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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE THE TRADE DESK, INC. DERIVATIVE LITIGATION	Case No. 114, 2025 On appeal from the Court of Chancery of the State of Delaware, Consol. C.A. No. 2022-0461-PAF **PUBLIC VERSION** **FILED JUNE 30, 2025**

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PRELIMINARY STATEMENT

This case is not about second-guessing Board discretion—it is about a Board captured by a controlling stockholder who approved a staggering transfer of wealth from the Company's minority stockholders to the controlling stockholder (who held an equity stake of under 10%) under the guise of "compensation." The so called "Performance Option," the Mega Grant, was not the product of an independent, deliberative process, but rather of Defendant Green's personal initiative, which was merely rubber-stamped by compromised directors. Plaintiffs have alleged with particularity that Green dominated the process, the directors lacked independence, and the award was approved for demonstrably pretextual reasons. These are not conclusory claims; they are supported by detailed factual allegations that, taken together, give rise to a reasonable inference of bad faith.

Plaintiffs allege that the directors permitted Green to dictate the terms of an unprecedented compensation award, without independent inquiry, negotiation, or resistance of any kind. The process was devoid of meaningful checks and balances—no stockholder vote, no substantive departure from Green's demands, and no terms to protect the Company. In such circumstances, where structural protections are absent and the controller's hand is unchecked by a captive board, Delaware law

permits a stockholder to seek redress on the company's behalf. Accordingly, the decision below should be reversed.

ARGUMENT

I. The Trial Court Erred in Holding That a Majority of the Board Was Independent.

A. Green's Status as a Controlling Stockholder Is Relevant to the Court's Independence Analysis.

In their Answering Brief ("AB"), Defendants argue in absolute terms that Green's status as a controlling stockholder does not affect the legal standard for assessing director independence, asserting that Rule 23.1 governs the demand futility analysis for derivative claims involving controlling stockholders. AB at 17-18 (citing *In re Match Grp., Inc. Deriv. Litig.*, 315 A.3d 446, 451-52 (Del 2024)). But that is not a correct statement of Delaware law. While the mere presence of a controller does not, by itself, rebut the presumption of director independence, it is nonetheless relevant to the independence inquiry when Plaintiffs' allegations are considered as a whole. *E.g.*, *Aronson v. Lewis*, 473 A.2d 805, 816 (Del. 1984), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000); *Sandys v. Pincus*, 152 A.3d 124, 133 (Del. 2016); *In re Kraft Heinz Co. Deriv. Litig*., 2021 WL 6012632, at *6 (Del. Ch. Dec. 15, 2021), *aff'd*, 282 A.3d 1054 (Del. 2022); *In re BGC P'rs, Inc. Deriv. Litig.*, 2019 WL 4745121, at *8 (Del. Ch. Sept. 30, 2019).

As iterated in Plaintiffs' Opening Brief ("OB"), Plaintiffs' allegations of Falberg's, Buyer's and Paley's longstanding and substantial personal, professional,

and financial ties to Green (OB at 5-8; 28-37), make Green's status as a controlling stockholder particularly significant. *See Aronson*, 473 A.2d at 815. The repeated and material participation of both Green and his personal counsel at Committee meetings, combined with the conspicuously "sparse" minutes of those meetings, speaks volumes about a process in which Compensia's advice was disregarded, and Green ultimately secured an outsized Mega Grant whose terms uniformly favored him while failing entirely to reflect the grant's stated purpose. OB at 8-21; 27; 43-49. The Trial Court thus erred in failing to accord proper weight to Green's status as a controller.

B. The Trial Court Erroneously Concluded That a Board Majority Could Independently Assess a Demand.

1. Kathryn Falberg

Rather than addressing the allegations concerning Falberg's independence holistically, both the Trial Court and Defendants improperly compartmentalized them. Additionally, even the Trial Court's and Defendants' rejection of individual allegations made by Plaintiffs runs contrary to Delaware precedent.

First, Falberg's holdings of over $19 million in Trade Desk shares obtained due to Green are inherently material—a factor the Trial Court overlooked. OB at 7-8; 35-36. If Green had not appointed Falberg to the Board when Trade Desk was private, she would not own any of this stock. A0121-122. Contrary to Defendants'

argument, Green's inability to deprive Falberg of the "economic benefit of those holdings" is irrelevant. AB at 20. As the Trial Court acknowledged, it "is possible for past benefits of sufficient materiality in the specific circumstances of a particular director to give rise to a sense of owingness." Memorandum Opinion ("Op.") at 53 (citing *BGC*, 2019 WL 4745121, at *12). That is precisely the case here.

Second, while Falberg's director fees *alone* do not create a reasonable doubt as to her independence, it is nonetheless a relevant factor in making an independence determination. *See In re Ltd., Inc.*, 2002 WL 537692, at *5 (Del. Ch. Mar. 27, 2002). In 2021 Falberg received a total of $1,553,670 in director compensation, of which 19% came from Trade Desk. Op. at 54-55. Defendants' argument that "Plaintiffs make no specific allegations regarding Ms. Falberg's income during any other year" other than 2021 is a red herring. AB at 21. This case was filed in 2022, making Falberg's 2021 income the most relevant year for evaluating her independence. Moreover, Falberg was a professional director reliant on fees from her directorships as her sole source of income. OB at 8. It is implausible she would jeopardize her directorship at Trade Desk—and her standing on other boards—by approving litigation against Green, particularly given that she not only approved the Mega Grant, but also chaired the Committee tasked with "negotiating" against him.

Defendants' and the Trial Court's reliance on *Kraft*, 2021 WL 6012632, at *11-13, to suggest Falberg's director compensation could not reasonably impair her ability to objectively evaluate a demand is also misplaced. AB at 21. In *Kraft*, the "demand futility analysis hinge[d] entirely on whether the directors had disabling connections to 3G," relating to its "sale of 7% of its then-24% stake in The Kraft Heinz Company." *Kraft*, 2021 WL 6012632, at *1, *6. In determining that a director's compensation—amounting to 17% of his publicly reported income—was insufficient to rebut the presumption of independence for purposes of a demand, the court emphasized that the director had no prior relationship with 3G and "[t]he Complaint lack[ed] any particularized allegations supporting a pleading-stage inference that 3G was responsible for his directorship […] with Kraft Heinz or had the power to strip him of […] his Board position." *Id.* at *12.

That is not the case here. Falberg's relationship with Green dates back at least fifteen years prior to this action. OB at 7. Moreover, as Trade Desk's controlling stockholder, Green is directly responsible for Falberg's directorship and holds the power to remove her from the Board. OB at 3-4, 7.

2. Lise Buyer

When Buyer joined the Board in March 2019, the Company determined that she was not independent under the NASDAQ rules, presumably due to her previous

consulting work for the Company. OB at 7. But Trade Desk soon reclassified Buyer as independent, and she was appointed "Lead Independent Director" in February 2021. *Id.* Defendants disregard the fact that Buyer joined the Board as a non-independent director, while contending that Buyer's prior consulting work and her admitted reliance on Trade Desk and Green for business references do not create a reasonable doubt as to her independence. AB at 23-26.

While Buyer's prior classification by the Company as "not independent" under the NASDAQ listing rules is not dispositive, it "should be considered as part of a holistic demand futility analysis." *Kraft*, 2021 WL 6012632, at *12. Contrary to the Trial Court's finding, Buyer's compromising relationship with the Company and Green did not simply end upon her reclassification as independent—as evidenced by Buyer's 2021 director and officer questionnaire, in which she identified her prior consulting engagement with the Company as a "material relationship." OB at 45.

Defendants contend that the Trial Court's statement that Buyer would have "roughly 50 available references" to tap into should she fall out of favor with Green is "not a 'defendant-friendly inference,' [i]t is math." AB at 25-26. But neither Defendants nor the Trial Court identify how many businesses Buyer lists as references, nor do they address, among other factors, the size of these companies, the extent of their influence, or whether any of these potential references would even

be favorable to Buyer—let alone as influential as Green. Thus, the inference drawn by the Trial Court was not only defendant-friendly, it also lacks any support in the record. *See* OB at 33.

Further, Defendants seek to minimize Buyer's role in the Mega Grant by mischaracterizing Plaintiffs' references to the Complaint. AB at 26-27. In doing so, they deliberately overlook more than three full pages of citations to the record detailing Buyer's active participation in Committee meetings—despite her not being a member of the Committee. OB at 13-17. Why was it that Buyer volunteered or was asked to "facilitate [] discussions around a potential significant equity grant" in the first place? *Id.* at 13. And why did she participate in Committee meetings to provide input on the "size and framework" for Green's Mega Grant when she was not a member? *Id.* at 13-17. Such questions, together with Plaintiffs' other well-pleaded allegations challenging Buyer's independence, support the reasonable inference that she was incapable of impartially considering a litigation demand.

Finally, Defendants disregard the fact that Buyer played a critical role in spearheading the Trigger Amendment. *See id.* at 7, 31. These allegations are material in assessing Buyer's ability to consider a demand, particularly given that the Trigger Amendment had already solidified Green's control over the Company—which

reinforces the inference that the Mega Grant's stated purpose of retaining Green was a pretext. *Id.* at 18-19; 45-47.

3. Eric Paley

Defendants argue, and the Trial Court held, that the "long-standing pattern of mutually advantageous business relations between Mr. Paley and Mr. Green" does not warrant skepticism regarding Paley's ability to evaluate a demand. AB at 27-28; Op. at 34-44. But these relationships run deep and are financially significant. FC—a then newly formed venture capital fund managed by Paley—was one of two initial investors in Trade Desk, ultimately reaping hundreds of millions of dollars in gains. OB at 5-6, 28-29. To no surprise, Paley described the funding as one of the "most worthwhile investments … he has ever made." *Id.* at 5, 29. This investment was critical to both Paley and the newly-formed FC. Despite FC divesting its Trade Desk holdings in 2019, Paley remained on the Trade Desk Board, while Green, in turn, became an investor in FC. *Id.* at 5-6, 28-30.

Defendants' argument also highlights the Trial Court's error—namely, its failure to assess Plaintiffs' allegations holistically. AB at 27-28. Again, Plaintiffs' allegations regarding Paley's financial gains from his association with Green and Green's full-circle investment in Paley's venture capital firm must be considered

alongside Plaintiffs' other well-pled claims.[1] These include Paley's lengthy tenure on the Board, his biweekly communications with Green, and his public admiration for Green, expressed through words such as "intimate," "so lucky," and "special." OB at 28-31. In light of this record, is it plausible that Paley—who approved the Mega Grant and whose firm counts Green as an investor—would authorize litigation against Green? The Trial Court failed even to confront that question.

Further, Defendants' comparison of Plaintiffs' allegations concerning Paley's long-standing relationship with Green to those in *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1051 (Del. 2004) (AB at 29), is ill-supported. The central issue in *Beam* was whether allegations of mere personal friendship (i.e., running in the same social circles), without more, were sufficient to raise a reasonable doubt about a director's independence. *Id.* at 1050-52. This Court determined that they were not. *Id.*

Plaintiffs' allegations here, by contrast, are more analogous to those in *Sandys*, where two directors—partners at a venture capital firm that was an early-

[1] *See* OB at 24 (citing *Del. Cnty. Empls. Ret. Fund v. Sanchez*, 124 A.3d 1017, 1022 (Del. 2015) (*"*all the pled facts regarding a director's relationship to the interested party [must] be considered in full context in making the… pleading stage determination of independence."); *id.* at 25 (citing *In re Oracle Corp. Derivative Litig.*, 2022 WL 3136601, at *8 (Del. Ch. May 20, 2022) ("allegations levied against a director's independence must be viewed holistically.").

stage investor in the controlled company with additional interlocking relationships with the controller—were deemed incapable of impartially considering a litigation demand. 152 A.3d at 127. As this Court reasoned in *Sandys*, it is "reasonable to expect that [a mutually beneficial ongoing business] relationship might have a material effect on the parties' ability to act adversely toward each other." OB at 30, fn. 117 (citing *id.* at 134).

Here, Plaintiffs' particularized allegations as to Paley's mutually beneficial ongoing business relationship with Green—including over 300 one-on-one telephone calls—when considered together with the broader context, raise a reasonable doubt as to Paley's ability to impartially evaluate a demand. OB at 28-31. The Trial Court erred in holding otherwise.

II. Plaintiffs' Allegations Support a Reasonable Inference that Buyer, Falberg, and Paley Operated With a "Controlled Mindset" and Breached Their Duty of Loyalty.

Plaintiffs' "controlled mindset" allegations assert that Buyer, Falberg, and Paley knowingly prioritized Green's interests over those of the Company and its minority stockholders by approving an $819 million award that exclusively benefits Green without delivering any corresponding value to the Company. In essence, the Complaint alleges that Buyer, Falberg, and Paley "went along" with the Mega Grant to "make [Green] happy," and not because of an honest belief that doing so served the best interests of the Company and its minority stockholders. *IBEW Loc. Union 481 Defined Contribution Plan & Tr. on Behalf of GoDaddy, Inc. v. Winborne*, 301 A.3d 596, 627 (Del. Ch. 2023). Such particularized allegations support a rational inference that these directors "acted with a purpose *other than* that of advancing the best interests of the corporation and its stockholders." *Id.* at 623 (emphasis added). That is a textbook example of disloyalty. Accordingly, Plaintiffs have sufficiently pleaded that Buyer, Falberg, and Paley face a substantial likelihood of liability under Rule 23.1 *Id.* at 628-629.

A. Contrary to Defendants' Claim, There Is Nothing "Circular" About Plaintiffs' "Controlled Mindset" Theory.

Defendants ask the Court to blind itself to the extreme facts of this case. But the objective facts concerning the Mega Grant are critical in drawing inferences

concerning the directors' state of mind. The salience of the award itself is evidenced by *Winborne*, a case that Plaintiffs cite extensively and that Defendants completely ignore. Relying on this Court's decision in *Allen v. Encore Energy P'rs, L.P.*, 72 A.3d 93 (Del. 2013), which discussed how to assess allegations of bad faith at the pleading stage, the *Winborne* court stated:

> At the pleading stage, the test [for bad faith] is whether the complaint alleges a constellation of particularized facts which, when viewed holistically, support a reasonably conceivable inference that an improper purpose sufficiently infected a director's decision to such a degree that the director could be found to have acted in bad faith.

Winborne, 301 A.3d at 623.

As the court further explained, "if the pled facts indicate that the terms of the transaction were extreme," this is "logically relevant" to drawing a pleading-stage inference about the directors' state of mind. *Id.* at 620 (quoting *Encore Energy*, 72 A.3d at 107). That proposition is drawn directly from this Court's observation in *Encore Energy* that bad faith may be inferred "when a plaintiff alleges objective facts indicating that a transaction was not in the best interests of the [company] and that the *directors knew of those facts*." *Encore Energy*, 72 A.3d at 107-108 (emphasis added). This is precisely what Plaintiffs allege here.

In assailing Plaintiffs' controlled mindset theory, Defendants devote more attention to the label than anything else. Plaintiffs' theory is not merely that Buyer,

Falberg, and Paley had a controlled mindset, but rather that their controlled mindset *caused them to breach their duty of loyalty* by knowingly advancing Green's interests at the Company's expense. No Delaware court has described the "controlled mindset" theory as "circular," as Defendants claim. AB at 33-34. That word appears nowhere in any of the decisions Defendants cite, and the allegations in those cases all shared a common flaw: they were conclusory and failed to match the challenged conduct.

As a fallback, Defendants rely on *Southern Peru* to claim that controlled mindset can only establish "a violation of the duty of care." AB 37 (citing *In re S. Peru Copper Corp. S'holder Deriv. Litig.*, C.A. No. 961-CS, at 123:22-129:5 (Del. Ch. Dec. 21, 2010) (TRANSCRIPT) ("Tr.")). That is simply wrong, as later cases make clear. In *Southern Peru*, the plaintiff argued that the directors (who the court later found had fallen victim to a controlled mindset) "really didn't understand" what they were doing and were guilty of a "negotiating [] blunder." Tr. at 32-33. As the court stated in dismissing those individuals on summary judgment, "the fact that

somebody is not adroit doesn't expose them to monetary liability" in light of the availability of Section 102(b)(7) exculpation. *Id.* at 40.[2]

In contrast to the post-trial outcome in *Southern Peru*, in three of Plaintiffs' key "controlled mindset" cases—*CBS*, *Viacom*, and *Berteau v. Glazek*—the court denied motions to dismiss because the allegations were sufficient to plead a non-exculpated breach of loyalty claim. The common thread in these cases is that the directors' conduct supported a reasonable inference at the pleading stage that they acted not out of an honest belief that the transaction served the company's best interests, but to appease the controller.

While Defendants feebly attempt to distinguish it, *CBS* is directly on point. The court in *CBS* held that the plaintiffs had adequately alleged demand futility because a majority of the board faced a substantial likelihood of liability for having "approved a conflicted transaction for improper reasons," specifically to placate the controller, an inference that was warranted because the directors capitulated to the "[controller's] will on nearly every point . . . flagged as critical to [the company] and

[2] That directors in one situation can manifest a controlled mindset and only be found to have breached their duty of care while directors in another situation can manifest a controlled mindset to a degree that suggests bad faith involves no contradiction. As with the distinction between gross negligence and bad faith generally, it is a matter of degree. In short, the allegations matter much more than the label.

its stockholders." *In re CBS Corp. S'holder Class Action & Derivative Litig.*, 2021 WL 268779, at *31, *42 (Del. Ch. Jan. 27, 2021), *as corrected* (Feb. 4, 2021).

Similarly, in *Viacom*, the court denied a motion to dismiss and held that the allegations were sufficient to state non-exculpated breach of loyalty claims against directors who approved a conflicted transaction in circumstances where they inferably "acted in deference, and out of loyalty, to [the controller] in a manner detrimental to [the company's] minority stockholders." *In re Viacom Inc. S'holders Litig.*, 2020 WL 7711128 at *10 (Del. Ch. Dec. 29, 2020), *as corrected* (Dec. 30, 2020).

And in *Berteau v. Glazek*, the court again held that the plaintiff sufficiently pled a non-exculpated breach of loyalty claim against directors who approved a conflicted transaction and who inferably were simply "not prepared to exercise [their] ability to say 'no' to the controller." 2021 WL 2711678, at *22 (Del. Ch. June 30, 2021). As is the case here, the court found the allegations "support a reasonable inference that the negotiations over deal terms were limited to the minimum necessary to confer a scintilla of legitimacy to the [committee's] process." *Id.* at *24. While the court recognized that the defendants "may eventually prove that they acted loyally to [the company], conducted a fair process, and did not acquiesce to the influence of [the controller]," dismissal was unwarranted because "[t]hat conclusion

cannot be reached as a matter of law at this preliminary stage." *Id.*; *accord Kahn v. Stern*, 183 A.3d 715 (Del. 2018) (allegations need only support a rational pleading stage inference of bad faith, and do not need to "rule out any possibility other than bad faith.")

Finally, in *Tornetta*, the court found that a similar process that took place through an identical number of meetings (ten) and a nearly identical duration of time (nine months compared to ten here) revealed that "neither the [c]ompensation [c]ommittee nor the [b]oard acted in the best interests of the [c]ompany when negotiating [the controller's] compensation plan," as there was "barely any evidence of negotiations at all," and the terms were patently unfair. *Tornetta v. Musk*, 310 A.3d 430, 511 (Del. Ch. 2024).

B. Defendants' Reliance on *Zuckerberg II* Is Unavailing.

Defendants' reliance on *United Food & Commercial Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund v. Zuckerberg*, 262 A.3d 1034 (Del. 2021) ("*Zuckerberg II*") is unpersuasive. Selectively quoting the Court's *Zuckerberg II* decision, Defendants wrongly characterize Plaintiffs' argument as presuming "'that a stockholder has a general right to control corporate claims' *anytime* a stockholder disagrees with a controller transaction." AB at 33 (quoting *Zuckerberg II*, 262 A.3d at 1055) (emphasis added). But this case involves far more

than mere disagreement—it concerns inferably beholden and disloyal directors binding the Company to an extreme equity award that benefited only Green. In *Zuckerberg II*, plaintiff argued that an *exculpated* due care claim should suffice to excuse demand under *Aronson* where the entire fairness standard applied to the challenged transaction. *Id.* at 1049-1050. Non-exculpated claims were not at issue. As the Court noted, the plaintiff made only "conclusory allegations" of bad faith, and "concede[d] that the complaint did not plead with particularity that a majority of the demand Board was subject to liability for acting in bad faith." *Id.* at fn. 112. The Court rejected plaintiff's argument that the standard of review dictated the result for demand futility purposes, observing that it would "collapse[] the distinction between the board's capacity to consider a litigation demand and the propriety of the challenged transaction." AB at 33 (quoting *Zuckerberg II*, 262 A.3d at 1055-56).

Crucially, however, *Zuckerberg II* left open "a path" for this very situation. *Id.* at 1049. Namely, one "where there is reason to doubt that the board could bring its impartial business judgment to bear on a litigation demand" for reasons that have nothing to do with the standard of review. *Id*. When Plaintiffs' strong independence allegations are combined with the objective facts concerning the Mega Grant and viewed holistically, there is a reasonable doubt that Buyer, Falberg, and Paley could have properly responded to a demand. *See Kahn v. Portnoy*, 2008 WL 5197164, at

*13 (Del. Ch. Dec. 11, 2008) ("[w]hen the relationships of [the directors to the controller] are considered together with the allegations of a conflicted [controller] transaction . . . , it becomes clear that there is a reasonable doubt that the [] board would be able to exercise disinterested and independent business judgment in deciding whether to pursue the derivative action.")

C. Defendants' Attempt to Minimize Green's Involvement Fails.

In their brief, Defendants attempt to rehabilitate the process by suggesting Green had nothing to do with the origination of the Mega Grant and downplaying his overall involvement throughout. But Defendants cannot rewrite the Complaint, and they are not entitled to have inferences drawn in their favor.

According to Defendants, Plaintiffs' claim that the Committee acquiesced to Green's demand for the "Mega Grant" is contradicted by the December 4, 2020, meeting minutes. Specifically, Defendants argue that because Falberg "discussed initial thoughts on a potential CEO grant," and Green "did not attend that meeting," it follows that Green could not have demanded the Mega Grant. AB at 41-42.

This argument misrepresents both the Complaint and the timeline of events. Defendants fixate on the December 4 meeting, but that isolated moment ignores the broader pattern of Green's control over the process. A0082-102. Indeed, Defendants fail to address the fact that once Green attended the January 6, 2021 Committee

meeting to present "his views of executive and CEO compensation," the Committee immediately "determined to consider a large CEO grant further," and from that point on, no alternative approach was ever considered. A0082.

In the same vein, Defendants argue that the Mega Grant was not put to [redacted] for reasons unrelated to Green. To support that contention, they cite the minutes of the February 18, 2021 Committee meeting—the only meeting where [redacted] was discussed—which did not expressly state that Green or Sonsini "opposed [redacted]." AB at 44. Notably, recognizing that [redacted] would plainly run counter to Green's interests, Defendants also do not contend that Sonsini supported one. Because the minutes omit any explanation for why [redacted] was rejected—and because they are deliberately sparse overall—Plaintiffs are entitled to the reasonable inference that Sonsini conveyed Green's opposition to a [redacted], and the Committee complied.

D. A Holistic Review of the Allegations Supports a Rational Inference of Bad Faith by Buyer, Falberg and Paley.

Defendants argue that Plaintiffs improperly refer to Buyer, Falberg, and Paley in "combination," but the explanation is simple— the allegations apply to each of them individually. AB at 38. Falberg chaired the Committee, and although Buyer and Paley were not official members, they were nonetheless involved. Aside from Pickles (who recused himself), Buyer and Paley had the longest and closest ties to

Green. Their unexplained involvement raises a reasonable inference that they participated precisely for this reason—choosing to "lean into, rather than avoid, entanglements with" Green, the interested party. *Winborne*, 301 A.3d at 631.

Whether acting on their own initiative or at Green's behest, Buyer and Paley inserted themselves into the process to advance Green's interests, not to negotiate against him. At the February 3, 2021 Committee meeting, both Buyer and Paley "provide[d] input to the Committee on *the size* and *framework* of the grant" (*see*, B0058-0061)—the very matters central to Plaintiffs' bad faith allegations. Similarly, both Buyer and Paley attended the February 18, 2021 Board meeting where a potential stockholder vote was rejected, and the size, framework, and other "key considerations" were again discussed.[3] A0293-0295.

Defendants claim Compensia "made its presentation solely to the Committee (not to Buyer or Paley) on December 4, 2020." AB 45. While true, this point is irrelevant, as Buyer and Paley later received the "presentation materials Compensia had prepared and distributed" to the Committee. A0317-0319. They were therefore fully aware of Compensia's advice—and knew it had been disregarded.

[3] Contrary to Defendants' contention, the allegations against Paley are not "limited to his approval" of the Mega Grant. AB at 39.

Defendants quibble with whether Compensia framed its guidance as "recommendations." AB 45. The distinction is irrelevant. The purpose of engaging Compensia was for the directors to obtain advice and guidance from an independent compensation consultant, precisely what Compensia provided. Buyer, Falberg, and Paley, however, disregarded any guidance that materially disfavored Green.[4] While a failure to obtain expert advice may suggest a duty of care breach, disregarding such advice altogether raises serious questions under the duty of loyalty. Indeed, Compensia's advice is central to the inference of bad faith in this case, as it illustrates both what genuine negotiations on the Company's behalf should have entailed and the essential terms necessary for the Mega Grant to achieve its purported goals. *All* of Compensia's key decision points were decided in Green's favor:

[4] Defendants cannot identify a single term that actually favored the Company as opposed to Green. Their reference to the "change in control" and "clawback provisions" is puzzling (AB at 46), as both those provisions entirely favor Green. OB at 20, fn. 104; A0066-67. With respect to the "higher stock price hurdles," as the Trial Court noted, this was offset by the "longer" period of time Green had to achieve them. Op. at 17, fn. 86.

Compensia's key decision points	Result[5]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

That outcome is unsurprising, given the total absence of positional negotiations with Green over the award's size, structure, or any other material term. *Id.* As the court observed in *Tornetta*, the absence of "positional negotiation" is "as close to admitting a controlled mindset as it gets." 310 A.3d at 447. As summarized below, given the logical implications of the objective facts, Buyer, Falberg, and Paley are not entitled to a presumption of good faith with respect to the Mega Grant.

1. *Buyer, Falberg, and Paley knew the Mega Grant was completely unnecessary to "retain" Green or align his interests with stockholders.*

Buyer, Falberg, and Paley were fully aware that the Mega Grant did not align with its purported intent. Even if the Court ignores Green's enormous equity stake in Trade Desk prior to the Mega Grant, Defendants' "retention" rationale collapses

[5] A0095-0102, ¶¶ 144-152.

under the weight of a more fundamental problem. Pursuant to the Trigger Amendment approved by the Board in 2020, Green would *automatically* lose control of Trade Desk once he was no longer CEO, President or Chairman. OB at 4, A0046, ¶50, n. 11. The Trigger Amendment thus unequivocally extended Green's control over the Company, and fully "retained" him for another five years. OB at 4, A0045-46, ¶¶47-51.

Defendants fail to explain how the Mega Grant could plausibly be deemed "necessary" to retain Green in light of the Trigger Amendment. Defendants cite to the December 4, 2020 minutes to argue that the Committee purportedly "believed" a Mega Grant was "necessary" to retain Green. AB at 44. However, the minutes say nothing of the sort—they neither state nor imply that anyone held that belief. More importantly, Defendants ignore the critical point: the Mega Grant did not—and could not—serve the stated purpose of retention, because Green was not going anywhere. Thus, contrary to Defendants' argument, Plaintiffs do not allege mere disagreement with the Mega Grant as a "retention tool"; they allege through particularized facts that the Mega Grant's stated purpose of retaining Green was pretextual because Green never threatened to leave, and the entire point of the Trigger Amendment was to ensure that he could not do so without losing control. A0123-24.

2. *Buyer, Falberg, and Paley knew the Mega Grant could not serve any "retention" goal.*

Green is not required to remain CEO for the award to vest. This structural feature of the Mega Grant is fundamentally inconsistent with any purported goal of ensuring Green's continued service as CEO. OB at 18-19, A0330. In the same vein, the Mega Grant includes no minimum vesting or achievement period—meaning it could fully vest at any time, regardless of Green's future role at the Company. A0097-98, ¶¶ 149-50. As Compensia's advice made clear, this feature unequivocally benefits Green but does nothing to advance a legitimate retention objective. OB at 46.

3. *Buyer, Falberg, and Paley knew the Mega Grant did nothing to "further align" Green's interests with stockholders.*

Additionally, the Mega Grant does not preclude Green from selling any portion of his 45 million shares. A0102, ¶ 152. It therefore did not—and *could not*—ensure any purported "alignment" with stockholders, a fact that everyone, Buyer, Falberg, and Paley included, necessarily understood.

4. *Buyer, Falberg, and Paley knew the Mega Grant could not ensure the creation of any "long-term value" to stockholders.*

Finally, the Mega Grant did not include a mandatory clawback provision. Thus, Green is not required to return any vested shares no matter how short-lived the increase in Trade Desk's stock price and regardless of the reason for the decline.

OB at 21, A0063-0067, ¶¶ 85-86. As such, the Mega Grant did not—and *could not*—ensure that any stock price increases that triggered vesting for Green would provide long-term value to stockholders.

CONCLUSION

The Trial Court erred in dismissing Plaintiffs' claims under Rule 23.1. The Complaint pleads particularized facts supporting a reasonable pleading-stage inference that Falberg, Buyer, and Paley—each of whom lacked independence from Green—acted in bad faith by approving the $819 million Mega Grant without an honest belief that it was in the Company's best interests. When viewed holistically, the cumulative weight of Plaintiffs' particularized allegations—Green's domination of the process, the directors' longstanding and substantial ties to him, the Mega Grant's extreme and irrational terms, and the Company's deficient disclosures—raises a reasonable doubt that a majority of the Board could impartially consider a litigation demand. *Zuckerberg II*, 262 A.3d at 1061. Accordingly, the Court should reverse and remand for further proceedings.

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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE THE TRADE DESK, INC. DERIVATIVE LITIGATION	Case No. 114, 2025 On appeal from the Court of Chancery of the State of Delaware, Consol. C.A. No. 2022-0461-PAF

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2025, the foregoing public version of ***Appellants' Reply Brief*** was caused to be served upon the following counsel of record via File & Serve*Xpress*:

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