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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, YANGLING CAO, ANDREAS WICKI, CHRIS NOLET, and RACHELLE JACQUES, Defendants below, Appellees.	**PUBLIC VERSION FILED NOVEMBER 15, 2024** No. 303, 2024 On appeal from the Court of Chancery, C.A. No. 2023-0125-PAF

APPELLEES ASTRAZENECA UK LIMITED, ASTRAZENECA PLC, TYRELL RIVERS, PH.D., AND PASCAL SORIOT'S ANSWERING BRIEF

Dated: October 31, 2024

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TABLE OF ABBREVIATIONS

Abbreviation	Definition
¶	Complaint paragraph
14D-9	Viela's tender offer/recommendation statement, filed on Schedule 14D-9 on Feb. 12, 2021 (B1_766-825)
220 Demand	March 12, 2021 § 220 Demand by Plaintiff
220 Production	Documents produced by Viela in response to the 220 Demand
6D	6 Dimensions Capital
A_	Citations to Appendix to Appellant's Opening Brief
Alexion	Alexion Pharmaceuticals, Inc.
Amendment Agreement	Apr. 14, 2021 Amendment Agreement between AstraZeneca Pharmaceuticals LP and Viela (B1_850-67)
APA	Feb. 23, 2018 Asset Purchase Agreement by and between Viela and MedImmune, MedImmune Limited and AstraZeneca Collaboration Ventures, LLC
App.Br.	Plaintiff's Corrected Opening Brief, filed Sept. 24, 2024
AZ	AZ plc and AstraZeneca UK Limited
AZ plc	AstraZeneca plc
B1_	Citations to Appendix to Answering Brief of Appellees AstraZeneca UK Limited, AZ plc, Rivers, and Soriot
B2_	Citations to Appendix to Answering Brief of Appellees Non-AZ Directors
Brennan	David Brennan, Alexion's Board Chair
Boyu	Boyu Capital
Cao	Yanling Cao, Boyu's designee to Viela's Board
Chan	Mitchell Chan, Viela's CFO
Clinical Supply Agreement	Feb. 23, 2018 Clinical Supply Agreement by and between Viela and AZ UK (B1_89-133)

Abbreviation	Definition
CMA	UK Competition and Markets Authority
CMC	Chemistry Manufacturing & Controls
COGM	Cost of Goods Manufactured
Commercial Supply Agreement	Apr. 4, 2019 Commercial Supply Agreement by and between Viela and AZ Pharmaceuticals LP (B1_269-317)
Complaint	Plaintiff's Feb. 2, 2023 Verified Stockholder Class Action Complaint (A97-189)
CRO	Contract Research Organization
DTA	Dutch Tax Authority
EC	European Commission
FDA	U.S. Food & Drug Administration
FTC	U.S. Federal Trade Commission
Goldman	Goldman Sachs
HBM	HBM Healthcare Investments AG
Hu	Edward Hu, 6D's designee to the Viela Board
Horizon	Horizon Therapeutics plc
Jacques	Rachelle Jacques, Viela director
January 8 Letter	Jan. 8, 2021 Letter from Marc Dunoyer, AZ plc's CFO to Yao (B1_579-84)
KFN	KKR Financial Holdings LLC
KKR	Kohlberg Kravis Roberts
License Agreement	Feb. 23, 2018 MedImmune License Agreement by and between Viela and MedImmune (B1_244-64)
MedImmune	MedImmune, LLC, former wholly-owned subsidiary of AZ plc
Merger	Mar. 15, 2021 merger by and between Viela and Horizon
Merger Agreement	Jan. 31, 2021 Agreement and Plan of Merger by and between Viela and Horizon (B1_658-764)

Abbreviation	Definition
MSDSA	Feb. 23, 2018 Master Supply and Development Services Agreement by and between Viela and AZ UK Ltd. (B1_192-242)
NDA	Nondisclosure agreement
NMOSD	Neuromyelitis optica spectrum disorder
Nolet	Chris Nolet, Viela director
Non-AZ Directors	Cao, Hu, Wicki, Jacques, Nolet, and Yao
Op.	Trial Court's Memorandum Opinion issued July 2, 2024 and corrected July 8, 2024, appended as Exhibit A to App.Br.
Plaintiff	Appellant Stephen M. Sciannella
R&D	Research and Development
Rivers	Tyrell Rivers, Ph.D.
Soriot	Pascal Soriot
Support Agreements	Service and supply agreements entered into by and between AZ or MedImmune and Viela, including the Clinical Supply Agreement, the Commercial Supply Agreement, the TSA, the MSDSA, and the License Agreement
Tong	Sean Tong, Boyu's designee to Viela's Board
TSA	Feb. 23, 2018 Transition Services Agreement by and between Viela and MedImmune (B1_135-90)
VIB7734	Viela drug candidate
Viela	Viela Bio, Inc.
Viela 2020 10-K	Viela's 2020 Annual Report filed with the SEC Mar. 1, 2021
Walbert	Tim Walbert, Horizon's CEO
Wicki	Andreas Wicki, Ph.D., HBM's designee to the Viela Board
Yao	Zhengbin Yao, Ph.D., Viela's CEO

NATURE OF PROCEEDINGS

The Trial Court dismissed this post-closing action challenging Horizon's acquisition of Viela. AZ owned only 26.7% of Viela's shares and had but one representative on Viela's seven-member Board that approved the Merger. Yet the Complaint alleged that AZ controlled Viela and coerced its Board to sell Viela to pave the way for antitrust clearance of AZ's acquisition of Viela's competitor, Alexion.

The Trial Court correctly found that the Complaint's "bare" and "conclusory" allegations failed to plead "actual control"—general or transactional—by AZ. As for general control, the Trial Court correctly concluded that Plaintiff's allegations of non-independence from AZ for five of seven directors were "makeweight." Meanwhile, AZ's 26.7% stake (an undisputedly non-dispositive factor), even in conjunction with veto rights over limited corporate actions, did not give AZ the ability to coerce the Viela Board's decision-making. Nor did the Support Agreements; they were time-limited, *permitted Viela* to engage other providers, and *bound AZ* to lengthy notice [redacted] Regardless, the mere existence of contract rights, or alleged operational dependence on a minority stockholder, does not suffice to infer control, as this Court has held.

As for transactional control, apart from conclusory speculation, the Complaint identified no "threat" from AZ in or before the January 8 Letter, let alone one that

would coerce Viela's Board to sell the company. Neither the "full contents" of the January 8 Letter (a "proposal" to work "in close collaboration" with Viela to "ensure its business continuity," committing to complete all remaining services or work closely with Viela to transition them) nor the "unscrambled" timeline pleaded in the Complaint (including that Horizon and Viela negotiated and agreed to $53 per share almost two months before the January 8 Letter) gave rise to any reasonable inference that AZ threatened to breach the Support Agreements or otherwise abandon Viela. Contrary to Plaintiff's assertion, the Trial Court did not make findings of disputed fact, but instead credited the Complaint's well-pleaded factual allegations (not conclusory assertions), reviewed the full contents of the documents incorporated therein, and drew all reasonable inferences in Plaintiff's favor.

Meanwhile, Plaintiff's theory that the January 8 Letter constituted some threat to terminate or breach the Support Agreements is separately foreclosed by the Merger Agreement's interim operating covenant and Plaintiff's allegation that AZ knew any AZ/Alexion transaction would command exacting antitrust review. The Merger Agreement precluded any changes to the Support Agreements without Horizon's consent—thereby making AZ's requisite disentanglement from Viela immeasurably *harder*. And AZ undisputedly knew it was under regulatory scrutiny; had AZ threatened Viela, that could (and likely would) have been discovered, jeopardizing the clearance it sought.

At bottom, Plaintiff's allegations of coercion and control were premised on nothing more than (1) two sale processes that, at times, overlapped, and (2) the reality that AZ would have to divest its Viela stake and disentangle from the Support Agreements. As shown on the face of the documents incorporated into the Complaint, the rest was imagined by Plaintiff and backward. He incorrectly morphed what AZ was *required* to do under the AZ/Alexion merger agreement (at any cost to AZ) into what AZ *supposedly threatened* to do, without pleading supporting facts.

This Court may affirm on the alternative ground that AZ, were it a controller, received no non-ratable benefit from the Merger. Plaintiff conceded that AZ's alleged unique need (obtaining antitrust clearance for the AZ/Alexion transaction) required *both* selling its Viela stake *and* amending the Support Agreements to disentangle from Viela. But the Merger solved only the first of those two requirements, and complicated the second.

The Trial Court properly dismissed the claims against Soriot and Rivers, since *Corwin* cleansed the Merger and the vague allegations concerning them were insufficient, particularly given that Soriot left Viela's Board before Horizon's first bid.

SUMMARY OF ARGUMENTS

1. Denied. ***First,*** the Trial Court correctly found that Plaintiff pleaded no facts to support a reasonable inference that AZ controlled Viela's Board and, therefore, that AZ owed it no fiduciary duties. Given the "full contents" of the documents incorporated into the Complaint, the "unscrambled," undisputed timeline, and Plaintiff's own concessions, Plaintiff failed to plead actual general or transactional control. ***Second*** and alternatively, Plaintiff failed to plead that AZ had any disabling conflict that, were it a controller, would have triggered entire fairness review.

2. Denied. ***First***, without a controlling stockholder, and given the 14D-9's disclosures, *Corwin* cleansing applies. Rivers and Soriot join in the Non-AZ Directors' arguments on this point. ***Second*** and alternatively, Plaintiff pleaded no breach of loyalty against Rivers (who was vaguely alleged only to have "acted as a liaison" and "obtained confidential information" for AZ) or Soriot (who left Viela's Board well before Horizon's first bid).

STATEMENT OF FACTS

A. AZ Defendants

AZ is a global, science-led biopharmaceutical company that discovers, develops, and commercializes therapeutics.[1] It owned 26.7% of Viela's common stock just before the Merger.[2]

Soriot, AZ plc's CEO, was a Viela director from January 2019 through September 18, 2020.[3] Rivers, another AZ executive, was a Viela director from February 2018 through the Merger.[4]

B. Viela Spins Off from AZ and Receives Investments from AZ and Several Independent Funds

On February 28, 2018, AZ announced that its biologics R&D arm, MedImmune, would spin off six early-stage molecules into an independent biotech company, Viela.[5] One, inebilizumab (UPLIZNA), was being developed to treat NMOSD.[6] Five of Viela's executives, including Yao, came from MedImmune, having played key roles developing the molecules.[7]

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1 Op.4; B1_267; A114(¶26).

2 Op.4; A104(¶4).

3 Op.5; B1_332; B1_411; A117(¶31).

4 Op.5; B1_332; A116(¶29).

5 Op.6-7; B1_266; A104(¶4); A120(¶41).

6 Op.7; B1_321; B1_325-26; A106(¶7); A111(¶18 n.1).

7 Op.6; B1_323; A121(¶41).

To effect the spin-off, Viela entered into an APA with MedImmune, through which Viela acquired the IP and materials associated with the molecules for $142 million, financed by AZ's purchase of Series A-1 preferred stock.[8] Then and in December 2018, Viela sold $140 million and $30 million, respectively, of Series A-2 preferred stock to Boyu, 6D, and other investors.[9] In June 2019, Viela sold $75 million of Series B preferred stock to HBM and other investors.[10] These investments entitled AZ to designate two of Viela's then-eight directors (Soriot and Rivers),[11] the series A-2 holders to elect four (Cao and Tong from Boyu, Hu from 6D, and Nolet, who was unaffiliated with any fund),[12] and the series B holders to elect one (Wicki from HBM).[13] Jacques, who was unaffiliated with any fund, replaced Tong in April 2020.[14] Yao was Viela's remaining director.[15]

C. Viela Enters into Support Agreements with AZ

The APA provided for Viela to enter into transitional Support Agreements, designed to ensure adequate drug development and commercialization support for

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8 Op.7; B1_327; B1_334.

9 B1_334-35.

10 B1_335.

11 Op.5 & n.55; B1_382; A104(¶4).

12 Op.n.55; B1_331-33; B1_334-35; B1_382; A117-18(¶¶33-34); A119(¶36); A129(¶54); A131(¶57).

13 Op.n.55; B1_333; B1_335; B1_382; A118-19(¶35); A129(¶54); A131(¶57).

14 A119(¶37).

15 Op.5; B1_330; B1_382; A117(¶32).

Viela as a new standalone entity.[16] The agreements—negotiated at arm's length[17]—were time-limited and non-exclusive as to certain services, and had lengthy notice periods for any termination for convenience [redacted]

License Agreement (2018). Under the License Agreement, MedImmune granted Viela an exclusive license to use certain patented methods to further develop autoimmune treatments, including UPLIZNA.[18] The License Agreement would not expire until expiration, revocation, invalidation, or abandonment of the last patent or patent application within the licensed patents and could be terminated by Viela, but not AZ, for convenience.[19]

Clinical Supply Agreement (2018). The Clinical Supply Agreement provided that AZ would furnish clinical supply of UPLIZNA and shipping, distribution, and regulatory support.[20] [redacted][21]

16 Op.7; *see* B1_981(§15:3.2).

17 B1_327.

18 Op.8; B1_247-29(§2.1); A122(¶44(a)).

19 Op.8; B1_253-54(§6.1, 6.2.4).

20 Op.8; B1_102(§2.3); B1_104(§2.5); A123(¶44(d)).

21 B1_112(§10.3(a)).

[redacted][22] The agreement had a five-year term (through February 23, 2023), which automatically renewed for successive one-year terms, unless either party provided notice of intent not to renew or otherwise terminated the agreement.[23] AZ could terminate for convenience, but only upon 2.5 years' notice, after which it was required to supply product for another nine months.[24]

Commercial Supply Agreement (2019). The Commercial Supply Agreement provided that AZ would manufacture and supply UPLIZNA for Viela's commercial use [redacted][25] [redacted][26] The agreement had a ten-year term (through April 4, 2029) and could be terminated for convenience only upon three years' notice, after which, if AZ terminated, AZ was required to supply product for another 12 months.[27]

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22 B1_123(§20.2).

23 Op.8-9; B1_121(§19.1).

24 Op.9, 71; B1_122(§19.2(d)); B1_123-24(§20.3).

25 Op.11; B1_281-82(§§2.3, 2.5); B1_286(§7.1); A123(¶44(e)).

26 B1_291(§10.3); B1_302(§20.1).

27 Op.11; B1_300-01(§§19.1, 192); B1_303(§20.2).

TSA (2018). Under the TSA, MedImmune agreed to provide transitional services, including financial, procurement, and IT services, clinical data management and statistical programming, clinical operations, and development and commercial activities.[28] The TSA concluded upon expiration of the last service period agreed to by the parties, and could be terminated by Viela, but not AZ, for convenience.[29]

MSDSA (2018). Under the MSDSA, AZ agreed to provide "non-exclusive" development services and supply clinical product for certain molecules other than UPLIZNA.[30] The MSDSA provided Viela the right "at all times [and] at its sole discretion, to engage other service providers" [redacted][31] [redacted][32] The MSDSA had a ten-year term (through February 23, 2028) and could be terminated by Viela, but not AZ, for convenience.[33]

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28 Op.10; B1_141(§2.1); B1_159(Schedule 2.1); A123(¶44(f)).

29 Op.10; B1_149(§§7.1, 7.2.1).

30 Op.9; B1_197(Background(C)); B1_200(§§1.1, 1.3); A122-23(¶44(c)).

31 Op.9; B1_200(§1.3); B1_208(§7.4.1).

32 B1_222-23(§15.7).

33 Op.9-10; B1_200(§1.4); B1_222(§15.4).

D. Viela's IPO

To fund development and commercialization, Viela conducted an IPO that closed on October 7, 2019 and generated approximately $173 million.[34]

In connection with the IPO, Viela adopted a Third Amended and Restated Certificate of Incorporation and Restated Bylaws.[35] They required the vote of 75% of Viela's common stock for removal of directors for cause,[36] amendment of certain Charter provisions,[37] and any stockholder proposal to adopt, amend, or repeal Viela's Bylaws, unless the Board recommended its approval, in which case only a majority was required.[38] (The Board could unilaterally adopt, amend, or repeal any Bylaw without stockholder action.[39]) Even with its 26.7% position, AZ thus could not unilaterally remove Viela directors or stack Viela's Board with directors of its choosing. Plaintiff never alleged that AZ ever exercised (or threatened to exercise) any veto right it had under these supermajority requirements.[40]

Viela's post-IPO SEC filings disclosed the existence of the Support Agreements and warned that Viela was, "for a period of time," "substantially reliant"

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34 Op.12-13; B1_375; A121(¶41).

35 Op.14; B1_342-50; B1_352-73.

36 Op.14, 50; B1_345(§6(E)); A128(¶52).

37 Op.14, 51; B1_348(§10); A128(¶52).

38 Op.14, 50; B1_372-73(Art.X).

39 Op.14-15, 51; B1_372(Art.X).

40 Op.52; *see* A128(¶52).

on AZ for certain services and that it "could" incur "operational difficulties" or losses that "could" have a material, adverse effect on Viela if AZ were "unable or unwilling" to perform under those agreements.[41]

Viela also warned that it did not have manufacturing capability and instead relied on AZ to manufacture its clinical and commercial product supply.[42] Viela made clear, however, that there were "other contract manufacturers" it was free to "engage" and that it "believe[d]" there were "several potential alternative manufacturers who could manufacture [its] product candidates."[43] Viela also confirmed that it had sufficient supply of UPLIZNA for at least the first two years of commercialization; Horizon confirmed the same.[44]

Viela further warned that it did not have the ability to "independently conduct clinical trials," but instead relied on medical institutions, clinical investigators, contract laboratories and other third parties, such as CROs," to conduct or support its trials.[45] Viela disclosed that it relied on AZ for "certain operational and regulatory

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41 Op.12, 62, 65; B1_832; B1_833; A105(¶6); A110-11(¶18); A123-24(¶45); A130(¶55).

42 Op.12; B1_834-35; A110-11(¶18); A121-22(¶42); A125-26(¶¶47-49); A129-30(¶55).

43 Op.12; B1_834-35.

44 B1_323-24; B1_340; B1_381; B1_767; B1_828; B1_832.

45 Op.12; B1_833; A121(¶42); A126-27(¶50).

services" for clinical trials.[46]

None of Viela's filings stated that AZ was a controlling stockholder or that AZ exercised control—or even influence—over Viela or its Board.[47]

E. Horizon Initiates Partnership Discussions with Viela and Later Soriot Contacts Alexion

The FDA approved UPLIZNA to treat NMOSD on June 11, 2020, and Viela launched UPLIZNA commercially in the US later that month.[48]

By that time, Viela had already been searching for commercial partners.[49] [redacted] [50] On July 2, 2020, Yao and Walbert discussed potential collaboration.[51]

On July 15, 2020, Viela and Horizon entered into an NDA that anticipated [redacted]"[52] Viela and

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46 Op.12; B1_833; A126(¶50). Plaintiff's assertion that "AstraZeneca conducted Viela's clinical trials," App.Br.1, is thus false. *See* B1_833.

47 Op.65. Viela's filings further disclosed that it leased headquarters space and equipment from AZ, Op.11; A130(¶55), but also that Viela leased space from two third parties, Viela 2020 10-K at 93, F-33 (available at sec.gov and referenced A123(¶45); A125-26(¶¶48-49); A130(¶56); A133(¶61); A148(¶89)).

48 Op.17; A105-06(¶7); A133(¶61); A138-39(¶71).

49 B1_385.

50 B1_453.

51 B1_453; B1_784; A143(¶79).

52 Op.17, 72; B1_399.

its financial advisor Goldman also entered into an NDA for "the evaluation of strategic alternatives."[53] That summer, Horizon conducted preliminary diligence and expressed an interest in further exploring a partnership.[54] The Complaint nowhere alleged that Soriot, Rivers, or AZ engineered Horizon's original (or later) outreach or played any part in discussions between Horizon and Viela.

Separately, on August 10, 2020, approximately 1.5 months *after* Viela and Horizon initiated partnership discussions, Soriot contacted Brennan to inquire about Alexion's potential interest in a business combination with AZ.[55] On September 2, 2020, Soriot met with Alexion executives and outlined a proposal for AZ to acquire Alexion for $148 per share, sending a written proposal the next day, which Alexion rejected.[56] On September 8, 2020, AZ submitted an updated proposal to acquire Alexion for $155 per share, which Alexion again rejected.[57]

On September 9, 2020, Soriot notified Viela that he would resign from Viela's Board, effective September 18, 2020.[58] The Complaint nowhere alleged what, if anything, Soriot said about why he was resigning. Instead, the Complaint alleged

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53 Op.17; B1_407.

54 Op.17; B1_784; *see* A143(¶79).

55 Op.18; B1_870; A107(¶11); A133(¶62).

56 Op.18; B1_871; A133(¶62).

57 Op.18; B1_871; A108(¶11); A133(¶62).

58 Op.18; B1_411; A108(¶11); A134(¶62); A141(¶76).

that the pursuit of Alexion was "covert[]," "surreptitious[]," "secret[]," and "concealed from Viela," and that there is "no record" Soriot disclosed the pursuit to Viela in August, September, or even through mid-November.[59]

F. Viela's Partnership Discussions Progress While AZ Terminates Discussions with Alexion

At a Viela Board meeting on September 18, 2020, Goldman outlined several strategic options, including "partnership+" opportunities that would allow Viela to "gauge near-term M&A interest."[60] Goldman noted that pharmaceutical mergers typically occur between companies already partnering on a product.[61] The Board approved the engagement of Goldman to assist with identifying and exploring "partnership+" and other strategic alternatives, and in tandem, to proceed with discussions with Horizon.[62] Goldman's engagement letter states that it was retained to advise for "potential partnership or licensing transactions" or the "possible sale" of Viela.[63]

On October 6, 2020, Horizon senior management met with Yao to discuss a potential collaboration regarding VIB7734.[64] Around that time, from early October

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59 Op.18, 23, 66-67, 72-73; A107(¶11); A133-34(¶62); A141(¶¶76-77); A145(¶83); A174-75(¶¶142-43).

60 Op.18-19; B1_414; B1_435.

61 B1_420-21.

62 Op.18-19; B1_424; B1_784-85; A142(¶78); A146(¶85); A156(¶103).

63 Op 19; B2_65; A142(¶78).

64 Op.19-20; B1_785; A143(¶79); A144(¶81).

2020 through mid-November 2020, Goldman contacted eight potential partners ("Project Zenith").[65] Five expressed interest and entered into confidentiality agreements on customary terms with Viela.[66]

Meanwhile, on October 24, 2020, AZ terminated due diligence and discussions with Alexion, given certain tax-related issues with the DTA.[67]

G. Horizon Proposes to Acquire Viela and Price Is Set

On October 29, 2020, Horizon sent a non-binding proposal to acquire Viela at $44.00 per share, a 35% premium over Viela's $32.54 prior-day closing price.[68] The offer anticipated executing a definitive merger agreement before Thanksgiving, and was approved by Horizon's board and not contingent on financing.[69] Horizon indicated that it expected any Viela stockholders represented on Viela's Board to sign a Tender and Support Agreement in connection with any transaction.[70] The Complaint nowhere alleged that Soriot, Rivers, or AZ played any role in causing Horizon to make this (or any) proposal.

On November 3, 2020, Viela's Board met and discussed Horizon's October

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65 Op.19; B1_785; A146(¶85).

66 Op.19; B1_523.

67 B1_873.

68 Op.20; B1_442; A143(¶80); A156(¶103).

69 Op.20; B1_443.

70 Op.20; B1_443.

29 proposal.[71] After Goldman presented its analysis, the Board determined that the offer was inadequate and authorized Yao to communicate that to Horizon, which he did.[72]

On November 12, 2020, Horizon made a revised non-binding offer of $49.50 per share, a 52% premium over Viela's October 28 closing price, again noting that the proposal [redacted].[73]

[redacted][74]

Viela's Board met the following day, November 13, and again rejected the offer as inadequate.[75] By this time, only four Project Zenith companies remained active in the process, and none had submitted proposals.[76] The Board concluded that the best approach was to convey to Horizon receptivity to considering a rebid, with guidance towards $55.00 per share, which Yao then relayed to Horizon.[77] Again, the Complaint alleged that there is "no record" Soriot disclosed his pursuit of

71 Op.21; B1_447.

72 Op.21; B1_447-80; B1_787.

73 Op.22; B1_482-83; *see* A144(¶82).

74 B1_483.

75 Op.22; B1_485.

76 Op.22; B1_492; B1_787.

77 Op.22; B1_485; B1_787.

Alexion at this time.[78]

On November 16, 2020, Horizon revised its offer to $53.00 per share—$9 more per share than its original offer—[redacted][9] The November 16 offer stated that [redacted][80]

Viela's Board met the next day, November 17.[81] The Board viewed it unlikely to negotiate a higher price and believed that attempting further negotiation could risk Horizon walking away.[82] The Board agreed to $53.00 per share, determining that it justified entering a process with Horizon to provide additional due diligence and negotiate a definitive merger agreement.[83] The Board also instructed Goldman to contact the two remaining Project Zenith companies viewed most likely to make an acquisition proposal.[84] Goldman contacted both; neither indicated interest.[85]

Counsel for Viela and Horizon thereafter negotiated the terms of the Merger

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78 Op.23, 66-67; A145(¶83); *supra* n.59.

79 Op.23; B1_515-16; *see* A144(¶82).

80 B1_516.

81 Op.23; B1_518; A146(¶84).

82 B1_788.

83 Op.23; B1_518; B1_788; A146(¶84); A238.

84 Op.23; B1_788.

85 Op.24; B1_788; A146(¶85); A239.

Agreement.[86] As of December 7, 2020, Viela was targeting approval of the Merger on December 11, with deal announcement on December 14.[87]

H. AZ and Alexion Agree to Merge

Meanwhile, on November 23, 2020, after Alexion settled with the DTA, AZ re-engaged with Alexion about a potential combination.[88] On December 12, 2020, AZ announced its acquisition of Alexion at $175 per share.[89] The merger agreement between AZ and Alexion, which was public, contained a "hell or high water clause," obligating AZ to "take, or cause to be taken, all actions and [] do, or cause to be done, all things necessary, proper or advisable" to obtain antitrust approval.[90]

According to the Complaint, it was clear to Soriot from the beginning that antitrust authorities would subject any AZ/Alexion transaction to exhaustive review.[91] Per those authorities' disclosures and common practice, such review includes interviewing competitors and industry participants and ensuring that competitors remain viable and robust.[92] It thus was clear that antitrust authorities reviewing the AZ/Alexion deal could, and likely would, interview Viela and/or

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86 Op.24; B1_789.

87 Op.73 & n.239; B1_534; B1_537; B1_542; *see* A146(¶86).

88 B1_874.

89 Op.25; B544-54; A134(¶63).

90 Op.25; B1_561(§8.02(e)).

91 A106-07(¶9); A133-34(¶¶62-63); A136(¶66).

92 B1_952-53; B1_961(§9.6); B1_971-72.

Horizon about AZ's treatment of Viela and Viela's long-term viability as a robust competitor.

I. Horizon's Supply Disruption

In mid-December, as the Merger Agreement's terms "were almost finalized and the Acquisition was nearing public announcement," Horizon informed Viela that it needed more time.[93] The reason soon became clear: on December 17, 2020, Horizon announced a short-term supply disruption.[94] The next day, Viela's Board met and determined *not* to terminate discussions with Horizon and to continue to engage with the other Project Zenith parties.[95]

J. January 8 Letter

Although Viela's deal with Horizon was paused, antitrust review of the AZ/Alexion transaction moved forward. On January 8, 2021, AZ sent Viela a letter expressing AZ's desire to complete its separation from Viela, which the letter noted had been underway since Viela's IPO.[96] The January 8 Letter—which was styled as a "Proposal" [redacted]—stated that AZ sought to "work closely" and in "close collaboration" with Viela, with the goals of "ensuring [Viela's] business continuity" and putting Viela "into the best

93 Op.73 & n.117; B1_542; B1_569; A108-09(¶13); A146-47(¶86).

94 Op.24; B1_572; B1_575; A108-09(¶13); A146-47(¶86).

95 Op.24; B1_577.

96 Op.25-27, 70, 82-85, 87-88; B1_579-84; A109(¶14), A147-48(¶¶88).

position," either "to move forward as a fully independent company or to integrate [its] business in the event of an acquisition."[97] The letter stated:

- AZ was setting out the "remaining steps" that it "envisage[d]" and "believe[d]" were necessary to finalize the separation, [redacted]"[98]
- Regarding the TSA, [redacted]" AZ proposed to complete all remaining services in accordance with the TSA's terms.[99]
- Regarding developmental services under various Support Agreements, AZ identified the Service Schedules that it believed were "still (partly) active," and proposed to complete all remaining services that were then-planned to be completed by end of Q2 2021, and "assist [Viela] in transitioning all other remaining services" [redacted]

97 B1_579.

98 B1_579-80.

99 B1_580.

[redacted][100]

- Regarding certain IP sublicenses that AZ had granted to Viela in connection with third-party licensors, AZ proposed that Viela enter into direct license agreements with those third parties, after which the sublicense agreements would be mutually terminated. [redacted][101]
- [redacted][102]
- [redacted]

100 B1_580.

101 B1_581.

102 B1_581.

[redacted] [103]

- [redacted] [104]

- [redacted] [105]

At a January 14, 2021 meeting, Viela's Board discussed, *inter alia*, "AstraZeneca's interest in accelerating the separation" with Viela.[106] The night

103 B1_581-82.

104 B1_582.

105 B1_582.

106 Op.27; B1_588; A151(¶91).

before, Nolet emailed Yao, noting that he hoped the Board would discuss "important spade work" Viela's CFO had been doing "around the notion of us essentially having to find a buyer for our shares held by AZ."[107] Nolet added that "we should begin to address" the topic, unless Yao had heard "the pending deal [with Horizon] is likely to close soon."[108]

K. Horizon Re-engages and Merges with Viela, and Horizon and AZ Negotiate to Amend the Support Agreements

On January 18, 2021, Horizon informed Viela that it was comfortable moving forward with discussions.[109] Plaintiff conceded this was a "lucky break," with no involvement from Soriot, Rivers, or AZ.[110] By January 25, Yao updated the Board that the parties were "back on track," with management anticipating seeking Board approval for a transaction to be signed the week of February 1.[111]

On January 31, 2021, Viela's Board—which consisted of Rivers, Yao, and the five other Non-AZ Directors—met to consider and approve the Merger Agreement.[112] Neither antitrust approval for the AZ/Alexion transaction nor amendment of the Support Agreements was a condition to the Merger Agreement.

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107 Op.28; B1_586; A109(¶15), A150-51(¶90).

108 Op.28; B1_586.

109 Op.28; B1_591; B1_789; *see* A110(¶16); A151(¶92).

110 Op.28, 75; A285.

111 Op.28; B1_593.

112 Op.28-29; B1_622; B1_790; A103(¶2).

Meanwhile, an interim operating covenant in the Merger Agreement precluded Viela from amending or modifying the Support Agreements without Horizon's consent.[113]

Following discussion with Goldman, including consideration of its fairness opinion, the Board unanimously voted to enter into the Merger Agreement at $53.00 per share, a 53% premium over Viela's $34.68 closing price the prior trading-day.[114]

Horizon commenced the tender offer on February 12, 2021.[115] Stockholders approved the deal, with holders of approximately 94% of Viela's common stock tendering their shares, and the Merger closed on March 15, 2021.[116]

Several weeks later, AZ and Horizon began negotiating amendments to the Support Agreements.[117] On April 14, 2021, AZ and Horizon executed an Amendment Agreement that amended the Commercial Supply Agreement and the MSDSA.[118] [redacted][19] In July 2021, AZ and Horizon executed a First Amendment to the TSA [redacted]

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113 Op.30; B1_706-10(§5.3(w)).

114 Op.29; B1_622-30; B1_632-56.

115 Op.32; B1_791.

116 Op.32; B1_846; A103(¶2).

117 Op.32; *see* B1_851-52; B1_941-43.

118 Op.32; B1_852-60(§1(b)); B1_863-65(§2(e)).

119 B1_853(§1(b)(v)); *see also* B1_854(§1(b)(viii)) [redacted] B1_855(§1(b)(xiii)) [redacted]

[redacted][redacted][120]

L. AZ Obtains Antitrust Approval for the Alexion Deal

The FTC, CMA, and EC each began review of the AZ/Alexion transaction shortly after December 12, 2020, including considering whether AZ could pursue an "input foreclosure" strategy to harm Viela's ability to remain a robust competitor.

On April 16, 2021, the FTC cleared the AZ/Alexion transaction.[121] In July 2021, the EC did the same.[122] The EC concluded that the amended Support Agreements "prevent[ed]" any input foreclosure risk because they—like the initial Support Agreements—"include[d] provisions (i) to avoid the risk of [UPLIZNA] supply disruption and (ii) to facilitate the transfer of the technology and the manufacture of Uplizna."[123] The EC called Horizon as part of its review.[124]

On July 14, 2021, the CMA also cleared the AZ/Alexion transaction.[125] The CMA "considered an input foreclosure theory of harm" and concluded AZ "would lack the ability to foreclose."[126]

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120 B1_941(§2); B1_944.

121 Op.32; B1_878-82.

122 Op.32; B1_893-911; A134(¶64n.4).

123 B1_910.

124 B1_910(n.101).

125 Op.32; B1_913-39.

126 B1_921(n.56).

M. The Trial Court Dismisses the Complaint with Prejudice

After inspecting documents received pursuant to its 220 Demand, Plaintiff filed suit.[127] The Complaint alleged that AZ breached fiduciary duties owed to Viela stockholders as a conflicted controlling stockholder given the Support Agreements;[128] supposed "threats" to terminate those agreements and sell its Viela holdings;[129] AZ's equity stake and "veto" power;[130] service of former MedImmune executives in Viela management;[131] and AZ's relationships with Yao and other directors affiliated with funds that AZ "permitted" to invest in Viela.[132] The Complaint also alleged that Soriot and Rivers breached their fiduciary duties as Viela directors.[133]

In a 102-page decision, the Court dismissed the Complaint with prejudice. As for AZ, the Court concluded that Plaintiff failed to plead general or transactional

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127 *See* A103(¶2). The 220 Production included formal Board materials regarding the Merger/strategic alternatives and certain emails, including those between Viela directors and Yao or Chan concerning separation of AZ and Viela. B1_986-87; B1_990.

128 A105(¶¶5-6); A121-28(¶¶42-51); A266.

129 A108(¶12); A109-110(¶¶14-15); A110-11(¶¶17-18); A129-31(¶¶53-56); A147-51(¶¶87-91); A269-72.

130 A128(¶52); A265; A270-71.

131 A104(¶4); A121(¶41); A266; A268.

132 A111-12(¶¶19-20); A131(¶¶57-58); A153(¶98); A266; A268; App.Br.17.

133 A172-77(¶¶134-152).

control over Viela's Board at the time of the Merger.[134]

Regarding general control, the Court found that neither AZ's 26.7% stake, nor its associated blocking rights over "limited corporate actions," contributed to an inference of control, especially when compared to Plaintiff's cases where broader rights enabled minority stockholders to "block board decisions" or "shut down the effective operation of the [board]."[135] The Court also found that AZ's alleged relationships with the Viela directors did not demonstrate general control:

- The allegation that Cao, Hu and Wicki were "susceptible" to AZ because their funds had invested early in Viela was "makeweight," with no well-pleaded allegations that the funds, let alone directors, were beholden to AZ.[136]
- The Complaint pleaded no allegation even connecting Jacques and Nolet to AZ.[137]
- AZ's 2018 appointment of Yao to his Viela position did not demonstrate Yao's allegiance to AZ in 2020, especially without well-pleaded allegations that AZ controlled the terms of his employment or

134 Op.2, 66, 75-76.

135 Op.47-52.

136 Op.55-58.

137 Op.57-58.

severance package.[138] The Court further noted that, even assuming Yao lacked independence from AZ, that still left five of seven directors who approved the Merger independent from AZ.[139]

The Court further found that Plaintiff nowhere pleaded facts indicating that AZ's 2018 appointment of Viela executives translated into AZ exercising control over them, much less Viela's Board, when the Merger was approved.[140] Finally, the Court found that Viela's operational dependence on AZ through the Support Agreements, which was "not on an exclusive basis," did not demonstrate control over Board decision-making, as in *In re KKR Fin. Hldgs. LLC S'holder Litig.*, 101 A.3d 980 (Del. Ch. 2014), *aff'd sub nom. Corwin v. KKR Fin. Hldgs. LLC*, 125 A.3d 304 (Del. 2015).[141] The Court added that Viela's warnings of "substantial[] relian[ce]" on AZ did not show that AZ was a controlling stockholder.[142]

Regarding transactional control, the Court first determined that Plaintiff failed to plead that Soriot or Rivers improperly influenced the sale process, either through "backchannel conversations" between Yao and Soriot—about which Board was informed and during which, per Plaintiff, Soriot did not disclose the Alexion

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138 Op.54-55.

139 Op.58.

140 Op.58-59.

141 Op.59-62, 65.

142 Op.62-65.

pursuit—or through conclusory allegations that Rivers "acted as a liaison" and "obtained confidential information" for AZ.[143] The Court again rejected the conclusory assertion that the Non-AZ Directors fell victim to a "controlled mindset" during the sale process, with no well-pleaded allegations they were beholden to AZ.[144]

The Court rejected Plaintiff's "conclusory allegations" of threats from AZ prior to January 8, as the Complaint failed to identify any such communication.[145] The Court again noted that there were no well-pleaded allegations that Soriot even disclosed the Alexion pursuit to Viela or Yao before at least mid-November; rather, Plaintiff pleaded there was "no record" of such disclosure.[146]

Turning to the January 8 Letter, the Court considered its "full contents" and concluded that there was no reasonable inference that it constituted a threat to terminate the Support Agreements or otherwise abandon Viela: the letter was a "proposal" to complete an ongoing separation by working "in close collaboration" with Viela to "ensure its business continuity" and put it in "the best position" moving forward; it proposed to complete all remaining services or work with Viela to transition to another provider; and its Annex provided the steps AZ "believe[d]

143 Op.66-67 & n.213.

144 Op.67-68.

145 Op.n.223.

146 Op.18, 23, 66-67, 72-73.

[were] the required steps to implement the Proposal."[147] The Court also found that the Support Agreements' terms confirmed that the January 8 Letter could not have insisted on "expeditious" or unilateral termination of AZ's support.[148]

The Court further rejected Plaintiff's "non-linear," "temporally untethered" timeline of events.[149] The Court noted it was undisputed that many months before the January 8 Letter was sent, Viela and Horizon had been in partnership discussions and then months-long negotiations over a merger, had reached agreement on $53 per share (on November 17) after two rejected bids, and were moving toward a mid-December deal announcement when, in mid-December, Horizon put negotiations on hold; once Horizon worked out its supply chain issues, the parties "picked up where they left off and finalized the deal" at the same agreed-upon price from November—yet there were no allegations that Viela's value had materially changed in the interim, or that AZ had brought Horizon to (or back to) the table.[150] Viewing the "unscrambled" timeline, the Court found, it was not reasonable to infer that the January 8 Letter "exerted control to threaten Viela's Board into pursuing and ultimately approving the Merger."[151]

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147 Op.70, 82-85, 87-88.

148 Op.71.

149 Op.72.

150 Op.72-75, 85-86.

151 Op.74.

Accordingly, having viewed the allegations "as a whole" and "in a light most favorable to Plaintiff," and because it was not reasonably conceivable that AZ actually exercised either general or transactional control at the time of the Merger, the Court concluded that AZ did not owe Viela stockholders fiduciary duties and dismissed the claim against it.[152]

The Court separately dismissed the claims against Rivers, Soriot, and the remaining Defendants because the Merger was subject to *Corwin* cleansing and the Complaint failed to adequately plead waste.[153]

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152 Op.75-76, 102.

153 Op.76-102.

ARGUMENT

I. AZ WAS NOT A CONTROLLER AND OWED NO FIDUCIARY DUTIES TO VIELA

A. QUESTION PRESENTED.

Whether the Trial Court correctly dismissed the Complaint against AZ where Plaintiff failed to plead facts supporting a reasonable inference that AZ controlled Viela. B1_14-17; B1_43-65; B1_998-1001; B1_1008-1026.

B. SCOPE OF REVIEW.

This Court reviews *de novo* a dismissal for failure to plead facts to support a reasonable inference of control. *Sheldon v. Pinto Tech. Ventures*, 220 A.3d 245, 250-51 (Del. 2019). The Trial Court's ruling can be affirmed on alternative or additional bases that were argued below. *RBC Cap. Mkts. v. Jervis*, 129 A.3d 816, 849 (Del. 1995); *Unitrin v. Am. Gen'l*, 651 A.2d 1361, 1390 (Del. 1995).

As the Trial Court correctly recognized,[154] on a motion to dismiss, only well-pleaded factual allegations are credited; conclusory allegations unsupported by specific facts are not. *Allen v. Encore Energy Partners*, 72 A.3d 93, 100 (Del. 2013); *In re Gen'l Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006). A plaintiff receives the benefit of only *reasonable* inferences. *Feldman v. Cutaia*, 951 A.2d 727, 731 (Del. 2008); *accord Hughes*, 897 A.2d at 168.

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154 Op.42 & n.2.

Under the incorporation-by-reference doctrine, a plaintiff cannot seek inferences contradicted by a plain reading of the documents incorporated into a complaint. *Hughes*, 897 A.2d at 169-70; *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001). Nor can a plaintiff cherry-pick words from or misrepresent their contents. *Hughes*, 897 A.2d at 169-70; *Amalgamated Bank v. Yahoo!*, 132 A.3d 752, 797 (Del. Ch. 2016).

C. MERITS OF ARGUMENT.

Plaintiff nowhere disputes, and thus concedes, that the Trial Court correctly set forth the framework for analyzing whether a minority stockholder is nonetheless a controlling stockholder.[155] *See Tumlinson v. Advanced Micro Devices*, 106 A.3d 983, 988 (Del. 2013) (argument not included in opening brief is waived); *see also* Supr. Ct. R. 14(b)(vi)(A)(3).

Plaintiff had to plead facts to support a reasonable inference that AZ possessed actual control—that AZ actually dominated and controlled the Viela Board's decision-making. *See Kahn v. Lynch Comm'n Sys.*, 638 A.2d 1110, 1115 (Del. 1994) (confirming that minority stockholder owes fiduciary duties only where it "exercise[s] actual control"); *see also In re Morton's Restaurant Grp.*, 74 A.3d 656, 664-65 (Del. Ch. 2013).[156] The minority stockholder's power must be "so potent

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155 Op.43-47.

156 *Accord In re Rouse Props.*, 2018 WL 1226015, *11-12 (Del. Ch. Mar. 9, 2018); *Thermopylae Cap. Partners v. Simbol*, 2016 WL 368170, *13 (Del. Ch. Jan.

that independent directors cannot freely exercise their judgment, fearing retribution" from the minority stockholder. *Morton's*, 74 A.3d at 665.[157]

A plaintiff must plead "actual domination and control of the board" either "generally" or with respect to the challenged transaction. *GGP*, 2021 WL 2102326, *13; *accord Rouse*, 2018 WL 1226015, *12. The actual control test is "not easy to satisfy." *KKR*, 101 A.3d at 992; *accord Morton's*, 74 A.3d at 664.

1. AZ Did Not Exercise General Control

"Significant" Equity Stake "in Conjunction with" Supermajority Provisions. Plaintiff begins by insisting that the Trial Court failed to "meaningfully consider" AZ's voting power as a result of its 26.7% stake, pointing to a supposed presumption of control with at least 20% of voting stock, per 8 *Del. C.* § 203(c)(4). App.Br.23-24. Plaintiff did not cite that statute or argue a presumption below, so the argument is waived. *See Manheim v. Ban*, 319 A.3d 268 (Table) (Del. 2024); *Almond for Almond Fam. 2001 Tr. v. Glenhill Advisors*, 224 A.3d 200 (Table) (Del. 2019).[158]

29, 2016); *KKR*, 101 A.3d at 991-995; *Superior Vision Servs. v. ReliaStar Life Ins.*, 2006 WL 2521426, *4 (Del. Ch. Aug. 25, 2006).

157 *Accord In re GGP, Inc. S'holder Litig.*, 2021 WL 2102326, *13 (Del. Ch. Mar. 25, 2021), *rev'd on other grounds*, 282 A.3d 37 (Del. 2022).

158 Plaintiff faults the Trial Court for "minimizing the influence" from AZ's stake by observing that Plaintiff offered only one sentence in support of it as a factor showing control. App.Br.24; *see* Op.48. While Plaintiff now leads with AZ's stake, that factor was relegated to the middle of cited factors below. A265-73. The Court nonetheless analyzed alleged control in view of AZ's stake. Op.47-52.

Regardless, Plaintiff's own authority, App.Br.23-24, holds that ownership stake is neither dispositive, *Tornetta v. Musk*, 310 A.3d 430, 503 (Del. Ch. 2024), nor even the predominant factor, *Voigt v. Metcalf*, 2020 WL 614999, *17 (Del. Ch. Feb. 10, 2020). The Trial Court so recognized, observing that pleading stage inferences of control have gone both ways with equity positions less or "far more" than 25%.[159]

The Trial Court also considered how AZ's 26.7% stake operated in conjunction with Viela's supermajority provisions.[160] Plaintiff contends that the Court wrongly "brushed this issue aside" by observing that AZ had not exercised its veto rights. App.Br.25. That is wrong. The Court analyzed AZ's veto rights—the scope of which was undisputed—over director removals for cause, amendment of certain Charter provisions, and stockholder proposals to amend Bylaws if not recommended by the Board,[161] and correctly concluded that they were "limited," confined to "limited corporate action," and far narrower than those in cases where control was found, *see* App.Br.23-25.[162] In *Voigt*, the minority stockholder had consent rights over "a wide range of significant corporate and finance matters."

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159 Op.47-48 & n.180; *see In re Crimson Exploration Inc. S'holder Litig.*, 2014 WL 5449419, *10 (Del. Ch. Oct. 24, 2014) (cases "do not reveal any sort of linear, sliding-scale approach whereby a larger share percentage makes it substantially more likely that the court will find the stockholder was a controlling stockholder").

160 Op.48-52.

161 Op.48-52.

162 Op.50-52.

2020 WL 614999, *3, 19. In *Basho Techs. Holdco B v. Georgetown Basho Invs.*, the minority stockholder had blocking rights over the company's access to capital. 2018 WL 3326693, *28-31 (Del. Ch. July 6, 2018), *aff'd sub nom. Davenport v. Basho Techs. Holdco B*, 221 A.3d 100 (Del. 2019). And in *Williamson v. Cox Commc'ns*, the minority stockholders had effective veto rights over *all* board decisions. 2006 WL 1586375, *2, 5 (Del. Ch. June 5, 2006).

"Contractual Influence." Plaintiff next claims that the Trial Court failed to assess the potential "leverage" AZ supposedly had through the Support Agreements. App.Br.25-27. That too is incorrect. Plaintiff again ignores the plain, unambiguous terms of the Support Agreements, which the Court closely reviewed.[163] The agreements were time-limited and gave *Viela* freedom to engage other suppliers or service providers in its discretion, while binding *AZ* to provide various goods and services either without any right to terminate or only upon lengthy notice periods and [redacted] *Supra* 7-9.

Plaintiff cites no case holding that the mere existence, or even exercise, of contractual rights held by a minority stockholder, or a company's alleged contractual operational dependence on that stockholder, is sufficient to infer control. *KKR* explains why it is insufficient: while "every contractual obligation of a corporation constrains the corporation's freedom to operate to some degree," that does not

163 Op.7-12, 71.

translate to "coercive power that [a contractual counterparty] could wield over the board's ability to independently decide whether or not to approve [a] merger." 101 A.3d at 994.[164] Other courts have likewise so held. *See Thermopylae*, 2016 WL 368170, *13.[165]

Plaintiff's own authority, App.Br.25-27, similarly holds that a minority stockholder must *exercise* contractual rights in a way that coerces a board. In *Basho*, the minority stockholder repeatedly used blocking rights to "maneuver[] the [c]ompany into a position of maximum financial distress." 2018 WL 3326693, *1, 29-30, 35. In *Skye Mineral v. DXS Cap. (U.S.)*, the minority stockholder had similarly significant blocking rights over access to capital, but those rights, alone, were insufficient to support a reasonable inference of control. 2020 WL 881544, *4, 26-27 (Del. Ch. Feb. 24, 2020). Rather, an inference was drawn because the minority

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164 Plaintiff again fails to distinguish *KKR*. Below, Plaintiff claimed that the argument in *KKR* was a "one-trick pony," with control alleged solely on the basis of operational dependence. A274-75. The Trial Court correctly rejected this characterization. Op.n.206; *see* 101 A.3d at 993. Plaintiff now attempts to switch gears, proffering two new, but inadequate, bases for distinguishing: (1) KKR held only 1% of KFN equity and had no presumption of control, and (2) plaintiffs did not claim control was wielded over the KFN board. App.Br.36. Regarding the former, the *KKR* Court did not view that issue as plaintiffs' "real grievance," 101 A.3d at 994, and regarding the latter, Plaintiff likewise failed to plead any such facts or reasonable inferences, *infra* at 40-47.

165 *Accord Superior Vision*, 2006 WL 2521426, *5; *Calesa Assocs. v. Am. Cap.*, 2016 WL 770251, *10 n.129 (Del. Ch. Feb. 29, 2016); *In re WeWork Litig.*, 2020 WL 7343021, *15 (Del. Ch. Dec. 14, 2020).

stockholder "participated in a concerted effort to place [the company] in a precarious financial condition . . . and then exercised their leverage with the Blocking Rights to steer [the company] off the cliff into the bankruptcy ravine below." *Id.* *27. Plaintiff does not claim that AZ *ever* exercised rights under the Support Agreements, let alone to harm Viela.[166]

Plaintiff's attempt to bootstrap his assertion of "contractual influence" with Viela's SEC disclosures about the Support Agreements, App.Br.26-27, fails. The disclosures did not say that AZ controlled, or even influenced, Viela or its Board, and they did not warn of a "corporate catastrophe," App.Br.2, 29, if AZ were unable or unwilling to perform under the Support Agreements. Rather, the disclosures reiterated that Viela would be "substantially reliant" on AZ, but only "for a period of time" and with the ability to engage other manufacturers, service providers, and lessors. *See supra* 10-12. Viela disclosed that it "could" incur operational difficulties or losses if AZ were unable or unwilling to perform, but those were potential, forward-looking operational risks, none of which actually ever transpired. *Id.*[167] As courts have held, such language does not provide sufficient basis to infer

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[166] Plaintiff references his allegation that Rivers and Soriot once voted with Viela's Board to pay AZ additional money for certain product supply. App.Br.35; A124(¶46). [redacted] B1_1042-43; B1_1046.

[167] Plaintiff mischaracterizes another risk factor, claiming Viela warned that if AZ discontinued its clinical and pre-clinical support, Viela's "financial results and the commercial prospects for [its] product candidates in the subject indication would

domination over Board decision-making. *See GGP*, 2021 WL 2102326, *5 (no control despite disclosure that minority stockholder had "significant influence over" company).[168]

"Additive" Factors. Plaintiff proffers two "additive" factors of alleged influence. *First*, Plaintiff implies that AZ had independence-compromising relationships with Cao, Hu, and Wicki (but not Nolet or Jacques). App.Br.17, 35. But Plaintiff merely repeats his assertion that they were "susceptible" to AZ's pressure because their funds were "permitted" to invest in Viela in 2018, without explaining how co-investment years earlier would have still rendered the funds (let alone the individuals) beholden to AZ.

Second, Plaintiff points to AZ's prior appointment of Viela executives in 2018. App.Br.35-36. Putting aside that the Complaint was devoid of any detail on this (including which executives played what role(s) vis-à-vis the Board), Plaintiff again nowhere explains how prior *executive* appointments controlled Viela *Board* decision-making, years later.

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be harmed." A111(¶18); A126-27(¶50); A130(¶55); App.Br.10, 14. That disclosure referred to the circumstance in which Viela's relationships with "third-party CROs" were terminated. B1_834.

[168] *Accord Rouse*, 2018 WL 1226015, *19; *In re Tesla Motors, Inc. S'holder Litig.*, 2018 WL 1560293, *19 (Del. Ch. Mar. 28, 2018).

2. AZ Did Not Exercise Transactional Control

Pointing to the January 8 Letter, Plaintiff now concedes that it was *not*, as he argued below, a notice of termination or threat to terminate the Support Agreements. App.Br.29-30. Rather, Plaintiff contends that the letter constituted a threat to breach the agreements and a statement that AZ was "unwilling" to perform under them. *Id.* This theory, not presented below, is waived. *Supra* 34.

Regardless, Plaintiff's new assertion is similarly foreclosed by the plain language of the letter's "full contents." AZ made a "Proposal" to "work closely" and "in close collaboration" with Viela to finish the companies' separation in a way that "ensure[d] business continuity" for Viela and put it in the "best position" moving forward. *Supra* 19-20. AZ proposed to complete the bulk of services under the existing arrangements and otherwise to work with Viela to transition the remaining services and leases, while expressly confirming that the then-existing arrangements would remain in place pending the parties' collaboration and alignment. *Supra* 20-22. As the Trial Court correctly found, there is no *reasonable* reading of the letter that indicates abandonment of Viela,[169] or even unwillingness to perform. Plaintiff's own authorities, App.Br.33-34, provide that he could only receive the benefit of "reasonable" interpretations of the documents on which he relied, *Vanderbilt Income and Growth Assocs. v. Arvida/JMB Managers*, 691 A.2d 609, 613 (Del. 1996), and

[169] Op.70, 82-85, 88.

he could not cherry-pick words out of context to misrepresent what the documents say, *Voigt*, 2020 WL 614999, *9.[170]

Plaintiff's new theory about the January 8 Letter is also belied by the "unscrambled" timeline of events. Plaintiff himself alleged that the $53 per share price was set November 17.[171] The January 8 Letter could not have "coerced" a decision Viela's Board had already made, months earlier.

As the Trial Court properly found, Plaintiff's assertion of a rushed, single bidder process instigated by the January 8 Letter "falls flat when considering the status of the transaction before Horizon temporarily paused the discussions."[172] Plaintiff's Opening Brief studiously ignores the many events that undisputedly took place for months before the January 8 Letter: Horizon/Viela partnership discussions since July 2020;[173] merger price negotiations from October through mid-November (with two bid rejections);[174] agreement on price on November 17;[175] and negotiating

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170 Plaintiff again seizes on the language that AZ wanted to achieve separation "as expeditiously as possible," App.Br.2, 3, 16, 30, 42 & n.3, but again omits the next words: "while ensuring your business continuity." B1_579.

171 A146(¶84); A238.

172 Op.74-75; *see also* Op.72-73, 85-86.

173 A143(¶79).

174 A144(¶82); A169(¶125).

175 A146(¶84); A238.

and finalizing the Merger Agreement, and readying for deal announcement (in December), before Horizon's supply chain issue.[176]

Additionally, Plaintiff's theory that the January 8 Letter was some kind of threat to weaponize the Support Agreements is precluded by the Merger Agreement's interim operating covenant, which prohibited changes to those agreements without Horizon's consent.[177] It is not reasonably conceivable that Horizon would have proceeded with the tender offer if it believed that the (unamended) Support Agreements would have allowed AZ to coerce, threaten, or harm Viela or that AZ was going to "expeditiously" terminate, or breach, the Support Agreements. Meanwhile, if AZ had the "leverage" to level the "threats" Plaintiff imagined, AZ would have conditioned its approval of the Merger on Viela's agreement to amend the Support Agreements. That never happened. Instead, AZ was left to negotiate amendments to the Support Agreements after the Merger closed, with a counterparty over which it undisputedly had no leverage or control. *Supra* 24-25.

Finally, Plaintiff's January 8 "threat to breach" theory is not reasonably conceivable given the antitrust review process for the AZ/Alexion transaction, to

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176 A146-47(¶86).

177 B1_706-10(§5.3(w)); B1_16; B1_53-54; B1_1000; B1_1022-23; *see* Op.30.

which Plaintiff points, App.Br.19-20, 34-35.[178] Plaintiff himself alleged that Soriot and AZ knew from the beginning that multiple antitrust regulators would review the AZ/Alexion transaction.[179] AZ's communications with and actions toward Viela were undisputedly under a microscope (and the EC documented that it called Horizon). *Supra* 18-19, 25. Had AZ conveyed any threatening behavior—whether in the January 8 Letter or otherwise—that *would have been discovered and jeopardized* AZ's ability to obtain the clearance for which, per Plaintiff, AZ "was willing to sacrifice material value in its Viela investment."[180]

Not surprisingly, Plaintiff now pivots to a supposed *pre*-January 8 threat from AZ. App.Br.30-33. But even after access to the 220 Production, the Complaint identified no such communication,[181] merely alleging in conclusory fashion that "by October 30," and even by Soriot's September 9 announced departure from the Viela Board, "AstraZeneca" had conveyed that, without a sale of Viela, AZ would sell its

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178 B1_16-17; B1_54-55; B1_1000; B1_1023.

179 A106-07(¶9); A133-34(¶¶62-63); A136(¶66); A174-75(¶142).

180 A107(¶10). Plaintiff seizes on the EC's finding of *potential* risk of UPLIZNA supply foreclosure. App.Br.19-20, 34-35. The EC found only that the combined AZ/Alexion entity would have "the ability and the incentive" to discontinue or degrade UPLIZNA manufacture, B1_910, not that AZ had so threatened. Regardless, the initial Commercial Supply Agreement required AZ to give three years' advance notice before termination for convenience; the amended Agreement simply forfeited any termination right. *Supra* 8, 24.

181 Op.n.223.

Viela holdings.[182] Plaintiff now points to "support[]" for a supposed pre-January 8 threat, App.Br.31-32, but there is none:

- Nolet's January 14, 2021 email: Plaintiff double speculates that (i) the January 8 Letter did not mention selling AZ's block because that "threat" had already been made, App.Br.31, and (ii) such "threat" was the reason for Nolet's request to discuss finding a buyer for AZ's shares, App.31-32. Nolet's email says nothing about any communication from AZ; AZ's need to divest its Viela holdings was evident from the December announcement of the AZ/Alexion merger. Nolet also underscored that the issue was recent, as one the Board "should begin" to address.[183]
- January 14, 2021 Board discussions: The minutes from this meeting, App.Br.32, nowhere identify any separation-related communication from AZ pre-dating January 8.[184]
- Yao/Soriot "[o]ngoing conversations": The referenced November 13 minutes, App.Br.32, say only that Yao reported to the Board that he

[182] A108(¶12); A141(¶76); A150(¶90); A158(¶105). Plaintiff never explained how AZ selling its shares, which it was entitled to do, constituted some threat that coerced the Board to sell Viela, as opposed to looking for buyer(s) for the shares. *See* B1_586.

[183] B1_586.

[184] B1_588.

"periodically me[t]" with Soriot to discuss Viela's "public progress," and offered that he "could" confidentially explore with Soriot AZ's views about potential transaction scenarios.[185] Regardless, the minutes say nothing about any communication from AZ.

- Yao October 6 "instruction": Plaintiff insists Yao "instructed" Horizon to make an acquisition offer on October 6. App.Br.32. The supposed October 6 instruction did not come "just days after" Soriot's final board meeting, App.Br.32; Soriot resigned on September 9, effective September 18. Nor was there a valid basis to speculate that Yao's "instruction" was to bid *to acquire*. Plaintiff quotes Walbert, who said Horizon was told "there was not an interest in a *one-off licensing deal* [and] that we should be considering a *broader type of collaboration* with the Viela team."[186] Regardless, it is pure speculation that Yao's "instruction" was instigated by Soriot.

Meanwhile, Plaintiff's own allegations preclude any inference of a supposed threat to abandon Viela before the January 8 Letter and "by October 30": Plaintiff

185 B1_485.

186 A143(¶79) (emphasis added); *see also* B1_785.

pleaded that Soriot *hid* the Alexion pursuit from Yao and Viela at least through mid-November 2020.[187] Plaintiff's Opening Brief simply ignores these allegations.

That leaves Plaintiff with his assertion that the Trial Court embarked on a "wide-ranging fact-finding mission," "browsing through" the exhibits submitted with Defendants' dismissal motions and supposedly resolving factual disputes in Defendants' favor. App.Br.4, 28. The Court did no such thing, but instead recognized that, while it could consider documents incorporated into the Complaint, the pleading standard remained unchanged; it credited Plaintiff's well-pleaded factual allegations and gave Plaintiff all reasonable inferences.[188]

Indeed, with two exceptions, Plaintiff nowhere disputes the Trial Court's *factual* findings, but rather its assessment of the *inferences*—of supposed threats, coercion, and control—Plaintiff sought. *First,* Plaintiff contests the Court's finding that the separation between Viela and AZ had "already been in the works" before the January 8 Letter. App.Br.33-34. Plaintiff proffered no alternative facts, which is

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[187] A107(¶11); A133-34(¶62); A141(¶¶76-77); A145(¶83); A174-75(¶¶142-143).

[188] Op.42 & n.2. Virtually all of the exhibits were incorporated into the Complaint, either expressly or through the parties' agreement. B1_890(¶15); *see* B1_77-86; B1_1037; B2_61-63; B2_437-39. The Trial Court relied on the documents (particularly the Support Agreements and the January 8 Letter) primarily for what they undisputedly contained, and only in limited circumstances took notice of the truth of an undisputed matter asserted in them. *See Hughes*, 897 A.2d at 169; D.R.E. 201(b) (permitting judicial notice of facts "not subject to reasonable dispute").

unsurprising given the letter's cataloguing of "remaining" services. Regardless, Plaintiff misses the thrust of the Court's ruling: the "full contents" of the letter, along with the "unscrambled" timeline conceded by Plaintiff, permitted no reasonable inference that the letter threatened to terminate/breach the Support Agreements.

Second, Plaintiff disputes a supposed finding that he had alleged threats only in January 2021. App.Br.30. That mischaracterizes the Trial Court's ruling. The Court correctly observed that Plaintiff proffered only conclusory allegations regarding pre-January 8 communications, while also pleading that Soriot did *not* disclose the Alexion pursuit at least through mid-November.[189]

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Viewing the *facts* (not conclusory assertions) and "unscrambled" timeline pleaded in the Complaint or contained in the documents incorporated therein, the Trial Court correctly concluded that there was no reasonable inference of control, with allegations a "far cry" from those in the cases Plaintiff primarily cited.[190] *See Basho*, *supra* 36, 37; *Voigt*, 2020 WL 614999, *14-17, 19 (disabling relationships with eight of 12 directors, 35% block, and veto rights over "significant"

[189] Op.18, 23, 66-67, 72-73 & n.223; A133-34(¶62); A145(¶83). Plaintiff separately complains that the Trial Court made an "uncited" finding that AZ had never exercised any veto right. App.Br.25. That was not a *disputed* fact; Plaintiff never alleged otherwise.

[190] Op.70.

transactions); *Tornetta*, 310 A.3d at 445-46, 504-21 ("Superstar CEO," "managerial supremacy," disabling relationships with majority of board, and "dictat[ing]" sale "game clock").

II. THE COMPLAINT FAILED TO PLEAD THAT AZ WAS CONFLICTED, PRECLUDING ENTIRE FAIRNESS REVIEW

A. QUESTION PRESENTED.

Whether the Trial Court's ruling can be affirmed on the alternative basis that, even were AZ a controlling stockholder, Plaintiff failed to allege that AZ had any disabling conflict triggering entire fairness review. B1_17-18; B1_65-67; B1_1001; B1_1027-29.

B. SCOPE OF REVIEW.

This Court reviews *de novo* a decision to grant a motion to dismiss. *Account v. Hilton Hotels*, 780 A.2d 245, 248 (Del. 2001). The Trial Court's ruling can be affirmed on alternative grounds "fairly presented" below. *Stnd. Distrb. Co. Through Penn. Mfrs. Ass'n Ins. v. Nally*, 630 A.2d 640, 647 (Del. 1993).

C. MERITS OF ARGUMENT.

Plaintiff concedes that the mere presence of a controlling stockholder does not trigger entire fairness; the controller "must be conflicted as well." *Harcum v. Lovoi*, 2022 WL 29695, *13 (Del. Ch. Jan. 3, 2022); App.Br.37.

Plaintiff claims that AZ was conflicted because the Merger furthered a unique need: "pursu[ing] and complet[ing]" the Alexion/AZ transaction, which required antitrust clearance. App.Br.37. To plead a "disabling conflict" under this theory, Plaintiff had to plead facts supporting the "unusual" inference that AZ did not seek to "maximize the value of its shares." *Morton's*, 74 A.3d at 666-67.

Yet the Complaint conceded that, to reap the alleged non-ratable benefit of antitrust clearance for the AZ/Alexion transaction—which was never alleged to be guaranteed, and the Merger was not conditioned on clearance—AZ would have to *both* sell its Viela equity stake *and* amend the Support Agreements.[191] AZ did not need the Merger to secure those amendments, and did not condition its support of the Merger on amending the Support Agreements. More fundamentally, the Merger Agreement's interim operating covenant only *complicated* AZ's ability to amend the Support Agreements, by putting AZ in the position of having to later negotiate with Horizon, a third party over which it undisputedly had no influence, let alone control.

Because Plaintiff failed to plead facts showing that the Merger provided any non-ratable benefit to AZ, entire fairness did not apply.

[191] A109(¶14); A134-36(¶¶63-66).

III. THE CLAIMS AGAINST RIVERS AND SORIOT WERE PROPERLY DISMISSED

A. QUESTION PRESENTED.

Whether the Trial Court correctly dismissed the claims against Rivers and Soriot, where *Corwin* cleansing applied and where Plaintiff failed to plead any breach of the duty of loyalty. B1_18; B1_69-73; B1_1001-02; B1_1031-34.

B. SCOPE OF REVIEW.

This Court reviews the Trial Court's dismissal *de novo* and can affirm on alternative grounds "fairly presented" below. *Supra* 32, 49.

C. MERITS OF ARGUMENT.

As demonstrated by the Non-AZ Directors, the Trial Court correctly dismissed the claims against Rivers and Soriot because the Complaint failed to adequately allege that Viela's disclosures about the Merger were insufficient. But even if *Corwin* did not apply, the claims against Rivers and Soriot failed as a matter of law.

Rivers. The Complaint alleged that Rivers was a "conflicted fiduciary" who voted to approve the Merger to advance AZ's "self-interest."[192] But Plaintiff alleged no facts to support this conclusory accusation, and the mere fact that Rivers was AZ's designee is insufficient. The Complaint's allegations that Rivers served as a "liaison" between AZ and Yao/Viela, and "obtained confidential information" for

192 A175-76(¶147).

AZ's benefit, were likewise conclusory, as the Trial Court held.[193] Concerning the former, the relevant Board minutes document that Rivers excused himself whenever Viela's Board discussed AZ.[194] Regardless, without factual allegations that Rivers acted "to the detriment of [Viela] and its stockholders or to benefit [himself or AZ] improperly," there was no breach of fiduciary duty. *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214, *43 (Del. Ch. Aug. 27, 2015).

Soriot. The claims against Soriot were even more infirm. Soriot owed Viela stockholders no fiduciary duties once he resigned as of September 18, 2020. *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 758 (Del. Ch. 2005), *aff'd* 906 A.2d 27 (Del. 2006). The Complaint alleged that, before then, Soriot caused AZ to pursue Alexion.[195] But there was no allegation that Soriot disloyally shared or exploited Viela's confidential information in discussions with Alexion.

Plaintiff also alleged that Soriot "pushed Viela into a rushed, single-bidder sale process,"[196] but as the Trial Court observed, Soriot resigned from the Board almost six weeks before Horizon made its initial non-binding offer.[197] The only pre-resignation action to which Plaintiff pointed was Soriot's vote, with the rest of the

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193 Op.67; A116(¶30); A145(¶83).

194 Op.67; B1_485; B1_588.

195 A174(¶142).

196 A107(¶11); A117(¶31); A175(¶¶143-44).

197 Op.52-53; B1_411; B1_442.

Board, to formally retain Goldman,[198] an undisputedly independent financial advisor already helping Viela "evaluat[e] strategic alternatives" *before* Soriot first approached Alexion.[199] That retention bound Viela to nothing.

198 A117(¶31); A142(¶78); A156(¶103); A175(¶144).

199 B1_407; *see* A107(¶11); A133(¶62).

CONCLUSION

The Trial Court's decision should be affirmed.

Dated: October 31, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2024, true and correct copies of the foregoing **Appellees AstraZeneca UK Limited, AstraZeneca PLC, Tyrell Rivers, Ph.D. and Pascal Soriot's Answering Brief** were served on the following individuals via File & Serve*Xpress*:

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