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IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN M. SCIANNELLA, Individually and on Behalf of All Others Similarly Situated, Plaintiff Below, Appellant, v. ASTRAZENECA UK LIMITED, ASTRAZENECA PLC, TYRELL, RIVERS, PH.D., PASCAL SORIOT, ZHENGBIN YAO, PH.D., EDWARD HU, YANLING CAO, ANDREAS WICKI, CHRIS NOLET, and RACHELLE JACQUES, Defendants Below, Appellees.	No. 303, 2024 Case Below: Court of Chancery of the State of Delaware C.A. No. 2023-0125-PAF

APPELLANT'S CORRECTED OPENING BRIEF

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STATUTES, RULES, AND REGULATIONS

GLOSSARY

Term	Definition
Appellant or Plaintiff	Stephen M. Sciannella, Plaintiff Below, Appellant
Acquisition	The acquisition of Viela by Horizon for $53.00 per share in cash, which closed on March 15, 2021
Alexion	Alexion Pharmaceuticals, Inc.
AstraZeneca or AZ	AstraZeneca UK Limited, AstraZeneca PLC, and/or MedImmune collectively
Cao	Yanling Cao
Complaint	Verified Stockholder Class Action Complaint
Defendants	AstraZeneca, Rivers, Soriot, Yao, Hu, Cao, Wicki, Nolet, and Jacques collectively
Goldman	Goldman Sachs & Co. LLC
Horizon	Horizon Therapeutics plc and its related affiliates
Hu	Edward Hu
Jacques	Rachelle Jacques
Nolet	Chris Nolet
Rivers	Tyrell Rivers, Ph.D.
Schedule 14D-9 or 14D-9	Viela's tender offer/recommendation statement, filed on Schedule 14D-9 on February 12, 2021
Soriot	Pascal Soriot
Trial Court	Court of Chancery of the State of Delaware

Viela or the Company	Viela Bio, Inc.
Wicki	Andreas Wicki
Yao	Zhengbin (“Bing”) Yao, Ph.D.

NATURE OF PROCEEDINGS

Stephen M. Sciannella ("Plaintiff") brought this action for breach of fiduciary duty on behalf of the former minority stockholders of Viela Bio, Inc. following Viela's acquisition by Horizon Therapeutics plc for $53.00 per share. Plaintiff now appeals from the Trial Court's Memorandum Opinion, attached hereto as Exhibit A, which found that Plaintiff alleged no reasonably conceivable inference that AstraZeneca was a controlling stockholder or that Viela stockholders were uninformed of material facts about the Acquisition. That dismissal arose under multiple reversible legal and factual errors.

Plaintiff pleaded a "constellation of facts" supporting AstraZeneca's general and transactional control over Viela. AstraZeneca was Viela's founder, largest stockholder, landlord, and chief commercial supplier. AstraZeneca created Viela as a spin-off in February 2018 and continued to own a 26.7% stake in Viela at the time of the Acquisition in 2021. AstraZeneca employed two Viela directors, and its former employees occupied the entirety of Viela's C-suite. AstraZeneca conducted Viela's clinical trials. AstraZeneca manufactured Viela's products. AstraZeneca was the licensor of Viela's patents. As a result, Viela was left substantially reliant on AstraZeneca for nearly all of its business functions, a fact that Viela repeatedly disclosed in public filings.

What Viela did not disclose, and what Viela stockholders were left with no information about when deciding whether to tender their shares, was that AstraZeneca prompted Viela's sale process and then wielded its leverage over the Board to complete the Acquisition. AstraZeneca did so out of self-interest. While on the Viela Board, AstraZeneca's CEO, Pascal Soriot, chose to acquire Viela's largest competitor. AstraZeneca then sought to extricate itself from Viela to avoid forced divestitures and other antitrust hurdles to its acquisition of Alexion Pharmaceuticals, Inc., a company worth fifty times more than Viela.

Just as Viela was successfully launching its first FDA-approved drug, AstraZeneca instigated a sale process by conveying to Viela that, without a sale, it would unload its massive block of Viela shares. AstraZeneca then forced completion of the sale by conveying to Viela, in a detailed seven-page letter, [redacted] This left Viela imperiled. Viela had repeatedly warned public stockholders that, if AstraZeneca was even merely "unwilling" to perform under the contracts, Viela would suffer a corporate catastrophe, involving "losses," "material and adverse effect[s]," "harm," and debilitating "additional costs and delays." AstraZeneca's communicated exit plan pushed the Board into a corner: they had no option other than to sell the Company.

Absent a sale, AstraZeneca's exit would leave Viela without the mission-critical services that AstraZeneca provided.

In *Corwin*, the Court found it significant that "all of the objective facts regarding the board's interests, [the alleged controller's] interests, and the negotiation process, were fully disclosed." *Corwin v. KKR Financial Holdings LLC*, 125 A.3d 304, 312 (Del. 2015).[1] Here, by contrast, none of the objective facts regarding the alleged controller's interests were disclosed. Viela's Schedule 14D-9 did not disclose [redacted] was "an economically relevant statement of intent" that required clear and straightforward disclosure. *Morrison v. Berry*, 191 A.3d 268, 286 (Del. 2018), as revised (July 27, 2018).

The Complaint adequately alleged that the Acquisition triggers, and Defendants cannot satisfy, the entire fairness standard of review. Viela's controlling stockholder, based on its own unique conflict of interest, pressured the rest of the Board to complete an unfair and ill-timed Acquisition. Defendants then concealed that Board-level influence from Viela's public stockholders. The "troubling facts" alleged in the

[1] Unless otherwise indicated, all emphasis is added and all citations and footnotes are omitted.

Complaint, [redacted], did not come to light until Plaintiff unearthed them in confidential Section 220 productions.

Yet, the Trial Court dismissed the Complaint. With respect to control, the Trial Court found that AstraZeneca did not "wield the potential power that it did have." This was in error. Rather than accept the Complaint's detailed allegations as true, as required on a motion to dismiss, the Trial Court instead embarked on a wide-ranging fact-finding mission when browsing through the *86 documents* Defendants attached to their briefs. Trials – not motions to dismiss – resolve factual disputes. Court of Chancery Rule 12 was not designed for fact-finding and does not allow for a full record, evidentiary hearing, or trial. Through the crucible of trial, witnesses can be cross-examined on their self-serving claims in documents. The factfinder can assess witness credibility. Empty assertions in documents can be undermined with contradictory evidence. A pleading-stage motion does not provide those checks and balances. But the Trial Court still attempted to make findings regarding multiple contested facts and resolve a host of factual issues. As a result, the Trial Court's fact-finding was marred with errors and mistakes that undermine several aspects of its Opinion.

The Trial Court also erred in finding that *Corwin* cleansed multiple "troubling facts" that were not actually disclosed to stockholders in the 14D-9. In particular, the

Trial Court failed to apply the misleading partial disclosure standard that this Court has adopted. *See, e.g.*, *Morrison*, 191 A.3d at 283; *City of Dearborn Police & Fire Revised Ret. Sys. v. Brookfield Asset Mgmt. Inc.*, 314 A.3d 1108, 1130 (Del. 2024). The 14D-9 stated that Viela had received no "notice of ... intention to cancel, terminate or suspend performance" of a material contract, while concealing that [redacted]. The Trial Court erred by not assessing whether the 14D-9 was misleading by partial disclosure. The Trial Court also reversibly erred in holding that the stockholder vote was fully informed despite two additional material disclosure violations, including reliable standalone projections and the Viela CEO's conflicted deal negotiations.

The Trial Court's erroneous rulings should be reversed.

SUMMARY OF ARGUMENT

1. When determining whether a pleading alleges a reasonably conceivable controlling stockholder, "'[s]ources of influence and authority must be evaluated holistically, because they can be additive.'" *Tornetta v. Musk*, 310 A.3d 430, 501 (Del. Ch. 2024). AstraZeneca held 26.7% ownership of Viela, enjoyed blocking rights by virtue of Viela's supermajority voting requirement, and employed two Viela directors. Further, Viela could only survive so long as AstraZeneca was willing to perform under an array of contracts. In conveying to Viela that – unless Viela was acquired – AstraZeneca would sell its stock and discontinue its contractual performance, AstraZeneca wielded significant leverage over Viela to complete the Acquisition. Because it is reasonably conceivable that AstraZeneca acted as a conflicted controlling stockholder, entire fairness should govern the motions to dismiss.

2. Judicial cleansing under *Corwin* is unavailable if a plaintiff alleges facts that "support[] a rational inference that material facts were not disclosed or that the disclosed information was otherwise materially misleading." *Morrison*, 191 A.3d at 282. The 14D-9 failed to disclose and/or was misleading regarding three material facts: (i) AstraZeneca's economically relevant statements [redacted]; (ii) Viela management's reliable,

reasonable, and ordinary-course projections that returned a valuation for Viela above the Acquisition price; and (iii) Viela's CEO's conflicted negotiations with Horizon.

STATEMENT OF FACTS

A. AstraZeneca Created Viela, Handpicked Its Management Team, and Held 26.7% of Its Common Stock

AstraZeneca created Viela as a spin-off in February 2018. A104, ¶4. AstraZeneca placed its trusted executives in all five top management positions at Viela, including Zhengbin Yao as CEO and Board member. *Id.* AstraZeneca designated two of its top executives for Viela's Board, including Soriot, AstraZeneca's CEO, and Tyrell Rivers, Executive Director of AstraZeneca's Corporate Development Group. *Id.* Following Viela's IPO in October 2019, the same AstraZeneca-picked management team and the same AstraZeneca directors remained at the Company's helm, and AstraZeneca remained Viela's largest stockholder, owning a 26.7% stake at the time of the Acquisition in early 2021. *Id.*

B. Viela Relied Upon AstraZeneca's Willingness to Perform Viela's Mission-Critical Business Functions

Up until the Acquisition, Viela continued to operate as if it remained a wholly owned AstraZeneca subsidiary. Viela never formed the infrastructure to exist independently of AstraZeneca. A105, 121-22, ¶¶5, 42. Viela repeatedly disclosed in its public filings: "We do not have the ability to independently conduct clinical trials"; "We do not currently have the infrastructure or internal capability to manufacture our product candidates for use in clinical development [or] commercialization"; and "We

do not currently own or operate, nor do we have any plans to establish in the future, any manufacturing facilities or personnel." A121, ¶42.

AstraZeneca performed all of those mission-critical functions for Viela pursuant to an extensive network of multi-year contracts. A105-122-28, ¶¶5, 43-51. Viela was substantially reliant on AstraZeneca for financial services; procurement activities; information technology services; clinical data management and statistical programming; clinical operations; development and commercial activities; and laboratory, office, and supply access. *Id.* Viela repeatedly disclosed that reliance in public filings:

- "In particular, we rely on AstraZeneca for the manufacture of the current clinical and commercial supplies of Uplizna, and for the current clinical and nonclinical supplies of our other product candidates.… AstraZeneca currently manufactures inebilizumab [Uplizna] for us using their proprietary methods in certain steps of the manufacturing process." A125, ¶¶47-48.
- "[W]e rely on AstraZeneca for certain operational and regulatory services with respect to each of our product candidates and their clinical trials and pre-clinical studies." A126, ¶50.
- "We are, and for a period of time will be, substantially reliant on AstraZeneca to provide these services …." A123-24, ¶45.

Viela also repeatedly conceded the adverse consequences it would suffer if AstraZeneca was "unable or unwilling" to perform. A105, 122-28, ¶¶5, 43-51. For example, Viela stated in its March 15, 2021 10-K: "*[I]f AstraZeneca is unable or*

unwilling to satisfy its obligations under these agreements, we could incur operational difficulties or losses that could have a material and adverse effect on our business, prospects, financial condition and results of operations." A124, ¶45. Viela also reported: "If we were to replace AstraZeneca for the manufacture of inebilizumab [Uplizna], *we may incur additional costs and delays* while the replacement manufacturer developed its own independent methods of manufacturing inebilizumab [Uplizna]." A125, ¶48. Similarly, Viela represented that if AstraZeneca discontinued its support, "we believe that our financial results and the commercial prospects for our product candidates in the subject indication *would be harmed, our costs could increase and our ability to generate revenue could be delayed*." A127, ¶50.

AstraZeneca's leverage over Viela was clear: Viela could only survive so long as AstraZeneca was willing to perform under these contracts. *Id.*

C. With AstraZeneca's Backing, Viela Performed Successfully Post-IPO and Was Growing Its Business

Though reliant on AstraZeneca to perform its critical business functions, Viela succeeded as a publicly traded company. A105-06, 138-41, ¶¶7-8, 71-75. On June 11, 2020, the FDA approved one of Viela's products, Uplizna, for the treatment of adult patients with a rare autoimmune condition, a breakthrough for the Company. *Id.*

Viela commercially launched Uplizna with significant success. A106, 138-41, ¶¶8, 71-75. On Viela's August 12, 2020 earnings call, management described the launch as "off to a solid start" and that "[w]ith a healthy balance sheet ... Viela is in a strong and flexible position to execute our U.S. commercialization plan for UPLIZNA, while unlocking the full value of a robust R&D pipeline." *Id.* Viela was fully funded for another two years. *Id.*

Viela also owned multiple promising drug candidates in advanced clinical trials. A106, 139-40, ¶¶8, 72-73. [redacted]. A126-27, ¶50. But Viela was still reliant on AstraZeneca to conduct these clinical and pre-clinical trials and studies. A126, ¶49.

D. AstraZeneca Executives Pursued an Acquisition of Viela's Primary Competitor While Serving on Viela's Board

Despite Viela's strong standalone performance, it remained reliant on AstraZeneca. But AstraZeneca's CEO, Soriot, viewed Viela as a disfavored asset. A106, 136-38, ¶¶9, 67-69. This caused a problem for Viela. In the summer of 2020, while Soriot and Rivers sat on Viela's Board, Soriot pursued AstraZeneca's "capital redeployment plan" and worked to acquire Viela's primary competitor, Alexion. *Id.* Alexion owned the drug Soliris, the only other drug approved to treat the same rare

disease as Uplizna. A123, ¶61. As such, AstraZeneca would need to extricate itself from Viela to gain antitrust approval for a purchase of Alexion. *Id.*

During Soriot's pursuit of Alexion on behalf of AstraZeneca, Soriot was armed with Viela's highly sensitive information regarding its expected place in the market relative to Alexion and Soliris. A141-42, ¶77. This information, which Viela had provided to Soriot as a director, included Viela's proprietary scientific, clinical, and market data regarding pricing strategies, launch plans, and study designs. *Id.*

Armed with this insight from Viela, Soriot knew that AstraZeneca would face antitrust problems – including forced divestitures and other regulatory blockades – if AstraZeneca attempted to close an acquisition of Alexion at the same time it owned a large stake in, and had operational control over, Viela. A106-07, 134-36, ¶¶9, 63-66. These concerns prompted AstraZeneca to untangle itself from Viela. *Id.* No other Viela stockholder harbored a similar incentive. *Id.*

AstraZeneca was willing to sacrifice material value in its Viela investment to pursue its much larger acquisition of Alexion. A107, ¶10. AstraZeneca ultimately reported $776 million in income from the sale of Viela to Horizon. *Id.* In contrast, AstraZeneca paid *$39 billion* to acquire Alexion. *Id.* AstraZeneca's investment in Alexion was ultimately worth over *fifty times* what it received for its investment in Viela.

E. Dual Fiduciaries Soriot and Rivers Effectuated AstraZeneca's Exit Plan from Viela

AstraZeneca, through Soriot, devised and effectuated an exit plan from Viela. A107-08, ¶11. While Soriot was moving to acquire Alexion, he and AstraZeneca pushed Viela into a rushed, single-bidder sale process. A107-08, 141-46, ¶¶11, 76-85. The chronology is clear:

- On September 8, Soriot and AstraZeneca submitted a written offer to acquire Alexion at $155 per share. A107-08, ¶¶11, 62.
- On September 9, Soriot informed Viela that he was resigning from the Board. A107-08, 133-34, 142, ¶¶11, 62, 78.
- On September 18, at Soriot's last Board meeting at Viela, the Board (including Soriot and Rivers) resolved to retain a financial advisor (Goldman), in part, to sell the Company. *Id.*
- On October 6, Viela signed Goldman's engagement agreement, and Yao "instructed" Horizon to submit an acquisition offer for Viela. A143-44, ¶¶79-81.

AstraZeneca maintained its insider access and influence at Viela. A116-17, 145, ¶¶30, 83. During the sale process, Rivers frequently acted on AstraZeneca's behalf, including requesting confidential Viela information for AstraZeneca's benefit. A116-17, ¶30. Soriot also remained in frequent contact with Yao. A145, ¶83.

Because AstraZeneca needed a sale of Viela to complete its acquisition of Alexion, AstraZeneca leveraged its contractual rights and relationships to channel the other Viela directors into a position where they had no option other than to facilitate a

sale. A129-30, ¶55. Viela provided no public rationale for Soriot's announced departure, but AstraZeneca had privately made clear to the Board that "if Viela were not sold, AstraZeneca would expeditiously remove itself from any involvement with the Company, including by promptly terminating its multiple, crucial contractual relationships with Viela and by immediately selling its Viela stock." *Id.*

Given Viela's dependence on AstraZeneca for its business operations, AstraZeneca's leverage placed extraordinary pressure on the Board. A129-30, 141, ¶¶55, 76. As Viela itself conceded, if the Board did not agree to sell the Company, AstraZeneca's extrication would result in the following:

- "if AstraZeneca is unable or unwilling to satisfy its obligations under these agreements, we could incur operational difficulties or losses that could have a material and adverse effect on our business, prospects, financial condition and results of operations";
- if AstraZeneca no longer manufactured Uplizna, it would "delay, prevent or impair our development or commercialization efforts" and Viela "may incur additional costs and delays while the replacement manufacturer developed its own independent methods of manufacturing inebilizumab [Uplizna]";
- if AstraZeneca discontinued the lease, Viela would be left without critical laboratory access; and
- if AstraZeneca discontinued its clinical and pre-clinical work for Viela, "our financial results and the commercial prospects for our product candidates in the subject indication would be harmed, our costs could increase and our ability to generate revenue could be delayed."

A129-30, ¶55.

Moreover, AstraZeneca was Viela's largest stockholder, holding a 26.7% stake in the Company. A130-31, ¶56. As Viela warned in its Form 10-K, sales of such large blocks of Viela's stock – or even "the perception that these sales might occur" – "could depress the market price of our common stock and could impair our ability to raise capital." *Id.*

F. AstraZeneca Formalized Its Exit Plan and Applied Pressure on the Board to Sell

Upon receiving Yao's "instruction," Horizon promptly submitted an acquisition proposal for Viela. A108-09, 143-44, ¶¶13, 79-81. On November 17, 2020, just three weeks after receiving the first offer, the Board agreed to a sale, in principle. A108-09, 146, ¶¶13, 84. In the midst of acquisition negotiations, however, Viela's short single-bidder sale process hit a snag when Horizon abruptly suspended discussions due to its own manufacturing issue. A108-09, 146-47, ¶¶13, 86-87. Suddenly, the sale outcome was murky; Viela had no imminent buyer in sight. *Id.* But AstraZeneca still needed to sell. *Id.*

Displeased with this turn of events, AstraZeneca turned up the heat. A109, 147-50, ¶¶14, 88-94. On January 8, 2021, AstraZeneca submitted a formal letter to Viela,

[redacted]

[redacted]

"AstraZeneca's letter did not mention the sale of its own block of Viela stock, because AstraZeneca had already made this point clear to the Viela Board." A150-51, ¶90. Absent a merger, AstraZeneca would liquidate its entire 26.7% ownership stake in Viela. A109-10, 150-51, ¶¶15, 90. On the evening of January 13, 2021, Viela director Chris Nolet confirmed that [redacted]

[redacted] A109-10, 151, ¶¶15, 91.

G. AstraZeneca's Exit Plan Caused the Board to Sell Viela at an Undervalued Price

On January 18, 2021, buyout discussions with Horizon abruptly resumed. A110, 151, ¶¶16, 92. Two weeks later, the Board agreed to the Acquisition, and the deal was publicly announced on February 1, 2021. A110, ¶16.

AstraZeneca's exit plan pushed the non-AstraZeneca directors into a corner: they had no option other than to sell the Company. A110, 129-32, 152, ¶¶17, 53-60, 93. Absent a sale, AstraZeneca's exit would leave Viela without the mission-critical services that AstraZeneca provided. *Id.*

At the time of the Acquisition, a majority of the Board was comprised of executives of investment funds that were chosen by AstraZeneca to become early investors in Viela. *Id.* These fund-associated directors, having been permitted by AstraZeneca to invest in an AstraZeneca-controlled spin-off, were particularly susceptible to AstraZeneca's pressure. A111-12, 131-32, ¶¶19, 57-60. As a result,

these directors, their related funds, and AstraZeneca locked up the Acquisition with over 50% of the stockholder vote through tender and support agreements. *Id.*

Yao's personal benefits in connection with the Acquisition further ensured his compliance with AstraZeneca's exit plan. A112, 144-45, 152-53, ¶¶20, 82, 95-98. While Yao was negotiating price with Horizon, he simultaneously negotiated management retention and change-in-control payments. *Id.* Yao obtained a lucrative consulting agreement with Horizon that paid more than his annual salary as CEO of Viela, for only part-time work. *Id.*

The Acquisition materially undervalued Viela at just $53.00 per share. A112-13, 154-65, ¶¶21, 99-118. Viela management had produced reasonable and reliable ordinary-course business projections, which yielded expected returns exceeding $60.00 per share. A154-63, 185-89, ¶¶99-115, Complaint Exhibit A. But under Yao's direction, those projections were drastically reduced just one day after Horizon expressed interest in acquiring the Company. *Id.*

On February 12, 2021, Viela filed a materially false and misleading Schedule 14D-9, which failed to disclose and/or misrepresented at least three material facts. A113, 166-70, ¶¶22, 119-126. First, the 14D-9 concealed [redacted] while, at the same time, attaching a misleading statement that Viela had not received any notice of an

intent to terminate any of its material contracts. A167-68, ¶¶122-123. Second, the 14D-9 did not disclose the management projections referenced above. A154-63, 168-69, 185-89, ¶¶99-115, 124, Complaint Exhibit A. Third, the 14D-9 did not disclose material facts regarding Yao's simultaneous negotiations with Horizon regarding compensation for Viela management, including himself, and regarding price. A144-45, 169-70, ¶¶82, 125. After a majority of the outstanding shares were tendered based on the misleading 14D-9, the Acquisition closed on March 15, 2021. *Id.*

H. Post-Script: the European Union Found that AstraZeneca Held Power over Viela's Operations

On November 16, 2022, the European Commission publicly released its previous antitrust review findings regarding AstraZeneca's acquisition of Alexion:

> Viela sources manufacturing services related to Uplizna from AstraZeneca. Uplizna directly competes with some of Alexion's marketed drugs and pipeline projects.…
>
> [C]ompetition concerns have been raised in relation to the above vertical link on the ground that the new entity [*i.e.*, AstraZeneca/Alexion] *would have the ability and the incentive to implement an input foreclosure strategy by discontinuing or degrading the manufacture of Uplizna so as to favour Alexion's products for the treatment of NMOSD and gMG*.

A135, ¶64.

The European Commission forced AstraZeneca and Horizon to amend AstraZeneca's supply agreements "to avoid the risk of supply disruption" in the manufacture of Uplizna. A135-36, ¶65. Once these amendments were in place and

AstraZeneca unloaded its full ownership stake in Viela through the Acquisition, the European Commission cleared the proposed AstraZeneca/Alexion merger on July 6, 2021. *Id.*

ARGUMENT

I. PLAINTIFF ADEQUATELY ALLEGED THAT ASTRAZENECA WAS A CONTROLLING STOCKHOLDER

A. Question Presented

Whether the Trial Court erred in finding that Plaintiff did not plead facts creating a reasonably conceivable inference that AstraZeneca was a controlling stockholder. The question was raised (MTD Answering Br. at 63-84 (A262-83)) and considered (Opinion at 43-73) below.

B. Scope of Review

The Court reviews "'*de novo* the dismissal by the Court of Chancery of a complaint under Rule 12(b)(6).'" *Brookfield*, 314 A.3d at 1126.

C. Merits of the Argument

"A stockholder could be found a controller under Delaware law: where the stockholder … owns less than 50% of the voting power of a corporation … but 'exercises control *over the business affairs* of the corporation.'" *Sheldon v. Pinto Tech. Ventures, L.P.*, 220 A.3d 245, 251 (Del. 2019). "Because '[b]roader indicia of effective control also play a role in evaluating whether a defendant exercised actual control over a decision,' the sources of influence … in support of a finding of general control [can] factor into the transaction-specific analysis." *Tornetta*, 310 A.3d at 501.

Sources of influence supporting general control include "ownership of a significant equity stake (albeit less than a majority), the right to designate directors (albeit less than a majority), decisional rules in governing documents that enhance the power of a minority stockholder or board-level position, and the ability to exercise outsized influence in the board room, such as through high-status roles like CEO, Chairman, or founder." *Basho Techs. Holdco B, LLC v. Georgetown Basho Invs., LLC*, 2018 WL 3326693, at *26 (Del. Ch. July 6, 2018) (citing multiple cases), *aff'd sub nom. Davenport v. Basho Techs. Holdco B, LLC*, 221 A.3d 100 (Del. 2019). Regarding transactional control:

> It is impossible to identify or foresee all of the possible sources of influence that could contribute to a finding of actual control over a particular decision. Examples include, but are not limited, to: (i) relationships with particular directors that compromise their disinterestedness or independence, (ii) relationships with key managers or advisors who play a critical role in presenting options, providing information, and making recommendations, (iii) the exercise of contractual rights to channel the corporation into a particular outcome by blocking or restricting other paths, and (iv) the existence of commercial relationships that provide the defendant with leverage over the corporation, such as status as a key customer or supplier.

Id.

"'Sources of influence and authority must be evaluated holistically, because they can be additive.'" *Tornetta*, 310 A.3d at 501. "'Rarely (if ever) will any one source of influence or indication of control, standing alone, be sufficient to make the

necessary showing.' 'Different sources of influence that would not support an inference of control if held in isolation may, in the aggregate, support an inference of control.'" *Id.* at 500-01. Control involves a "pleading stage inference" based on a "constellation of facts," where "the plaintiff receives the benefit of the doubt in a close case." *Voigt v. Metcalf*, 2020 WL 614999, at *22 (Del. Ch. Feb. 10, 2020). Here, AstraZeneca held *each and every one* of the above-delineated "sources of influence" over Viela.

1. AstraZeneca's Significant 26.7% Equity Stake in Viela

At 26.7% ownership, AstraZeneca was by far Viela's largest stockholder. A104, 114-15, 121-22, 128-31, ¶¶4, 26, 42, 52, 56. Section 203(c)(4) "creates a presumption of control at 20% ownership." *Basho*, 2018 WL 3326693, at *27 n.319. "A person who is the owner of 20% or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary." 8 *Del. C.* § 203(c)(4). Multiple Court of Chancery decisions have cited this presumption when analyzing control. *See, e.g.*, *Basho*, 2018 WL 3326693, at *27 n.319 (collecting authorities applying similar assumptions); *Voigt*, 2020 WL 614999, at *19 n.20 (same); *Tornetta*, 310 A.3d at 503.

When evaluating control, this Court has affirmed "the importance of examining whether an insurgent could win a proxy contest or whether the company could take action without the stockholder's consent." *Corwin*, 125 A.3d at 307 n.7. The Trial Court did not do that here. Other Court of Chancery rulings have calculated that if the holder of a 25% block favors a particular outcome, then the blockholder will win as long as holders of just 29% of the remaining stock vote the same way. *Voigt*, 2020 WL 614999, at *18; *Tornetta*, 310 A.3d at 502. By contrast, an opponent of the 25% blockholder must garner 75% of the unaffiliated shares to win. *Tornetta*, 310 A.3d at 502. "At a minimum," AstraZeneca's 26.7% block supplied a "powerful rhetorical card to play in the boardroom." *Id*. at 503 (cleaned up).

The Trial Court attempted to minimize the influence of AstraZeneca's ownership stake by incorrectly stating that Plaintiff "relegates this argument to one sentence in his answering brief." Opinion at 48. The Trial Court missed Plaintiff's reliance on AstraZeneca's ownership when distinguishing *KKR Financial* (MTD Answering Br. at 74 (A273)), in the Statement of Facts (*id.* at 7-60 (A206-59)), and throughout the Complaint (*see, e.g.*, A104, 121-22, 128-31, ¶¶4, 42, 52, 56). The Trial Court's failure to meaningfully consider AstraZeneca's voting power left its control analysis materially incomplete.

Additionally, AstraZeneca's 26.7% stake operated in conjunction with a supermajority voting requirement in Viela's certificate of incorporation. A128-29, ¶52. These provisions allowed AstraZeneca to maintain exclusive veto power over the removal of any director, even for cause, and over certain changes to Viela's certificate of incorporation and bylaws. *Id.* The Trial Court agreed that these "blocking rights are meaningful …." Opinion at 51. The Trial Court, however, brushed this issue aside with an uncited factual finding that AstraZeneca had not yet exercised those rights. *Id.* But even if true, that is not dispositive; what matters is the controller's leverage to veto a future action it opposes. *See, e.g.*, *Williamson v. Cox Commc'ns, Inc.*, 2006 WL 1586375, at *5 (Del. Ch. June 5, 2006) (finding "potential veto power" supported inference of control where "plaintiff makes no allegation that [the alleged controllers] ever affirmatively vetoed any [company] board decisions").

In sum, "'[a]ll else equal, a relatively larger block size should make an inference of actual control more likely.'" *Tornetta*, 310 A.3d at 502.

2. AstraZeneca's Contractual Influence over Viela

An inference of control can exist through "the existence of commercial relationships that provide the defendant with leverage over the corporation, such as status as a key customer or supplier." *Basho*, 2018 WL 3326693, at *26; *Voigt*, 2020 WL 614999, at *12. Viela could only function so long as AstraZeneca was willing to

perform under a web of mission-critical contracts. A105, 122-28, ¶¶5, 43-51. Viela repeatedly disclosed its "substantial" reliance in its public filings, A125-26, ¶¶47-49, which gave AstraZeneca "leverage over" Viela and the ability to "channel [Viela] into a particular outcome." *Basho*, 2018 WL 3326693, at *26.

In *Williamson*, the Court of Chancery drew an inference of control based on the leverage held by two 17.1% stockholders as the company's "only significant customers." 2006 WL 1586375, at *5. The company "depended on their cooperating as customers if it were going to operate its business profitably." *Id.* This relationship supplied the alleged controller with "significant leverage" to force the company towards a preferred path. *Id*. The same concepts apply to Viela's dependence on AstraZeneca.

The Trial Court agreed that "Viela substantially depended on AstraZeneca to support its business operations, including by providing products and services under the Support Agreements" and "for a significant portion of its business operations in the wake of the spin-off." Opinion at 61, 65. The Trial Court also recognized that "Viela's public filings describe how Viela is 'substantially reliant' on AstraZeneca to provide certain business services, and the Company would face 'operational difficulties' if AstraZeneca was unwilling or unable to continue to provide such services." *Id.* at 65.

The Trial Court, however, then found in conclusory fashion that Viela's substantial reliance upon AstraZeneca "did not give [AstraZeneca] control over Board decisions or the Company generally." *Id.* at 65-66. This unexplained and unsupported factual finding was in error. The Trial Court failed to assess the key inquiry on this issue, which looks to the *leverage* AstraZeneca possessed over Viela and its Board. *See, e.g.*, *Basho*, 2018 WL 3326693, at *26 ("leverage over the corporation"); *Williamson*, 2006 WL 1586375, at *5 ("significant leverage"); *Tornetta*, 310 A.3d at 500 ("ability to exert influence"); *In re Cysive, Inc. S'holders Litig.*, 836 A.2d 531, 553 (Del. Ch. 2003) ("enables him to control the corporation, *if he so wishes*"). If AstraZeneca wished to channel Viela into a particular course of action for AstraZeneca's own interests – *e.g.*, a sale of the Company – AstraZeneca could (and did) apply leverage by confirming that it would no longer be "willing" to perform under the contracts. In that scenario, Viela would incur "difficulties," "losses," "material and adverse effect[s]," "financial results … harmed," increased costs, and delayed revenues. A123-24, 129-30, ¶¶45, 55; *see, e.g.*, *Skye Min. Invs., LLC v. DXS Cap. (U.S.) Ltd.*, 2020 WL 881544, at *27 (Del. Ch. Feb. 24, 2020) (control adequately alleged where contractual rights "gave [alleged controllers] the unilateral power to shut [the company] down – full stop"). The Trial Court erred by failing to assess AstraZeneca's *leverage* over Viela.

3. AstraZeneca Wielded Its Power Over Viela

With detailed factual support, Plaintiff alleged that, "[t]o bring about the Acquisition, AstraZeneca wielded its power to channel the remaining directors into a position where they had no option other than to facilitate a sale of the Company." A110, 129-52, ¶¶17, 53-94, Section II(G) ("AstraZeneca Wielded Its Power Coercively During the Acquisition Process"). Yet, the Trial Court ignored and then contradicted those well-pleaded allegations when reaching the following counterfactual finding: "Nor did AstraZeneca wield the potential power that it did have." Opinion at 66.

The Trial Court erred when it rewrote Plaintiff's "'well-pled complaint' in favor of [Defendant AstraZeneca's] own version of events with documents drafted at a time when litigation relating to their contents was likely." *In re CBS Corp. S'holder Class Action & Derivative Litig.*, 2021 WL 268779, at *18 (Del. Ch. Jan. 27, 2021), as corrected (Feb. 4, 2021). "That is not how our Chancery Rule 12(b)(6) works." *Id.* Rather than accept the Complaint's allegations as true, as required on a motion to dismiss, the Trial Court instead embarked on a wide-ranging fact-finding mission when browsing through the 86 documents Defendants attached to their briefs. As a result, the Trial Court committed multiple factual errors when assessing the Complaint's well-pleaded allegations showing AstraZeneca's power over Viela.

First, the Trial Court found that "AstraZeneca did not threaten to terminate the Support Agreements *or otherwise abandon Viela* in the January 8 Letter" because "AstraZeneca *only had an express right to terminate the Clinical Supply Agreement for convenience,* which was subject to a lengthy notice and winddown period." Opinion at 71. This counterfactual ruling is incorrect. When focusing on whether AstraZeneca had "an express right to terminate," the Trial Court did not account for Viela's repeated warnings of a corporate catastrophe if AstraZeneca were merely "unwilling" to perform. *See* A123-24, 129-30, ¶¶45, 55 ("if AstraZeneca is *unable or unwilling to satisfy its obligations under these agreements*, we could incur operational difficulties or losses").

The Trial Court's fact-findings in this regard failed to comprehend that AstraZeneca, like any business entity, can elect to breach a contract – just as AstraZeneca threatened to do with Viela and just as AstraZeneca *actually did* with another entity dependent on its support in the same time period. *See, e.g.*, *Shareholder Representative Services LLC v. Alexion Pharmaceuticals, Inc.*, 2024 WL 4052343, at *48 (Del. Ch. Sept. 5, 2024) (finding Alexion/AstraZeneca liable for breach of contractual obligation to pursue drug milestones while "influenced, motivated by, or driven by AstraZeneca's pursuit of merger synergies" from its Alexion acquisition). Even if AstraZeneca was contractually bound to perform,

AstraZeneca wielded its power by confirming that it was no longer *willing* to perform. A147-51, ¶¶88-91.

Moreover, AstraZeneca cast aside the Trial Court's purported "lengthy notice and winddown period" [redacted] A147-48, ¶88. AstraZeneca was "unwilling" to comply with the same contractual provisions that the Trial Court found comfort in.

Second, the Trial Court incorrectly claimed that "[i]t is not until January 8, 2021 that Plaintiff alleges that AstraZeneca 'threatened' to abandon Viela." Opinion at 74. Not true. The Trial Court compounded this factual error by using it to support its dispositive factual finding that "it is not a reasonable inference that AstraZeneca exerted control to threaten Viela's Board into pursuing and ultimately approving the Merger." *Id.* These factual errors contradicted the following allegations, all of which show AstraZeneca threatened abandonment *before* January 8, 2021:

- "Viela provided no public rationale for Soriot's announced departure, but AstraZeneca *had privately made clear* to the Board that unless the Company was sold, AstraZeneca was out." A108, 141, ¶¶12, 76.
- "AstraZeneca's [January 8, 2021] letter did not mention the sale of its own block of Viela stock, because AstraZeneca *had already* made this

point clear to the Viela Board. The rest of the Board understood that AstraZeneca's exit plan was meant to force an acquisition of Viela." A150-51, ¶90 (citing Nolet email).

- "*[B]y October 30, 2020*, AstraZeneca *had already* made clear that Viela needed to be sold, Yao had already instigated an acquisition offer for the Company, and Horizon had reciprocated with an indication of interest just one day prior." A157-58, ¶105.

The Trial Court discounted those factual allegations in a footnote by claiming that "the Complaint does not point to any communications to support these conclusory allegations." Opinion at 71 n.223. That ruling was also incorrect. Although based on a statutorily limited Section 220 production of books and records, the Complaint still cited specific communications and a variety of evidence supporting those factual allegations, including:

- Email evidence: Nolet [redacted] A150-51, ¶90. Because the January 8th [redacted] did not mention a sale of AstraZeneca's stock, it is a reasonable inference that Nolet and the CFO would have learned of AstraZeneca's intent to sell its shares

directly from AstraZeneca's corporate executives on the Board. *Id*. How else would they have known?

- Board discussions: On January 14, 2021, the Board [redacted] indicating that AstraZeneca had previously threatened to sell its stock. A151, ¶91.
- Ongoing conversations: In November 2021, Yao and Soriot periodically met to "confidentially explore AstraZeneca's current view *as a shareholder* of various transaction scenarios in view of the Company's current progress." A145, ¶83.
- Factual chronology: It is reasonable to infer that AstraZeneca had made its intended exit clear to the Board given that Viela (through Yao) proactively sought an acquisition proposal from Horizon just days after Soriot's final board meeting, which occurred while Soriot was solidifying AstraZeneca's purchase of Alexion. A107-08, 133-34, 142-43, ¶¶11, 62, 78-79. It is implausible to view these events as random coincidences.[2]

[2] The Trial Court also erred by equating [redacted] with Viela to a pre-existing sale process unprompted by AstraZeneca. Opinion at 72.

The Complaint is teeming with supporting facts and evidence showing that AstraZeneca threatened a departure *before* January 8. The Trial Court erred when reaching a contradictory inference in favor of Defendants.

Third, the Trial Court further discounted AstraZeneca's influence through an ill-supported factual finding that the January 8th [redacted] represented a mere "'proposal' to facilitate a business separation *that had been in the works since Viela's IPO in October 2019*." Opinion at 70. The Trial Court's support for that finding was a statement contained in AstraZeneca's January 8th letter. *Id.* at 70 n.221.

The Trial Court erred – legally and factually – when accepting the truth of AstraZeneca's self-serving assertions in its January 8th letter, drafted at a time when AstraZeneca knew that antitrust review of its Alexion acquisition and related Viela entanglements was inevitable. Legally, "[i]n deciding a Rule 12(b)(6) motion to dismiss, the Court of Chancery could not consider the [January 8th letter] for the truthfulness of its [statements]." *Vanderbilt Income & Growth Assocs., L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613-14 (Del. 1996); *see also Voigt*, 2020 WL 614999, at *9 ("The incorporation-by-reference doctrine does not enable a court

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The Trial Court missed the fact that "up until October [2021], Horizon was only interested in a limited partnership about one pipeline candidate, VIB7734." A143, ¶79.

to weigh evidence on a motion to dismiss."). Yet, the Trial Court gave Defendants an unwarranted inference that every factual claim in AstraZeneca's letter was true.[3]

Factually, the Court erred when accepting as true AstraZeneca's unsupported finding that a business separation "had been in the works" since Viela's IPO. Opinion at 70. In March 2021, *after* the January 8th letter, Viela represented that "[w]e are, and for a period of time will be, substantially reliant on AstraZeneca to provide these services." A122-28, ¶¶43-51. At no point in time did Viela ever disclose – as the Trial Court erroneously found – that Viela and AstraZeneca were on the verge of separating.

Fourth, in making factual findings minimizing AstraZeneca's contractual influence over Viela, the Trial Court overlooked a key allegation. After conducting an exhaustive, months-long antitrust review of AstraZeneca's attempted acquisition of Alexion and AstraZeneca's influence over Viela, the European Commission found that AstraZeneca had "*the ability and the incentive* to implement an input foreclosure

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[3] The direct, but relatively courteous tone of AstraZeneca's attorney-drafted letter does not discount the very clear message [redacted] A147-48, ¶88; *see also Brookfield*, 314 A.3d at 1129 n.85 (quoting observation that "'[t]he stereotypical mobster is more subtly caring by saying, "You better be careful on the way home. I'd hate for something to happen to you." That's subtle, that's indirect, but fairly communicative'"; also recognizing "implicit threats").

strategy by discontinuing or degrading the manufacture of Uplizna so as to favour Alexion's products for the treatment of NMOSD and gMG." A135, ¶64. In contrast, the Trial Court here found that AstraZeneca wielded no influence over Viela or its Board as a result of AstraZeneca's manufacture of Uplizna. Opinion at 61-64. The Trial Court's pleading-stage fact findings are difficult to square with the European Commission's investigative finding that AstraZeneca had the "ability" to "foreclose" Viela's only commercial product by "discontinuing or degrading" its manufacture. A135, ¶64. The Trial Court erred when resolving these clear factual disputes in favor of Defendants on a motion to dismiss.

4. AstraZeneca Held Multiple Additional Layers of Influence Over Viela

While not dispositive in and of themselves, the following "additive" factors support AstraZeneca's additional influence over Viela and its Board: "relationships with particular directors that compromise their disinterestedness or independence [and] relationships with key managers or advisors who play a critical role in presenting options, providing information, and making recommendations …." *Basho*, 2018 WL 3326693, at *26. Two of AstraZeneca's highest-level executives – Soriot and Rivers – sat on the Viela Board and even participated in Board discussions and votes about increasing Viela's payments to their employer, AstraZeneca. A124, ¶46;

see Williamson, 2006 WL 1586375, at *4 (two of five directors supported inference of control). Soriot was also instrumental in the Board's decision to retain a financial advisor to sell Viela. A107-08, 133-34, 142-44, ¶¶11, 62, 78-81. In addition, AstraZeneca had chosen its executives to fill all of the top management positions at Viela, including CEO Yao. A104, 120-21, ¶¶4, 41. These management employees, especially Yao, played "a critical role in presenting options" and "providing information" in connection with the Acquisition. *Basho*, 2018 WL 3326693, at *26.

5. *KKR Financial* Is Distinguishable

The Trial Court principally relied on *In re KKR Financial Holdings LLC Shareholder Litigation*, 101 A.3d 980 (Del. Ch. 2014), *aff'd sub nom. Corwin*, 125 A.3d 304. *KKR Financial* is distinguishable for two principal reasons. First, KKR held 1% of KFN's equity. Unlike here, there was no presumption of control, *see* 8 *Del. C.* § 203(c)(4), and KFN faced no repercussions if KKR simply sold its stock. *Cf.* A130, ¶56 ("Sales of a substantial number of shares of [Viela's] common stock … could depress the market price of our common stock and could impair our ability to raise capital"). In fact, the *KKR Financial* plaintiffs confirmed that their claim "really has nothing to do with the amount of voting power KKR held in KFN." 101 A.3d at 993.

Second, *KKR Financial* contained no allegation that KKR wielded its power during the acquisition process. The plaintiffs there even disclaimed "any coercive power that stockholder [KKR] could wield over the board's ability to independently decide whether or not to approve the merger." *Id.* at 994. There was no allegation that KKR ever indicated that its support for KFN would discontinue in the absence of a sale. *Id.* By contrast here, AstraZeneca wielded its power, which gave AstraZeneca transactional control over the Acquisition itself. A129, ¶53.

6. Entire Fairness Applies

"When a transaction involving self-dealing by a controlling shareholder is challenged, the applicable standard of judicial review is entire fairness, with the defendants having the burden of persuasion." *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1239 (Del. 2012). The Trial Court did not address or consider AstraZeneca's conflicts with respect to the Acquisition.

AstraZeneca "'had [a] material financial or other interest in the transaction different from the shareholders generally.'" *Chester Cnty. Employees' Ret. Fund v. New Residential Inv. Corp.*, 186 A.3d 798, 2018 WL 2146483, at *1 n.7 (Del. May 10, 2018) (TABLE). Plaintiff alleged:

> AstraZeneca accelerated its "capital redeployment" exit plan from Viela to pursue and complete its fifty times larger acquisition of Viela's primary competitor. This conflict of interest was unique to AstraZeneca,

> Viela's largest stockholder. Other stockholders did not need to sell their shares of Viela because of any unique business strategies or pending acquisitions of a competitor.

A113-14, 133-38, ¶¶23, 61-69. Because it is reasonably conceivable that AstraZeneca was a conflicted controller, entire fairness should have provided the operative standard of review. The Trial Court erred by granting the motions to dismiss under a lower standard.

II. PLAINTIFF ADEQUATELY ALLEGED THAT THE 14D-9 WAS MATERIALLY MISLEADING

A. Question Presented

Whether the Trial Court erred in finding that Plaintiff failed to plead a material misrepresentation or omission in the 14D-9. The question was raised (MTD Op. at 89-101) and considered (Opinion at 76-102) below.

B. Scope of Review

The Court considers application of *Corwin* on a motion to dismiss *de novo*. *Morrison*, 191 A.3d at 282.

C. Merits of the Argument

"Careful application of *Corwin* is important due to its potentially case-dispositive impact." *Id.* at 274. "Precisely because Delaware law gives important effect to an informed stockholder decision, Delaware law also requires that the disclosures the board makes to stockholders contain the material facts and not describe events in a materially misleading way." *Appel v. Berkman*, 180 A.3d 1055, 1057 (Del. 2018). Judicial cleansing under *Corwin* is therefore unavailable if a plaintiff alleges facts that "support[] a rational inference that material facts were not disclosed or that the disclosed information was otherwise materially misleading." *Morrison*, 191 A.3d at 282.

Information is material if there is a "'substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote'" or "'significantly alter[] the "total mix" of information made available.'" *Id.* Here, it is reasonably conceivable that a Viela stockholder would view the facts omitted and misrepresented in the 14D-9 as material.

1. The 14D-9 Failed to Disclose, and Was Materially Misleading Regarding, AstraZeneca's Intent to Sever Ties with Viela

The Trial Court erred in ruling that information concerning [redacted], as well as the intended sale of its 26.7% stake, was immaterial. In *Corwin*, the Court found it significant that "all of the objective facts regarding the board's interests, [the alleged controller's] interests, and the negotiation process, were fully disclosed." 125 A.3d at 312. Here, by contrast, the objective facts regarding the alleged controller's interests were concealed. The 14D-9 omitted facts that would have revealed the conflicting agenda of Viela's founder, largest stockholder, employer of two directors, landlord, and only commercial supplier.

a. The Court Erred in Finding that AstraZeneca's Stated Separation Was Immaterial

AstraZeneca's January 8th letter notified [redacted]

[redacted] A148-50, ¶89. The Viela Board also knew that AstraZeneca intended to sell its Viela shares in the absence of an acquisition. A150-51, ¶90. This information was material and should have been disclosed. *Morrison* is on point:

> Plaintiff adequately alleges that the 14D-9 omits the material statement from the November 28 E-mail that Ray Berry believed that the Board should pursue a sale of the Company "at this time" and that, if it failed to act, he would sell his shares – a warning that Plaintiff characterizes as a threat. We do not embrace Plaintiffs' characterization of this as a threat, but *we do view it as an economically relevant statement of intent*.

191 A.3d at 286-87.

The Court in *Morrison* concluded: "A reasonable stockholder would want to know … [Berry's] communication of his intent to sell his shares if a transaction were not consummated." *Id.* This Court has repeatedly held, just as in *Morrison*, that the conflicts, non-ratable benefits, and views of influential blockholders matter to the minority stockholders. *See Brookfield*, 314 A.3d at 1137 ("it is reasonably conceivable that the Proxy's failure to disclose [the full extent of a controller's non-ratable benefit] likely significantly altered the 'total mix' of information"); *Appel*, 180 A.3d at 1059 (finding material the views of "the very person who founded [the company] and under whose leadership as CEO the company flourished").

The Trial Court attempted to distinguish *Morrison* by disagreeing with Plaintiff's allegation that the January 8 [redacted] was a "threat." Opinion at 83-86. That distinction was in error. In *Morrison* too, the Court disagreed with the plaintiffs' characterization of Berry's email as a threat. 191 A.3d at 286-87. But the Court still "view[ed] it as an economically relevant statement of intent" that should have been disclosed. *Id.*

When assessing materiality, the Trial Court again went on a fact-finding expedition and made mistakes. First, the Trial Court found that [redacted] was "a far cry from a threat to terminate these contracts on an expedited basis as Plaintiff alleges." Opinion at 83. The Trial Court overlooked that AstraZeneca wrote exactly that. [redacted] A147-50, ¶¶88-89.

Second, the Trial Court found that AstraZeneca's intended separation from Viela was immaterial to stockholders because "it is not reasonably conceivable that the Board was pressured to pursue a sale of the Company … in response to AstraZeneca's actions." Opinion at 86. The Trial Court erroneously conflated two separate inquiries subject to separate legal standards. From the perspective of

stockholders, the applicable legal standard is not whether the Board was pressured, but whether the facts "altered the 'total mix' of information made available.'" *Morrison*, 191 A.3d at 283; *cf. Brookfield*, 314 A.3d at 1132 ("It does not matter whether the financial advisor's opinion was ultimately influenced by the conflict of interest; the presence of an undisclosed conflict is still significant … *the stockholder's perspective is paramount*").

Third, there exists a substantial likelihood that a reasonable investor would have considered disclosure of these facts important in deciding whether to tender. The Trial Court overlooked that disclosure would have given stockholders a reason to conclude that: (i) AstraZeneca and its executives on the Board (one of whom recommended the Acquisition to Viela stockholders in the 14D-9) were conflicted with respect to the Acquisition; (ii) AstraZeneca's CEO pursued an acquisition of Viela's competitor while he sat on Viela's Board and was armed with Viela's proprietary trade secrets; (iii) AstraZeneca was on the verge of selling its stock and ending its contractual support for Viela, which would have placed Viela in a materially different position as a standalone company without a sale; and (iv) when

voting to approve the Acquisition, the full Board may have been subjected to extraneous influences arising from the conflicts of its largest stockholder.[4]

b. The Court Erred When Failing to Assess Whether the 14D-9 Included a Misleading Partial Disclosure

The 14D-9 (through its attachment of the Merger Agreement as an exhibit) contained the following representation: "To the Knowledge of the Company as of the Agreement Date, … no party to any Material Contract has given [Viela] written notice of its intention to cancel, terminate or suspend performance under any Material Contract …." A167, ¶122. This representation was, at a minimum, a materially misleading partial disclosure. *Id.*

"'Just as disclosures cannot omit material information, disclosures cannot be materially misleading.'" *Brookfield*, 314 A.3d at 1133. "'[E]ven a non-material fact can, in some instances, trigger an obligation to disclose additional, otherwise non-

[4] The Court has focused on alleged conflicts of legal and financial advisors in two recent opinions. *See, e.g.*, *Brookfield*, 314 A.3d 1132-33; *City of Sarasota Firefighters' Pension Fund v. Inovalon Holdings, Inc.*, 319 A.3d 271, 291-304 (Del. 2024). Relative to an outside advisor, the justification for clear and straightforward disclosure is probably greater in cases like this one, given the potential conflicts of large and influential blockholders with multiple board seats and significant commercial ties. *See id.* at 304 ("Boards, committees, and their advisors should take care in accurately describing the events and the various roles played by board and committee members and their retained advisors.").

material facts in order to prevent the initial disclosure from materially misleading the stockholders.'" *Id.* The Trial Court did not apply this standard.

When ruling on this issue, the Trial Court focused on whether the January 8th letter *in fact* constituted a legally effective "notice of termination." *See* Opinion at 88 (finding no inference "that AstraZeneca provided notice of its intent to cancel, terminate, or suspend performance of the Support Agreements"). At a minimum, the Trial Court erred by failing to apply the misleading partial disclosure standard. The 14D-9 was materially misleading when claiming that Viela had received no "*notice of* ... *intention* to cancel, terminate or suspend performance," [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

Finally, the Complaint also alleged that Soriot breached his fiduciary duties to Viela stockholders when acting for AstraZeneca's self-interest: "While he sat on Viela's Board, and while he was privy to confidential Viela trade secrets about its products and markets, Soriot secretly caused AstraZeneca to pursue an acquisition of Viela's primary competitor, Alexion." A141-42, 174, ¶¶77, 142. The Trial Court never addressed that claim or mentioned those allegations. Instead, it found that *Corwin* cleansed misconduct that was not actually disclosed to Viela stockholders. The Trial Court's ruling turned *Corwin* on its head. *Cf. Corwin*, 125 A.3d at 312 ("if troubling facts regarding director behavior were not disclosed that would have been material to a voting stockholder, then the business judgment rule is not invoked").

2. The 14D-9 Failed to Disclose Viela's Most Recent Operational Projections Prior to the Merger

Any misstatement or omission in the 14D-9 "which misled the stockholders concerning the value of the company would necessarily be material." *Zirn v. VLI Corp.*, 681 A.2d 1050, 1057 (Del. 1996). "In the context of a cash-out merger, reliable management projections of the company's future prospects are of obvious

materiality to the electorate." *In re PNB Holding Co. S'holders Litig*., 2006 WL 2403999, at *15 (Del. Ch. Aug. 18, 2006).

"[T]hree months before Horizon submitted its initial indication of interest, Viela management prepared reasonable, reliable, and well-supported five-year operational projections regarding the Company's expected revenues, costs, expenses, and cash flows." A154, ¶99. Those projections returned a valuation of Viela at well above $60.00 per share. *Id.* These projections were material and should have been disclosed. *Id.*

"[I]f the circumstances surrounding the preparation of interim projections reveal them to be reliable enough to aid stockholders in making an informed judgment, they should be disclosed, regardless of whether they were the final projections relied upon by the Board." *Chester Cnty. Employees' Ret. Fund v. KCG Hldgs., Inc.*, 2019 WL 2564093, at *14 (Del. Ch. June 21, 2019). "When management projections are made in the ordinary course of business, they are generally deemed reliable." *Cede & Co. v. Technicolor, Inc*., 2003 WL 23700218, at *7 (Del. Ch. Dec. 31, 2003), as revised (July 9, 2004), *aff'd in part, rev'd in part*, 884 A.2d 26 (Del. 2005).

Plaintiff alleged sixteen detailed paragraphs of facts, and a four-page chart, supporting the reliability of the June Projections. A154-63, 185-89, ¶¶99-115, Complaint Exhibit A ("Changes to Revenues from the June Projections to the October

Projections"). Plaintiff alleged in detail how the June Projections were: (a) prepared in the ordinary course of business and used for operational purposes; (b) utilized in a Board-approved budget; (c) consistent with management's public statements that Uplizna's launch was performing as expected; (d) supported by the Board's award to Viela management of 125% to 150% of their target cash bonuses for 2020 and management's related report that "we had in the aggregate exceeded our corporate goals"; (e) corroborated by subsequent statements from Horizon regarding the value of Viela's pipeline; and (f) more reliable than the October and Fairness Projections, which contained rushed, unexplained, and unjustified reductions in performance. *Id.* Plaintiffs' Exhibit A, attached to the Complaint, contained detailed analysis of the adjustments made from the June Projections to the October Projections (and ultimately the Fairness Projections), and charted the complete absence of justification for each corresponding change. A158-59, 185-89, ¶106, Complaint Exhibit A.

The Trial Court overlooked *all* of those allegations. None of those facts are addressed in the Trial Court's opinion in any detail. Instead, the Trial Court only referenced a paragraph in *an entirely different section of the Complaint* referencing analyst reports. *See* Opinion at 92 (citing paragraph 117 when purporting to describe Plaintiff's "argument that the June Projections were material"). The Trial Court erred by failing to consider any of the multitude of alleged facts supporting the reliability of

the June Projections. *Cf. KCG Holdings*, 2019 WL 2564093, at *14 ("it is reasonably conceivable the earlier projections and the circumstances surrounding the preparation of the Revised Projections would have been viewed as material and should have been disclosed").

3. The 14D-9 Failed to Disclose Yao's Numerous Post-Merger Compensation Discussions with Horizon During the Merger Negotiation Process

Plaintiff alleged that Horizon's first offer letter solicited Yao for post-merger employment. A143-44, ¶80. Thereafter, Yao and Horizon repeatedly discussed post-merger employment. A144-45, ¶82. "While the 14D-9 disclosed that Yao conducted unsupervised pricing discussions with Horizon on November 12, November 16, and November 17, 2020, at the same time, the 14D-9 omitted that, on November 12, 2020, Yao personally discussed with Horizon's CEO Walbert, the anticipated retention of Viela executive management in an acquisition (whether through employment or consulting agreements)." A169-70, ¶125.

As in *Mindbody,* "it is at least reasonably conceivable that a reasonable stockholder would consider [the CEO's] discussions with [the buyer] concerning the prospect of his future employment material." *In re Mindbody, Inc*., 2020 WL 5870084, at *28-*29 (Del. Ch. Oct. 2, 2020).

The Trial Court found that the existing disclosures were sufficient, including the 14D-9's statement that unnamed "'executive officers, members of the Board and affiliates *may* be considered to have interests … that *may* be different from or in addition to those of the Company's stockholders 'generally.'" Opinion at 98. That finding was in error. *See Brookfield*, 314 A.3d at 1133 ("the Proxy's use of the word 'may' in addressing Morgan Stanley's holdings in Brookfield was misleading."); *Inovalon*, 319 A.3d at 292-93 (same).

The Trial Court compounded that error by relying on the 14D-9's partial disclosure that Yao was offered a consulting agreement "[f]ollowing the execution of the Merger Agreement." Opinion at 99. This partial disclosure omitted that Yao had discussed such issues while purporting to negotiate deal price well *before* execution of the Merger Agreement. A143-51, 169-70, ¶¶80-92, 125. *See Inovalon*, 319 A.3d at 294 ("it was similarly misleading for the Proxy to state that Evercore 'may' provide advisory services … when, in fact, it was providing such services, and thus there was an actual concurrent conflict").

CONCLUSION

For the foregoing reasons, this Court should reverse the Trial Court's ruling and remand the Action for further proceedings.

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CERTIFICATE OF SERVICE

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