **Denied.** The Court of Chancery did not abuse its discretion in limiting the use of inspection material in litigation to lawsuits filed in the Court of Chancery or another Delaware court. The Court of Chancery has wide discretion to limit the use of inspection material, and here considered several case-specific factors set forth by this Court. In particular, KT4 has no legitimate reason for pursuing a lawsuit outside of Delaware, as any lawsuit related to potential wrongdoing by Palantir that is the subject of KT4's inspection would be appropriately brought in the state of Delaware against a Delaware corporation or its fiduciaries. Moreover, KT4's right to a jury trial would not be violated.

3. **Denied.** The Court of Chancery did not abuse its discretion in limiting KT4's inspection to those materials that were necessary to investigate whether Palantir had violated certain contractual requirements. The Court of

Chancery found that KT4 had established a credible basis to investigate whether Palantir had provided KT4 with notices of, and the opportunity to participate in, certain Palantir stock offerings. In doing so, the Court of Chancery expressly noted that the relevant contract permitted the waiver of those requirements. Palantir produced documents establishing that the relevant notice and first offer rights were waived, as explicitly permitted by the contract that KT4 agreed to when it purchased its shares. No additional inspection is necessary.

4. **Denied.** The production of emails is the exception, rather than the rule, in Section 220 proceedings. The Court of Chancery properly exercised its discretion in determining that emails were not essential for the permitted purposes of KT4's investigation.

STATEMENT OF FACTS

I. Abramowitz's Investments and Contractual Rights.

A. Abramowitz's Initial Investment and Early Relationship with Palantir.

As an early investor, Abramowitz for years enjoyed a close relationship with Palantir and its CEO, Dr. Alexander Karp. (Op. 1, 5-6.) He invested $100,000 in Palantir in 2003 after Dr. Karp told him that entrepreneur and venture capitalist Peter Thiel was raising money to start a company that would "[c]atch terrorists" (A3497 (Tr. 28:2-13); A4000 (Tr. 22:3-13)), and he added more than $2 million in investments over the ensuing nine years (A0698-700; A0701-05; A0809-54; A0856-67; A0918; A2545). These investments have yielded substantial profits. Abramowitz has realized at least $6.5 million from the sale of Palantir stock since 2011 (A0720-29; A0856-63; A0918; A1189-1200), and continues to hold shares that he estimates to be worth approximately $60 million (A1690-91 (¶ 1)). If Abramowitz is correct in his assessment of the value of his shares, he anticipates a more than 3,000% return from his investments in Palantir.

B. Abramowitz's Contracts with Palantir and Other Investors.

Through its purchase of preferred Palantir shares, KT4 became a party to Palantir's Investors' Rights Agreement (as amended and/or restated from time to time, the "IRA") and Right of First Refusal and Co-Sale Agreement (as amended and/or restated from time to time, the "FRCSA"). (*See, e.g.*, A0041-65; A0109-42;

A0183-234; A0235-77; A1204-85; A1286-377; A1698 (¶ 15); A1704 (¶ 19); A3499 (Tr. 30:8-13).) Together, these agreements set forth the rights and obligations of Palantir's stockholders, as well as the circumstances in which those rights can be amended, altered or waived.

IRA: Right of First Offer. Among the rights provided by the IRA is the ability of investors who hold a sufficient quantity of Palantir stock ("Major Investors") to request certain financial information from Palantir. (Op. 7-9.) The IRA also contains a right of first offer ("ROFO") that allows Major Investors, subject to certain limitations, to participate in primary stock offerings. If Palantir offered to sell its shares, it was required, absent a waiver, to provide notice to its Major Investors. (Op. 7.) As a Major Investor—again subject to certain limitations—KT4 was generally allowed to participate in any such offerings in proportion to its ownership of certain Palantir stock (identified as "Registrable Securities"). (*See, e.g.*, A0198-99 (§ 2.4).)

The rights set forth in the IRA are not unlimited. The IRA clearly states that any provision may be amended or waived "either generally or in a particular instance and either retroactively or prospectively . . . with the written consent of [Palantir] and the holders of a majority of the Registrable Securities." (*See*, *e.g.*, A0200-01 (§ 3.7).) For the provisions related to the inspection or first offer rights, an amendment or waiver requires only a majority of the holders of the Registrable

Securities held by the Major Investors. (*Id.*) Thus, under the IRA—which Abramowitz personally signed (*see, e.g.*, A0207-08)—KT4 agreed that its first offer and notice rights could be waived without its consent, participation or knowledge. Much of this litigation concerns the fact that Abramowitz is now unhappy with these express terms of contracts that he personally signed.

FRCSA: Right of First Refusal and Co-Sale. Under the FRCSA, Palantir has a right of first refusal when certain investors propose to sell Palantir stock. Again subject to certain limitations, a subset of owners of preferred stock ("Holders"), also have first refusal and co-sale rights that allow Palantir (and then Holders) an option to purchase shares in, or sell their own shares as part of, any proposed sale by certain owners of common stock—Stephen Cohen, Nathan Gettings, Dr. Karp, Joseph Lonsdale and Thiel (*see, e.g.*, A0235 (identifying "Founders")), as well as others in recent years (*see, e.g.*, A1205-10 (identifying rights related to sales by "Common Holders")).

Abramowitz signed the FRCSA on several occasions, including in 2008 on behalf of KT4 and an affiliated trust. (*See* A0250-51.) In a manner similar to the IRA, any provision of the FRCSA that Abramowitz signed could be amended or waived without KT4's consent, participation or knowledge. (*See* A0243 (§ 10).)

II. Abramowitz's Efforts To Divest and Seek Litigation Leverage.

A. Abramowitz's Relationship with Palantir Sours.

The close relationship between Abramowitz and Palantir was "fractured" in the summer of 2015 and has since deteriorated dramatically. (Op. 12.) At that time, Dr. Karp confronted Abramowitz about his repeated misappropriation of Palantir's confidential information and proprietary trade secrets. (A1621-40; A3590-91 (Tr. 121:8-122:6).) Dr. Karp told Abramowitz that his access to Palantir had ended, and Abramowitz decided to exit his investment. (A3480 (Tr. 11:2-17); A3490 (Tr. 21:3-10).) Abramowitz has repeatedly confirmed that he would sell his entire stake in Palantir the moment he is satisfied with the price (*see* A3556 (Tr. 87:5-23)); that he has no interest in retaining shares to pursue fiduciary claims even if he discovers a basis for one (*see* A3556-57 (Tr. 87:24-88:3)); and that he never once spoke with any other Palantir stockholder about the allegations of wrongdoing contained in KT4's Complaint before (or after) filing it, even though he claimed in the Demand to be seeking to communicate with other Palantir stockholders (*see* A3552-55 (Tr. 83:24-86:2)).

Following his falling out with Dr. Karp, Abramowitz joined with several other Palantir investors (together with Abramowitz, the "Selling Group") and attempted to sell his shares in Palantir. (*See* A3482 (Tr. 13:1-12).) In late 2015, the Selling Group sought to sell its shares to Brooklands Capital Strategies, a

division of TPG Capital ("TPG/Brooklands"). (Op. 12; A3524-25 (Tr. 55:17-56:2).)[1] While KT4 initially claimed in its Complaint and sworn interrogatories that "[t]he parties had negotiated and agreed upon the purchase price and all material terms and conditions of the sale" (*see, e.g.*, A1714 (¶ 32)), Abramowitz conceded at trial that the parties had not exchanged a purchase agreement (A3638 (Tr. 169:7-12)), that his understanding of a completed deal came from a vaguely recalled meeting at which there was no discussion of a potential price (A3639 (Tr. 170:10-20)) and that he did not know whether any other members of the Selling Group had agreed upon a price (A3637-38 (Tr. 168:22-169:6)). Nonetheless, when TPG/Brooklands ultimately declined to purchase the Selling Group's shares, Abramowitz blamed Palantir and a third party, Disruptive Technology Advisers LLC ("DTA").[2]

B. Abramowitz Seeks Leverage over Palantir.

The record establishes a direct line between Abramowitz's discontent over his failed sale of his stake in Palantir and this litigation. Abramowitz first consulted attorneys to assess the possibility of a tortious interference suit against Palantir. (A3598-99 (Tr. 129:17-130:23).) Instead of filing a tortious interference

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[1] TPG/Brooklands had expressed interest in purchasing a position in Palantir on behalf of CDH, a Chinese investment company. (A3525 (Tr. 56:6-11).)

[2] Abramowitz's allegations of interference are the subject of a lawsuit that KT4 and an Abramowitz-related trust filed against Palantir and DTA in Delaware Superior Court on December 14, 2017.

suit, however, KT4 sent Palantir an inspection request pursuant to the IRA.[3] (A1582-85.) KT4's request sought certain financial materials—year-end financial reports, unaudited financial statements and a budget and business plan (A1582)—as well as notices of Palantir's intention to offer stock provided to Major Investors since 2008 (A1583). KT4 also sought discussions with Palantir's officers related to 12 additional topics. (A1583-84 (including travel and expense records and every actual or potential offering or sale of Palantir stock, by anyone, over the prior five years).)[4]

Based on the breadth of the request, and Palantir's concern about providing more confidential information to someone it believes has stolen its trade secrets, Palantir believed that the IRA inspection request was made in bad faith and responded by amending the IRA under § 3.7. Along with a majority of the holders of Registrable Securities held by its Major Investors, Palantir increased the level of stockholdings required to qualify as a Major Investor. (A1587-603.) Under the revised definition, Abramowitz no longer qualifies as a Major Investor. Palantir and a majority of Major Investors also clarified that they have the right under the IRA to deny inspection requests they believe to be made "in bad faith or for an

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[3] At trial, Abramowitz made clear that he had never considered making such a books and records request before he discussed a potential tortious interference claim with several attorneys. (*See* A3600 (Tr. 131:4-17).)

[4] KT4 withdrew its IRA inspection demand on October 7, 2016. (A1658-59.)

improper purpose" and could require inspection information to be subject to a confidentiality and non-use agreement. (A1604-20, together with A1587-603, the "September 2016 IRA Amendments.")

At the same time, Palantir sued Abramowitz, KT4 and an Abramowitz-affiliated trust in California state court for theft of Palantir's trade secrets. (A1621-40.) Palantir alleges that Abramowitz misappropriated Palantir's confidential information by, among other things, filing several patent and trademark applications for trade secrets and listing himself as the sole inventor. (*Id.*) This action remains pending.[5]

III. The Demand and This Litigation.

A. KT4's Demand and Palantir's Response.

A few weeks after Palantir filed suit in California, KT4 sent Palantir the Section 220 Demand. (*See* A1645-51.) KT4's Demand stated just a single purpose—"to investigate fraud, mismanagement, abuse and breach of fiduciary duty" potentially committed by Palantir or its officers, directors, agents or majority stockholders. (A1648 (§ C).) Nonetheless, the Demand sought to inspect 22 categories of Palantir books and records, including the following: the minutes of every Palantir board meeting since 2011; travel and expense reports related to

[5] Palantir strongly disagrees with the assertion that discovery has stalled in California due to any of Palantir's actions or inactions (*see* KT4 Br. 13), but otherwise declines to debate that issue here.

Dr. Karp; all books and records related to any sales of Palantir stock since 2011; and all books and records related to any offer to purchase some or all of Palantir's stock. (*See* A1645-47.)

On September 28, 2016, Palantir rejected the Demand on the grounds that KT4 failed to (i) state a proper purpose, (ii) set forth a credible basis to infer wrongdoing, (iii) articulate what it intended to do with the requested documents and (iv) identify how the books and records requested were necessary and essential to its stated purpose. (A1652-54.) KT4 declined to amend the Demand in response to Palantir's objections. (Op. 16.)

B. Palantir's Efforts To Resolve the Demand and KT4's Complaint.

Palantir has sought on several occasions to resolve this books and records dispute, including in February 2017 when Palantir offered to provide KT4 with Palantir's audited financial statements and a summary capitalization table subject to Palantir's standard non-disclosure agreement. (A1471.) KT4 refused this offer (A1472), and instead filed its Complaint on March 8, 2017 (A1689-1748).

KT4's Complaint focused primarily on a set of allegations related to Palantir's purported interference with stock transactions, including the supposed transaction with TPG/Brooklands. (A1710-18 (¶¶ 24-42).) It also included allegations on several other topics, such as Palantir's compensation of executives and third parties (A1718-21 (¶¶ 43-49); A1733-34 (¶¶ 72-75)), purported

agreements with corporate insiders to purchase their stock (A1721-23 (¶¶ 50-54)) and nondisclosure agreements with employees (A1723-27 (¶¶ 55-61)). In addition, for the first time, KT4 stated that it was seeking to inspect Palantir's books and records to value its Palantir stock holdings. (*See* A1739-40 (¶ 87).)

Shortly after KT4 commenced this litigation, and without waiver of its arguments that KT4 lacked a proper purpose or credible basis for the Demand, Palantir again offered to provide certain materials responsive to the Demand, including materials sufficient for KT4 to value its shares.[6] (A2273-83.) Palantir conditioned its offer upon KT4's execution of a confidentiality agreement, a draft of which was attached to the letter. (*Id.*) Without offering any counterproposal, KT4 objected to the proposed confidentiality agreement and rejected Palantir's offer. (*See* A2307-08.)

C. Section 220 Proceedings.

As the Court of Chancery has made clear, the course of these Section 220 proceedings "has been anything but summary." (Op. 1; *see also* A3738-39 (Tr. 46:19-47:2) ("It has not been summary. . . . For the record, it's the least-summary summary proceeding that I've had to date.").) KT4 served Palantir, the

[6] Palantir offered (1) a list of Palantir's stockholders; (2) a list of all directors from 2011 through the present; (3) a list of corporate officers from 2011 through the present; (4) Palantir's audited consolidated financial statements for 2014 and 2015, the most recent audited statements available; (5) the July 2015 IRA and the September 2016 IRA Amendments; and (6) the July 2015 FRCSA. (A2273.)

defendant in this Section 220 proceeding, with a combined 57 interrogatories and requests for production (A2084-2114) that matched the overbreadth of the Demand. *See U.S. Die Casting & Dev. Co. v. Sec. First Corp.*, 1995 WL 301414, at *3 (Del. Ch. Apr. 28, 1995) (holding that Section 220 actions involve "limited discovery because of the limited relief available"). KT4's expansive requests led to the appointment of a Special Master, who prohibited 52 of KT4's requests—all aside from requests related to expected trial witnesses, the documents cited in Palantir's Answer and the documents that Palantir intended to use during depositions or at trial.[7] (*See* A2322-26.)

During discovery, it also became clear that KT4's allegations of supposed wrongdoing were based to an "extraordinary" extent "on hearsay, double hearsay and, at times, triple hearsay." (B61 (Tr. 61:19-23); Op. 2.) The sole support offered for 45 propositions in KT4's pretrial brief, for example, was Abramowitz's own interrogatory responses, which themselves often involved statements that Abramowitz was purportedly told by third parties. (*See, e.g.*, A3886-88 (regarding alleged commissions).) During the one-day trial on June 28, 2017, several of KT4's allegations were also contradicted by Abramowitz's own testimony, including that:

[7] By contrast, none of Palantir's discovery requests was subject to any order or limitation by the Special Master. (*See* A2062-83; A2322-26.)

- Palantir engaged in a "pattern and practice" of interference with secondary stock sales (A1710 (¶ 24)), despite Abramowitz's participation in multiple satisfactory transactions (A3606 (Tr. 137:6-12));

- Palantir had refused to transfer shares that Abramowitz purchased from Caedmon Partners on account of a confidentiality agreement (A1726 (¶ 60(b))), even though Abramowitz testified that he never designated a recipient for these shares (A3661-63 (Tr. 192:23-194:1));

- Palantir had failed to meet its contractual obligations under the FRCSA, even though Abramowitz had not reviewed the agreement to determine what he sought to investigate (A3577 (Tr. 108:14-22)); and

- Palantir's expenses related to its CEO included "an unreasonably large number of executive assistants" (A1733 (¶ 73)), although Abramowitz was aware of only three people who worked with Dr. Karp, including his chief of staff (A3565-67 (Tr. 96:5-98:4)).

KT4's evidentiary approach drew the Court of Chancery "into protracted *in limine* motion practice to determine the bounds of the admissible trial evidence." (Op. 2; *see also* B61 (Tr. 61:19-62:5) (noting that the post-trial motion *in limine* briefing and argument was a "somewhat unprecedented step" in a Section 220 proceeding).) The Court of Chancery excluded or limited the use of much of KT4's hearsay evidence in a decision not challenged here. (*See* B66-79 (Tr. 66:17-79:15).)[8]

[8] The Court of Chancery did so even under the relatively relaxed evidentiary guidelines of a Section 220 proceeding. *See, e.g.*, *Thomas & Betts Corp. v. Leviton Mfg. Co. (Thomas & Betts I)*, 685 A.2d 702, 710 (Del. Ch. 1995) (noting that hearsay statements must be "sufficiently reliable to create a credible inference of waste and mismanagement" to be admitted in a Section 220 proceeding), *aff'd*, 681 A.2d 1026 (Del. 1996).

D. Court of Chancery Decision.

Followed this evidentiary ruling, the Court of Chancery denied the majority of KT4's inspection requests on February 22, 2018. The Court of Chancery found that KT4 was not entitled to inspect any books and records to value its shares because KT4 had failed to state a valuation purpose in its Demand. (Op. 21-26.) The Court of Chancery also found that KT4's allegations of interference in the purported TPG/Brooklands transaction were not related to any of KT4's interests as a stockholder, and could not form a proper purpose for inspection under Section 220. (Op. 41-42.) With respect to KT4's allegations of compensation paid to third parties (Op. 40-41), lack of liquidity to stockholders (Op. 42-44) and CEO compensation (Op. 45), the Court of Chancery determined that KT4 did not have a credible basis to infer wrongdoing. As the Court of Chancery explained regarding one compensation issue, "[t]he lack of any evidence . . . is reflective of the kind of speculation and idle curiosity that cannot form a credible basis to investigate." (Op. 41.)

Inspection of Palantir's books and records was limited to three issues to which KT4 had pivoted its post-trial focus. The Court of Chancery ordered Palantir to produce the identities of Palantir's officers and directors and their dates of service from 2011 through the present; books and records related to Palantir's annual stockholder meetings; and Palantir's audited year-end financial statements

since 2011.[9] (Op. 47-48.) The Court of Chancery also ordered Palantir to provide copies of books and records related to the September 2016 IRA Amendments. (Op. 48.) With respect to Palantir's compliance with the FRCSA and IRA, the Court of Chancery ordered inspection of Palantir's stock ledger (Request No. 1); Palantir's stockholder list (Request No. 2); books and records related to actual or potential Founders' sales since 2011 (Request No. 11);[10] and each notice that Palantir sent to a Major Investor under the IRA related to an offering of sale by Palantir (Request No. 14). (Op. 48-49.)

In ordering this inspection, the Court of Chancery made clear that "[c]redible basis is a low standard," and that it was not reaching the merits of any of KT4's allegations of wrongdoing. (Op. 34-35.) To that end, the Court of Chancery acknowledged that corporations are entitled to act by written consent in lieu of annual stockholder meetings (*see* Op. 32), and recognized that the FRCSA and IRA provided Palantir and its investors with broad rights to amend or waive their provisions, prospectively or retrospectively (*see, e.g.*, Op. 35 & n.130). Notably, the only testimony of Abramowitz on which the Court of Chancery relied

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[9] Notably, Palantir had previously offered nearly all of this to KT4 as described above. (*See* A2273.)

[10] KT4 falsely suggests that Palantir has "refused to provide" information related to "the Founders' disposing of their options to purchase common stock." (KT4 Br. 10 n.2.) Palantir has provided books and records relating to the Founders' actual or potential sales of securities convertible into Palantir capital stock since 2011, as set forth in the Order. (*See* KT4 Br. Ex. B ("Order"), ¶ 2(a).)

in its Memorandum Opinion was that he had not received notices of Founders' stock sales or Palantir offerings. (*See* Op. 39.)

E. Post-Decision Proceedings.

After the Court of Chancery's decision, the parties met and conferred and submitted proposed implementing orders. Of relevance to KT4's appeal, the parties disagreed on the scope of the inspection of electronic documents to be permitted, whether investigating potential contractual noncompliance by Palantir's Founders was a proper purpose for inspection and whether the Court of Chancery should restrict the use of inspection material for litigation to proceedings in the Court of Chancery or, in certain cases, other Delaware courts. The Court of Chancery adopted Palantir's proposal on each of these issues. (*See* Order.)

On March 22, 2018, KT4 moved for reargument regarding inspection of emails. (A3454-60.) The Court of Chancery denied KT4's motion, finding that KT4 failed to identify any facts or arguments that the Court of Chancery had not previously considered. (KT4 Br. Ex. C ("Reargument Order").) The Court of Chancery held that that KT4 had failed to include a request for emails related to the majority of the books and records identified in its Demand, and that the Court of Chancery, "in its discretion, disagreed with KT4 that inspection of electronic mail is essential to fulfilling its stated purpose." (*Id.* ¶ 3.)

After the denial of the majority of KT4's inspection requests, on March 26, 2018, KT4 sent a second demand under Section 220, seeking to inspect many of the same books and records that it had previously sought. In this demand, KT4 specifically stated a valuation purpose. Despite Palantir's offer to allow KT4 to use certain materials produced in this Section 220 proceeding for valuation, KT4 has since filed suit on that new demand.

ARGUMENT

I. The Court of Chancery Correctly Held That KT4 Was Not Entitled To Inspect Books and Records for Valuation.

A. Question Presented

Did KT4 fail to state a valuation purpose in its Demand? (A3245-47; A3958-63.)

B. Standard of Review

Whether a Section 220 demand states a particular purpose is a question of fact that the Supreme Court will reconsider only "if the findings below are clearly wrong and justice requires." *Ivanhoe Partners v. Newmont Min. Corp.*, 535 A.2d 1334, 1341 (Del. 1987) (setting forth standard for reviewing decisions based on a paper record). If the lower court's findings "are sufficiently supported by the record and are the product of an orderly and logical deductive process, in the exercise of judicial restraint [the Supreme Court] accept[s] them, even though independently [the Court] might have reached opposite conclusions." *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

As KT4 asserts (KT4 Br. 22), whether a stated purpose is proper is a question of law. *See Thomas & Betts Corp. v. Leviton Mfg. Co. (Thomas & Betts II)*, 681 A.2d 1026, 1030 (Del. 1996); *see also Nw. Indus., Inc. v. B.F. Goodrich Co.*, 260 A.2d 428, 429 (Del. 1969) ("The 'purpose' required to be stated in the demand . . . must be a 'proper purpose' in order to make the demand

effective . . . .”). However, whether a purpose has been stated in the first place is a question of fact.

C. Merits of Argument

1. KT4 Failed To State a Valuation Purpose in the Demand.

The Court of Chancery properly denied inspection related to valuation based on KT4’s failure to include valuation as a purpose in the Demand. To satisfy the “form and manner” requirements of Section 220, a stockholder must make a “written demand under oath stating the purpose thereof.” 8 *Del. C.* § 220(b), (c); *Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 141 (Del. 2012) (“A Section 220 plaintiff’s compliance with the statutorily mandated procedures is a precondition to having the propriety of its purpose for inspection addressed.”). These statutory requirements are “both clear and commanding.” *Seinfeld v. Verizon Commc’ns, Inc.* 873 A.2d 316, 317 (Del. Ch. 2005).

KT4’s Demand stated that it was seeking inspection for “*a* proper purpose, to wit, to investigate fraud, mismanagement, abuse, and breach of fiduciary duty committed by the Corporation, its officers, its directors, its agents, and its majority shareholders.” (A1648 (§ C) (emphasis added).) KT4 went on to list six potential subjects of inspection, one of which was “whether the Corporation, its officers, its directors, its agents, and/or its majority shareholders have improperly prevented disfavored investors from realizing the value of their investments.” (*Id.* § C.4.)

And only embedded within this inspection request, alongside KT4's request for information to investigate whether Palantir interfered in stockholder transfers or approved "armed escorts" for its CEO, did KT4 seek to investigate whether Palantir "improperly depriv[ed] 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 the Corporation, and by purportedly retroactively amending the Investors' Rights Agreement for the purpose of depriving disfavored investors of any information regarding the financial performance of the Corporation)." (*Id.*)

KT4 has able counsel, and was obviously aware of—or at least should have been aware of—the requirement to state its purpose in the inspection demand. Stating a valuation purpose is not difficult. *See Seinfeld*, 873 A.2d at 317. But KT4 did not do so. This factual finding by the Court of Chancery—which is amply supported by the plain language of the Demand—was not clear error. For this reason alone, the Court of Chancery's denial of inspection for valuation should be affirmed.

None of the cases cited by KT4 supports a different conclusion.[11] In two of the cases cited by KT4, requests to inspect lists of the corporations' stockholders—for purposes other than valuation—were *denied* for failing to state a proper purpose. *See Nw. Indus.*, 260 A.2d at 429 (requiring "more as a statement of purpose"); *Weisman v. W. Pac. Indus., Inc.*, 344 A.2d 267, 269 (Del. Ch. 1975) (finding that an "unspecific demand" failed "to meet the strict requirement[s] of the statute"). In a third, *Thomas & Betts I*, the corporation challenged only whether the purpose stated in a demand was proper, and not whether a purpose had been stated. *See* 685 A.2d at 707-08. In the final case, the corporation did not challenge the stockholder's stated purpose for seeking a stock ledger. *See Henshaw v. Am. Cement Corp.*, 252 A.2d 125, 127-28 (Del. Ch. 1969). Here, Palantir has consistently stated that KT4 failed to state a valuation purpose, and the Court of Chancery properly determined that KT4's reference to investigating wrongdoing was separate from any alleged purpose to value its shares.

KT4's argument that its valuation purpose can be discerned from "surrounding circumstances" is similarly unavailing. (*See* KT4 Br. 23-24.) Not one of the cases that KT4 cites actually finds that a valuation purpose can be inferred from circumstance or context. *See, e.g.*, *Henshaw*, 252 A.2d at 127

[11] Even if, as KT4 claims, whether KT4 has stated a valuation purpose in its Demand is subject to *de novo* review, this Court can determine that KT4's Demand on its face contains only an investigative purpose.

(finding that inspection demand for stockholder list was likely made in preparation for a proxy fight at an upcoming annual meeting). In any event, the "surrounding circumstances" identified by KT4 do not suggest a valuation purpose.

First, KT4's assertion that its Demand "must be read in light of KT4's" prior request for materials under the IRA points to only one request—for "the value of Palantir's equity"—among 12 topics that KT4 sought to discuss with Palantir officers. (*See* KT4 Br. 24.) This request, pursuant to a contract between Palantir and its investors, does not suggest that KT4 had a valuation purpose when it later made a demand under Section 220—especially as the books and records that KT4 requested are those specifically mentioned in the IRA as subject to the (waivable) inspection right.

Second, KT4's assertion that its requests for financial statements and internal valuations "clearly were made to further a valuation purpose" (*id.*) based on the fact that Palantir offered KT4 audited financial statements ignores the fact that KT4 *rejected* Palantir's offers.[12] If KT4 had truly been interested in valuation, it would have accepted one of these offers rather than continue seeking all of the wide-ranging materials requested in its Demand. Its failure to do so—twice, without even engaging in negotiations—confirms that KT4's purpose was never to

[12] KT4 also ignores the fact that the Court of Chancery permitted inspection of financial statements for a purpose unrelated to valuation. (*See* Op. 47 (granting inspection related to annual stockholder meetings).)

value its shares. Moreover, Palantir's effort to resolve KT4's Demand short of litigation was not a concession that KT4 had stated a valuation purpose, and is no reason to extend this Section 220 proceeding any further.

Third, for the first time in its opening appellate brief, KT4 suggests that *Palantir* is responsible for KT4's failure to state a valuation purpose in its Demand. (KT4 Br. 24 (asserting that KT4 "phrased its valuation purpose in terms of investigat[ion]" because Palantir had amended the IRA).) If anything, KT4's new explanation further confirms that its only stated purpose was investigative. Nothing in the statutory text suggests that a stockholder can point to a corporation's actions as a substitute for satisfying its own Section 220 requirements.

Finally, KT4 argues that its failure to properly state a valuation purpose in its Demand was "cured" during the course of litigation. KT4 points to its post-Demand allegations of a valuation purpose, in interrogatory responses and at trial, to suggest that KT4 complied with the requirements of Section 220. (*See* KT4 Br. 27.) However, none of the cases that KT4 cites (*id.* at 25 n.8) suggests that the requirement to state a purpose in the demand letter is anything other than "clear and commanding." *See Seinfeld*, 873 A.2d at 317. To the contrary, the stockholders seeking inspection in each of these cases stated a purpose that could be proper under Section 220. *See, e.g.*, *Se. Pa. Transp. Auth. v. AbbVie Inc.*, 2015

WL 1753033, at *12 (Del. Ch. Apr. 15, 2015) (finding that stockholders had made clear their intention to pursue derivative litigation), *aff'd*, 132 A.3d 1 (Del. 2016) (TABLE); *Hatleigh Corp. v. Lane Bryant, Inc.*, 428 A.2d 350, 352 (Del. Ch. 1981) (finding, after the corporation conceded, that the stockholder had stated a proper purpose to solicit proxies). By contrast, KT4 did not state *any* valuation purpose in its Demand, and the "cure" sought by KT4 is an addition, not a clarification. Controlling Delaware case law instead establishes that a stockholder must satisfy the form and manner requirements of Section 220 *at the time of the inspection demand*. *See Cent. Laborers*, 45 A.3d at 146 (rejecting stockholder's effort to rely on a document filed after the Section 220 demand); *see also id.* at 144 ("The requirement that the corporation receive an inspection demand in proper form recognizes the importance of striking an appropriate balance between the rights of stockholders and corporations.").

* * *

Because KT4 failed to state a valuation purpose in its Demand, the Court of Chancery properly denied KT4's inspection requests related to valuation.

II. KT4's Use of Inspection Material in Litigation Is Appropriately Limited to Lawsuits Filed in the Court of Chancery or Other Delaware Courts.

A. Question Presented

Did the Court of Chancery abuse its discretion in requiring KT4 to bring any lawsuit arising out of the inspection material in the Court of Chancery or another court located in the State of Delaware? (A3421-22.)

B. Standard of Review

The Supreme Court "review[s] a trial court's determination of the scope of relief available in a Section 220 books and records action for abuse of discretion." *Espinoza v. Hewlett-Packard Co.*, 32 A.3d 365, 371 (Del. 2011). A court commits an abuse of discretion only if it has "exceeded the bounds of reason in view of the circumstances, or so ignored recognized rules of law or practice so as to produce injustice." *MCA, Inc. v. Matsushita Elec. Indus. Co.*, 785 A.2d 625, 633-34 (Del. 2001) (internal quotation marks, alterations and citations omitted); *see also Chavin v. Cope*, 243 A.2d 694, 695 (Del. 1968) ("When an act of judicial discretion is under review the reviewing court may not substitute its own notions of what is right for those of the trial judge, if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness."). Where, as here, discretion is specifically delegated by statute, "[t]he standard of review this Court applies to the Court of Chancery's exercise of statutorily conferred discretion is highly

deferential." *Wal-Mart Stores, Inc. v. Ind. Elec. Workers Pension Tr. Fund IBEW*, 95 A.3d 1264, 1272 (Del. 2014) (affirming determinations under Section 220).

C. Merits of Argument

1. The Court of Chancery Properly Exercised Its Discretion To Limit KT4's Use of Inspection Material.

This Court has consistently recognized the ability of the Court of Chancery to, in its discretion, impose restrictions on the use of inspection material, *see, e.g.*, *Disney v. Walt Disney Co.*, 857 A.2d 444, 450 (Del. Ch. 2004) (imposing confidentiality restrictions), including by limiting the use of inspection material to legal action in a Delaware court, *see United Techs. Corp. v. Treppel*, 109 A.3d 553, 554 (Del. 2014); *see also CM & M Grp., Inc. v. Carroll*, 453 A.2d 788, 793-94 (Del. 1982) ("[T]he Court of Chancery is empowered to protect the corporation's legitimate interests and to prevent possible abuse of the shareholder's right of inspection . . . ."). That discretion is embedded in the very text of Section 220, which vests the Court of Chancery with the authority to "in its discretion, prescribe any limitations or conditions with reference to the inspection." 8 *Del. C.* § 220(c).

In this case, the Court of Chancery properly required that:

> [a]ny claim, dispute, controversy, or cause of action between the Parties that arises out of the Inspection Information (including, for the avoidance of doubt, any derivative action) will be brought exclusively in the Court of Chancery of the State of Delaware, or, if this Court declines to exercise jurisdiction, any other state or federal court of competent jurisdiction located in the State of Delaware.

(Order ¶ 12.) In imposing this restriction, the Court of Chancery determined that any lawsuit arising from the inspection material—which, by statute, would relate to KT4's interests as a stockholder in Palantir, a Delaware corporation—should be decided by a court with expertise in the applicable corporate law. *See* 8 *Del. C.* § 220(b); *La. Mun. Police Emps.' Ret. Sys. v. Lennar Corp.*, 2012 WL 4760881, at *2 (Del. Ch. Oct. 5, 2012) ("[S]tockholders are only permitted to investigate those issues that affect their interests as stockholders."). The Court of Chancery also addressed the "legitimate concern" that Palantir and its stockholders "could face excessive costs and the risk of inconsistent rulings" if lawsuits on related issues were allowed to proceed in different jurisdictions. *United Techs.*, 109 A.3d at 560.

KT4 rests its appeal on the incorrect assertion that the Court of Chancery failed to consider "case-specific" factors in restricting lawsuits to Delaware courts. In *United Technologies*, this Court identified several examples of factors that the Court of Chancery may consider in determining whether to limit the use of inspection material to litigation in a Delaware court,[13] including: (1) whether a stockholder seeks to file claims that were the subject of prior derivative litigation

[13] KT4's comparison of this non-exhaustive list to a multi-factor test is inapposite. (*See* KT4 Br. 29 (citing *Roache v. Charney*, 38 A.3d 281, 288 (Del. 2012)).) In *Roache*, this Court determined that the lower court had neglected to consider one of three factors that a court must consider in every request for a continuance. *See* 38 A.3d at 288.

in the Court of Chancery; (2) a corporation's "legitimate interest in having consistent rulings on related issues of Delaware law, and having those rulings made by the courts of this state"; (3) the adoption of a forum selection clause in the corporation's bylaws; (4) the investment made by the corporation in defending any prior litigation and the Section 220 proceeding; and (5) whether a stockholder has a legitimate reason for filing a lawsuit in another forum. *See United Techs.*, 109 A.3d at 560-61. This Court also noted that the Court of Chancery could consider whether the stockholder retains the ability to seek a modification of a restriction imposed by the Court of Chancery if the need were to arise. *Id.*

In its brief, KT4 focuses on only three of these factors. (*See* KT4 Br. 30.) KT4 ignores Palantir's interest in having consistent rulings on related issues of Delaware law—especially where KT4 has already filed three actions against Palantir in Delaware[14]—as well as the investment that Palantir has incurred in defending this lengthy Section 220 proceeding and KT4's separate tortious interference action. Even among the factors on which KT4 has chosen to focus, moreover, the record reflects the Court of Chancery's consideration of whether KT4 had a legitimate reason to pursue litigation outside of Delaware. In letters regarding their proposed orders, each party presented arguments to the Court of

[14] Since the Court of Chancery's decision and KT4's filing of yet another action under Section 220, the importance of this limitation on KT4's use of inspection material has only increased.

Chancery as to whether KT4 had an interest in pursuing litigation outside of Delaware. (*See* A3391; A3422.) The Court of Chancery considered, and in its discretion rejected, the very concerns about personal jurisdiction and a jury trial that KT4 makes to this Court. (*See* KT4 Br. 30-32.)

The Court of Chancery did not abuse its discretion in considering and rejecting KT4's arguments.

First, KT4 argues that it must be able to pursue litigation outside of Delaware against "Palantir and the Founders" related to its contractual rights. (KT4 Br. 31.) However, the Court of Chancery allowed KT4 to investigate only "possible wrongdoing *by Palantir* in connection with contractual rights under the FRCSA and IRA." (Order ¶ 8 (emphasis added and internal quotation marks omitted).)[15] Any claim arising from such an investigation would have to be brought against the Founders in their capacities as fiduciaries. KT4 is not authorized to use the inspection material to investigate potential wrongdoing by Founders as individuals, and KT4 has offered no reason why a lawsuit against a Founder in its capacity as a fiduciary of a Delaware corporation could not and should not be filed in a court within the State of Delaware.

[15] KT4 sought to investigate potential wrongdoing by Founders related to the FRCSA or IRA. (A3391; *see also* A3427 (comparison of proposed orders).) The Court of Chancery denied this inspection request, and KT4 has not appealed this ruling.

Second, the restriction imposed by the Court of Chancery would not imperil any right of KT4 to a jury trial. (KT4 Br. 31.) KT4 asserts that it may have a right to a jury trial on certain "common-law claims, including a breach-of-contract claim." (*Id.*) To the extent that any such claim arises out of the inspection material, however, it must relate to KT4's interest as a stockholder. *La. Mun. Police Emps.' Ret. Sys.*, 2012 WL 4760881, at *2. Such a claim would ordinarily fall within the ambit of the Court of Chancery's jurisdiction. *See Clark v. Teeven Hldg. Co.*, 625 A.2d 869, 875 (Del. Ch. 1992) (noting that the Court of Chancery "has jurisdiction to hear such traditional, equitable matters as trusts and fiduciary relations"); *see also duPont v. duPont*, 85 A.2d 724, 729-30 (Del. 1951) (identifying Court of Chancery jurisdiction over actions where a sufficient remedy does not exist at law). Even if KT4 does have a right to a jury trial with respect to an unspecified future claim, however, that possibility is no reason to alter the Court of Chancery's Order. KT4 would not be barred from presenting its claim before a jury; it would be barred only from using the inspection material to do so. *See United Techs.*, 109 A.3d at 560-61. If KT4 were to identify at some future time a claim for which it had a right to a jury trial, KT4 would also be able to seek a modification of the Order under Chancery Rule 60(b). *See id.* at 560. Absent such modification, the Court of Chancery could decline to exercise jurisdiction over a damages claim for which there was a jury right and allow a claim to proceed in

another court of this state, or designate certain factual issues to be decided by a jury in the Superior Court. *See* 10 *Del. C.* § 369. To the extent that KT4 would have a right to a jury trial regarding unspecified future claims, multiple avenues exist to exercise this right.

III. KT4 Is Not Entitled To Inspect Additional Books and Records To Evaluate Palantir's Contractual Compliance.

A. Question Presented

Did the Court of Chancery abuse its discretion in limiting inspection to notices of Palantir offerings under the IRA for KT4's investigation of Palantir's compliance with its obligations to provide certain stockholders with notice and the opportunity to exercise their right of first offer? (A3271-79; A3987-89.)

B. Standard of Review

The Supreme Court "reviews for abuse of discretion the decision of the trial court regarding the scope of a stockholder's inspection of books and records." *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 569 (Del. 1997); *see also Wal-Mart Stores*, 95 A.3d at 1272 ("The standard of review this Court applies to the Court of Chancery's exercise of statutorily conferred discretion is highly deferential.").

C. Merits of Argument

1. The Court of Chancery Properly Exercised Its Discretion To Deny Inspection of Additional Materials Related to Palantir Offerings.

Under Section 220, the party seeking inspection "bears the burden of proving that each category of books and records is essential to accomplishment of the stockholder's articulated purpose for the inspection," and the Court of Chancery "has wide latitude in determining the proper scope of inspection."

Thomas & Betts II, 681 A.2d at 1035. A document is "essential" under Section 220 "if, at a minimum, it addresses the crux of the shareholder's purpose," an inquiry that is "fact specific and will necessarily depend on the context in which the shareholder's inspection demand arises." *Espinoza*, 32 A.3d at 371-72. This Court has also instructed that inspection in a Section 220 proceeding should come in the form of an "order circumscribed with rifled precision." *Sec. First Corp.*, 687 A.2d at 570.

KT4 is not entitled to inspect additional books and records related to Palantir stock offerings. As an initial matter, KT4's effort to investigate Palantir's alleged noncompliance with a contract is not a proper purpose for a Section 220 inspection. *See, e.g.*, *Pogue v. Hybrid Energy, Inc.*, 2016 WL 4154253, at *3 n.16 (Del. Ch. Aug. 5, 2016) (noting that the investigation of claims for breach of contract or to determine the validity of a corporate act were improper because "both relate[d] to an *individual* interest"); *Berkowitz v. Legal Sea Foods, Inc.*, 1997 WL 153815, at *2 (Del. Ch. Mar. 24, 1997) (denying inspection where plaintiff's purpose "only further[ed] his personal interests"); *Thomas & Betts I*, 685 A.2d at 711 (rejecting a stockholder's individual purpose). Section 220 is not the appropriate mechanism to remedy potential contractual wrongs like the purported IRA violation alleged by KT4, even those that involve contracts between corporations and stockholders. KT4 also failed to meet its burden to establish a

credible basis to infer wrongdoing. KT4 did not provide *any* evidence to infer wrongdoing related to a Palantir stock offering. The only evidence that KT4 presented regarding Palantir's potential noncompliance with the IRA was Abramowitz's testimony that he had not received notices of new financings since the Series E offering. (*See* Op. 39.) However, as the Court of Chancery noted, under the plain language of the IRA the provisions governing KT4's and other investors' notice and first offer rights may be waived. (*See* Op. 35 n.130.)

Even if limited inspection were proper, the Court of Chancery granted access to more than enough books and records to investigate whether Palantir provided "stockholders with notice and the opportunity to exercise the ROFO." (Op. 39.) KT4 argues that that the Court of Chancery found a credible basis for inspection of two topics: (1) notices of financing rounds provided to stockholders, and (2) documents related to its right of first offer, which KT4 claims to include the terms and approval process of each offering. (KT4 Br. 34-35.) KT4 does not suggest that the Order was insufficient with respect to notices, but instead argues that the Court of Chancery failed to require Palantir to produce books and records related to KT4's right of first offer. (Op. 35.) But KT4's dichotomy is false, and the "two" categories of documents are one and the same. Under the IRA, Major Investors have a waivable right to receive notice of Palantir stock offerings, including "the price and terms upon which [Palantir] proposes to offer" shares of

its capital stock. (*See, e.g.*, A1303 (§ 2.4(a)).) This notice allows Major Investors to exercise their right of first offer, provided that such notice and first offer rights were not otherwise waived. (*See, e.g.*, A1307-08 (§ 3.7) (identifying the circumstances under which IRA provisions, specifically including the right of first offer, "may be amended or waived (either generally or in a particular instance and either retroactively or prospectively)").)

In its Memorandum Opinion and Order, the Court of Chancery required Palantir to produce notices related to its stock offerings since Series E. (*See* Op. 48-49; Order § 2(b).) In accordance with the Order, Palantir has supplied copies of the waivers by which Palantir and its investors waived *both* the notice *and* the first offer rights of Major Investors. With these documents, KT4 can determine that its right to notice of each financing round, along with its right of first offer, were waived for the relevant Palantir offerings. Indeed, by conceding that it has received sufficient inspection related to its waivable notice rights, KT4 concedes that it has received all of the documents necessary to its investigation related to its waivable right of first offer. No additional documents are necessary or essential for KT4 to determine Palantir's compliance with its IRA obligations.

IV. The Court of Chancery Properly Excluded Emails from KT4's Inspection.

A. Questions Presented

Did the Court of Chancery abuse its discretion in finding that KT4 did not state a request for emails with specificity? (A3272; A3461-67.)

Even if KT4 requested inspection of emails in its Demand, did the Court of Chancery abuse its discretion in limiting the inspection to exclude emails? (A3461-67.)

B. Scope of Review

The Supreme Court "reviews for abuse of discretion the decision of the trial court regarding the scope of a stockholder's inspection of books and records." *Sec. First Corp.*, 687 A.2d at 569.

C. Merits of Argument

Under Section 220, the party seeking inspection "bears the burden of proving that each category of books and records is essential to accomplishment of the stockholder's articulated purpose for the inspection," and the Court of Chancery "has wide latitude in determining the proper scope of inspection." *Thomas & Betts II*, 681 A.2d at 1035. The production of emails in a Section 220 proceeding is the "exception rather than the rule." *In re UnitedHealth Grp., Inc. Section 220 Litig.*, 2018 WL 1110849, at *9 (Del. Ch. Feb. 28, 2018) (internal quotation marks and citation omitted); *see also In re Plains All Am. Pipeline, L.P.*

Unitholders Books & Records Litig., 2017 WL 6016570, at *5 (Del. Ch. Aug. 8, 2017) (ORDER) (rejecting email production request where plaintiffs had not carried their burden of showing that other documents would not be sufficient for their stated inspection purposes); *Chammas v. Navlink, Inc.*, 2016 WL 767714, at *6-8 (Del. Ch. Feb. 1, 2016) (similar). For two reasons properly within its discretion, the Court of Chancery has thrice concluded that KT4 failed to meet its burden in this case to inspect email communications.

1. The Court of Chancery Properly Determined That KT4's Demand Did Not Contain a Request for Emails Related to Any of KT4's Permitted Purposes for Inspection.

As an initial matter, the Court of Chancery correctly determined that KT4 failed to include a specific request for emails related to the topics into which the Court of Chancery permitted investigation. KT4 specifically sought emails only in KT4's Request No. 22, which requested books and records relating to whether the Corporation favored certain stockholders to the detriment of others. (*See* A1647 (Request No. 22 for "all books and records (including without limitation email and other correspondence)").) The Court of Chancery did not grant inspection of any documents in response to KT4's Request No. 22 (Reargument Order ¶ 4 & n.10), and KT4 did not specifically seek emails in any of the Requests related to the purposes for which KT4 was granted inspection.

KT4's argument that its general request for "hardcopy and electronic documents and information" constitutes a request for emails is unavailing in the context of a Section 220 proceeding. (*See* KT4 Br. 38-39; *see also* A1645-47 (stating requests for "all books and records").) If anything, the express reference to emails in one Request suggests that KT4 was *not* seeking emails in other requests that did not specifically reference emails.[16] As the Court of Chancery correctly held, KT4's request for electronic books and records is "most reasonably construed as an attempt to reach the company's books and records stored in that format." (Reargument Order ¶ 4.) Particularly in light of the fact that inspection of emails in a Section 220 proceeding is not the norm, the Court of Chancery did not abuse its discretion in holding that KT4 had failed to request emails with specificity in its Demand.

2. The Court of Chancery Properly Determined That Emails Are Not Essential to KT4's Stated Purpose.

Even if KT4's Demand could be interpreted as a broad request for emails, the Court of Chancery properly exercised its discretion in determining that emails were not necessary and essential to any permitted purpose for inspection. It is KT4's burden to show that emails are necessary and essential for one of its proper

[16] Under the same *expressio unius* reasoning, even if whether KT4 stated a request for emails is subject to *de novo* review, as KT4 incorrectly asserts, KT4's argument should be rejected.

purposes. *See In re Plains All Am. Pipeline*, 2017 WL 6016570, at *5. In determining the scope of inspection, the Court of Chancery must craft an "order circumscribed with rifled precision." *Sec. First Corp.*, 687 A.2d at 570. KT4 did not offer any evidence at trial to suggest that emails were essential for the permitted purposes of its inspection. As a result, in each of its Memorandum Opinion, Order and Reargument Order, the Court of Chancery, "in its discretion, disagreed with KT4 that inspection of electronic mail is essential to fulfilling its stated purpose." (Reargument Order ¶ 3.) Any other holding would flip the case law on its head and allow stockholders in Section 220 proceedings to obtain email inspection without any particularized showing that an investigation of potential wrongdoing required the inspection of email.

KT4 offers three arguments to justify inspection of emails. All three fail.

First, KT4 argues that because the September 2016 IRA Amendments were not accomplished by Palantir's board, "Palantir likely would have nothing to produce beyond the IRA amendments themselves." (KT4 Br. 40.) The fact that there are no documents related to the board's consideration of the September 2016 IRA Amendments, however, is not a basis to inspect emails. Palantir "has no duty to do the impossible" in producing documents that do not exist. *See Dobler v. Montgomery Cellular Hldg. Co.*, 2001 WL 1334182, at *9 (Del. Ch. Oct. 19, 2001).

Second, KT4 argues that emails will illuminate Palantir's intent when effecting the amendments. (KT4 Br. 40.) In contrast to those Section 220 proceedings in which the Court of Chancery has ordered inspection of emails, however, KT4 has not made any specific showing that emails would be necessary to investigate wrongdoing. In *Amalgamated Bank v. Yahoo! Inc.*, the Court of Chancery ordered inspection of the emails of the corporation's CEO—who, as revealed by the "trial record," was the "principal corporate actor in the hiring process" and "had all of the direct contact" of relevance to the inspection—where the plaintiff demonstrated that emails were necessary to show whether the CEO's knowledge varied from what she had informed the corporation's board. 132 A.3d 752, 792-93 (Del. Ch. 2016). Similarly, in *Wal-Mart Stores, Inc.*, the Court of Chancery exercised its discretion to order inspection of emails only after the plaintiffs had established a credible basis to infer wrongdoing related to a long-running internal investigation and potential cover-up. *See* 95 A.3d at 1267-70, 1278. By contrast, KT4 has not identified any reason to suspect wrongdoing related to the September 2016 IRA Amendments, let alone that this purported wrongdoing was accomplished by email. In the absence of such a showing, the Court of Chancery did not abuse its discretion in denying inspection of emails.

Third, KT4 argues that Palantir's response to KT4's inspection request under the IRA shows that Palantir's misconduct occurred over email. (KT4 Br. 41.)

However, a single email sent to Abramowitz's counsel 11 days before the September 2016 IRA Amendments does not provide any basis to infer wrongdoing. (*See* A1586.) The fact that a corporation communicated with a stockholder by email cannot be sufficient to establish an entitlement for that stockholder to inspect the corporation's internal emails. A contrary conclusion would create an exception that would quickly swallow the rule that email inspections are generally not permitted as a matter of right in Section 220 proceedings.

* * *

Because KT4 failed to meet its burden of showing that emails are necessary for any of the permitted purposes of its investigation, the Court of Chancery did not abuse its discretion in denying inspection of emails.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Chancery should be affirmed.

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