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Case Number 127,2025

IN THE

Supreme Court of the State of Delaware

CLEVELAND BAKERS AND TEAMSTERS PENSION FUND,

Plaintiff-Below,
Appellant,

v.

JEFFREY P. BEZOS, ANDREW JASSY, KEITH B. ALEXANDER, EDITH W. COOPER, JAMIE S. GORELICK, DANIEL P. HUTTENLOCHER, JUDITH A. MCGRATH, INDRA K. NOOYI, JONATHAN J. RUBINSTEIN, PATRICIA Q. STONESIFER, and WENDELL P. WEEKS,

Defendants-Below,
Appellees,

and

AMAZON.COM, INC.,

Nominal Defendant-Below, Appellee.

No. 127, 2025

COURT BELOW:
COURT OF CHANCERY OF THE STATE OF DELAWARE

C.A. No. 2023-0868-NAC

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NATURE OF PROCEEDINGS

Plaintiff, an alleged stockholder of Amazon.com, Inc., brought this derivative action challenging the board of directors' approval of contracts to buy satellite launch services for Project Kuiper. Project Kuiper is Amazon's initiative to develop a fast, affordable broadband service, to be delivered using thousands of satellites. In 2022, the Amazon board and its Audit Committee accordingly approved satellite launch contracts with three companies: Arianespace, United Launch Alliance (ULA), and Blue Origin, a company founded and owned by Amazon's former CEO, Jeff Bezos.

Plaintiff asserted that demand was futile because all the directors face a substantial likelihood of liability for approving the contracts with Blue Origin and ULA (whose new launch vehicles use Blue Origin engines) in bad faith, without adequate information or deliberation. Upon defendants' motion, the Court of Chancery dismissed the complaint under Rule 23.1 for failure to plead demand futility with particularity.

The dismissal of the complaint should be affirmed. As the Court of Chancery held, the complaint's allegations amount to "quibbles over the board's decision-making process," not indications of a conscious disregard of fiduciary duty. Pleading a claim of bad-faith conduct by concededly independent and disinterested directors is exceptionally difficult. Pleading a substantial likelihood of liability for bad-faith conduct by such directors is harder still. This complaint does not come close to clearing that high hurdle.

SUMMARY OF ARGUMENT

1. **Denied.** The complaint fails to plead demand futility with particularity and so was properly dismissed under Rule 23.1 by the Court of Chancery. Plaintiff's claim of error is confined to the argument that the complaint adequately alleged that all eleven directors on the demand board face a substantial likelihood of liability for approving the challenged contracts in bad faith. On appeal, plaintiff contests neither the independence nor the disinterest of the nine outside directors. The allegations of the complaint do not plead even a breach of the duty of care, let alone the extreme set of facts necessary to state a claim that concededly independent and disinterested directors acted in bad faith by consciously disregarding their fiduciary duties. The factual allegations of the complaint confirm that the Audit Committee and the full board separately approved the challenged contracts and did so only after reviewing their key terms, hearing presentations by management, and deliberating. Plaintiff's contention that the directors were subject to a "heightened standard" of good-faith conduct because the challenged contracts were not "run-of-the-mill" transactions is contrary to this Court's decisions. And plaintiff's contention that the alleged conduct of the board here is comparable to that of the board in *In re Walt Disney Co. Derivative Litigation*, 825 A.2d 275 (Del. Ch. 2003) ignores plaintiff's own allegations, which confirm that this case is nothing like *Disney*.

STATEMENT OF FACTS

This statement is drawn from the allegations of the complaint, documents incorporated by reference into the complaint, and matters properly subject to judicial notice.

A. Amazon and its board of directors

Nominal defendant Amazon.com, Inc. ("Amazon") is a Delaware corporation. A029. Founded by Jeffrey P. Bezos in 1994, Amazon is today one of the largest companies in the world. A030. In 2023, its net sales were $575 billion. B028.

When this action was filed, Amazon's board of directors had eleven members. Nine were outside directors who had never worked for Amazon. A032-36. The other two were inside directors: Bezos, who resigned as CEO in July 2021 and now serves as Executive Chairman, and Andy Jassy, Bezos's successor as CEO. A030-31.

Amazon's board has, among other committees, an Audit Committee. The Audit Committee's charter tasks it with review and approval of related-person transactions as defined by SEC rules. B104. Consistent with SEC and NASDAQ rules, Amazon's Audit Committee consists entirely of outside directors who are independent of the company. *See* 17 C.F.R. § 240.10A-3(b)(1)(i) (2023); NASDAQ, Listing Rules § 5605(a)(2).

Amazon's certificate of incorporation exculpates its directors from monetary liability for fiduciary duty breaches to the full extent permitted by the Delaware General Corporation Law. B113.

B. Jeff Bezos and Blue Origin

Bezos is the primary owner of Blue Origin, which he founded in 2000. A047. Blue Origin develops reusable rockets and rocket engines; it also provides launch services using its rockets. A049-50. In 2018, ULA, another launch services provider and a joint venture of Lockheed Martin Corp. and Boeing Co., selected Blue Origin to supply the first-stage engine for its new Vulcan Centaur rocket. A055; A071 n.99; https://www.prnewswire.com/news-releases/united-launch-alliance-building-rocket-of-the-future-with-industry-leading-strategic-partnerships-300720641.html.

C. Amazon undertakes Project Kuiper

In 2018, Amazon began developing a high-speed internet access service that would rely on satellite connections—allowing the service to reach customers who lack traditional cable internet connections. A066; B125; *see also* https://www.aboutamazon.com/news/innovation-at-amazon/what-is-amazon-project-kuiper. The effort is dubbed Project Kuiper and is part of Amazon's Devices and Services organization. A078 & n.105; https://www.aboutamazon.com/what-we-do/devices-services.

Project Kuiper's service will compete with Starlink, a network operated by SpaceX that similarly aims to provide global high-speed internet access through satellites. A066-67.

In July 2020, the Federal Communications Commission approved Amazon's application to deploy the Project Kuiper constellation system of 3,236 satellites. A068-69. The FCC's order required Amazon, absent an extension, to launch half of the satellites by July 30, 2026 and the remaining satellites by July 30, 2029. *Id.* At a meeting of Amazon's Audit Committee that same month, management informed the Committee of potential related-person transactions involving Project Kuiper. B104. A memorandum sent to the Committee in connection with the meeting explained that [redacted]

The memorandum reported that the company was "currently in discussions with Blue Origin, United Launch Alliance (ULA), Arianespace, and [redacted]," and added that "ULA is a joint venture between Lockheed Martin and Boeing, and the launch vehicle it would use for Project Kuiper incorporates an engine designed and manufactured by Blue Origin." *Id.*; A070-71. The memorandum concluded by explaining that management was "not requesting Audit Committee approval at this time," but would seek approval "if [Amazon] decide[s] to pursue a launch agreement with either Blue Origin or ULA," given Bezos's ownership of Blue Origin. B104; A071-72.

Four months later, at a meeting in November 2020, the Amazon board received an extended presentation on Project Kuiper by Dave Limp, the head of the Devices and Services organization that includes Project Kuiper, and Rajeev Badyal, the head of Project Kuiper. A078; B136. The presentation was accompanied by a detailed written report of more than 8,500 words that discussed Project Kuiper's business model, strategic objectives, costs, and top risks. B136-56. It also included multiple appendices and detailed financial projections. B146-56.

The report contained a thorough breakdown of Kuiper's cost structure. B144-45. [redacted] The report noted that Audit Committee approval would be required if Kuiper proposed purchasing launch services from Blue Origin or launch services from ULA that entailed use of its Vulcan Centaur vehicles (and thus Blue Origin engines). B142 n.6.

The report also identified Kuiper's top risks: [redacted]

[redacted]

At a board meeting in May 2021, management requested approval of a $[redacted] contract with ULA for nine satellite launches using Atlas V launch vehicles. A083-84. The board's approval was required under Amazon's internal procedures because the amount due under the contract could exceed [redacted]. B162. (The approval of the Audit Committee was not required because the contract was not a related-person transaction; ULA's Atlas V vehicle, unlike its new Vulcan Centaur vehicle, does not use a Blue Origin engine. A083-84.) The board, which had received a memorandum from management describing the terms of the contract, approved it after discussion. A084-86; B162-64.

In early July 2021, Bezos stepped down as CEO and became Executive Chair. A030-31; https://www.aboutamazon.com/news/company-news/email-from-jeff-bezos-to-employees. Andy Jassy succeeded him as CEO. A031.

D. The Audit Committee approves launch services contracts with ULA and Blue Origin

At an Audit Committee meeting in January 2022, management requested approval of launch services contracts with ULA and Blue Origin as potential related-

person transactions. A086; B170. As explained above, Bezos was not a member of the Audit Committee. Nor did he attend this meeting.

The Audit Committee received a memorandum from management describing the key terms of both contracts and explaining the expected maximum payments. B181-84. The memorandum stated that the Audit Committee's approval was required because both of the proposed transactions involved Blue Origin. B181. The ULA contract involved Blue Origin, the memorandum explained, because it contemplated use of ULA's Vulcan Centaur vehicle, which is powered by a Blue Origin engine. *Id.* The memorandum also stated that, over the course of the project, [redacted] *Id.*

The memorandum explained that, under the ULA contract, Amazon would purchase 38 launches, [redacted]. *Id.* The memorandum described the key terms of the contract, including potential indirect payments to Blue Origin for its engines: ULA could receive up to [redacted] under the contract, of which up to [redacted] could go to Blue Origin. B183. [redacted] *Id.* By contrast, each launch with reused engines would have a fixed price of [redacted] to [redacted]. *Id.* In addition to amounts paid for launches using new engines, ULA was expected to pay Blue Origin approximately [redacted] to facilitate the production of the engines. *Id.* Amazon could also owe ULA up to [redacted] for costs required to

achieve Amazon's launch cadence and up to [redacted] of that payment could go to Blue Origin. *Id.* [redacted]

The memorandum explained that, under the Blue Origin contract, Amazon would purchase 12 launches, with an option for 15 more, [redacted], using Blue Origin's New Glenn launch vehicle. B181-82. The memorandum described the key terms of the contract: Blue Origin could receive up to [redacted] under the contract. B184. Each launch had a base price of [redacted], subject to a minimum level of performance. *Id.* [redacted]

After management reviewed the proposed transactions with the Audit Committee, the Committee unanimously resolved to approve the transactions as potential related-person transactions. B170. Given the size of the proposed contracts, however, they remained subject to the additional approval of the full board.

E. The Amazon board approves launch services contracts with ULA, Blue Origin, and Arianespace

In March 2022, the Amazon board held a special meeting from which Bezos was recused. The sole item on the agenda was management's request for approval of the launch services contracts with ULA and Blue Origin, as well as a launch services contract with Arianespace. A093-94; B189-90. (Arianespace, a French company founded in 1980, is the world's first commercial launch services provider. *See* https://www.arianespace.com/profil-in-short.) The board's approval was required under Amazon's internal procedures because the amount due under each contract could exceed $500 million. *See* B194.

The proposed contract with ULA covered launch capacity for [redacted] at a maximum cost of [redacted] billion. B195-96. The proposed contract with Blue Origin covered launch capacity for [redacted] satellites, with optional capacity for [redacted] additional satellites, at a maximum cost of [redacted]. *Id.* The proposed contract with Arianespace covered launch capacity for [redacted] satellites at a maximum cost of [redacted]. *Id.*

The board received a memorandum from management summarizing the key terms of the contracts. B194-96. The memorandum explained that [redacted]

[redacted]

The memorandum included a table listing the key terms for each contract, including the launch vehicle to be used, the number of firm and optional launches purchased, the contract's term, the total launch capacity, non-recurring expenses, price per launch, average cost per satellite, the maximum total cost of each contract, termination provisions, and other relevant provisions. B194-96.

At the meeting, Limp, as head of Amazon's Devices and Services organization, "updated the Board on the status of Project Kuiper, [redacted] B189.

The minutes record that "[t]he directors then asked questions of management on aspects of the proposed LSAs, and discussion ensued." *Id.* Following the

discussion, the board unanimously resolved to approve the LSAs as requested. B189-90.

F. Amazon contracts with SpaceX for additional launch services

In December 2023, Amazon announced that it had entered into a contract with SpaceX for three launches. A105-06. The announcement explained that "Project Kuiper satellites were designed from the start to accommodate multiple launch providers and vehicles." *See* https://www.aboutamazon.com/news/innovation-at-amazon/amazon-project-kuiper-spacex-launch, *quoted in* A106. It added that the company's earlier procurement of launch services from Arianespace, Blue Origin, and ULA "provides enough capacity to launch the majority of our satellite constellation, and the additional launches with SpaceX offer even more capacity to support our deployment schedule." *Id.*

G. This derivative action

Plaintiff demanded inspection of Amazon's books and records concerning the selection of launch providers for Project Kuiper. After receiving relevant records of the Amazon board, plaintiff filed this derivative action in August 2023 and amended its complaint in February 2024. By agreement of the parties, all the board materials Amazon provided to plaintiff for inspection are incorporated into the complaint.

The complaint challenged the contracts with ULA and Blue Origin approved by the board in March 2022 as unfair to nominal defendant Amazon. The complaint asserted three claims for breach of fiduciary duty, against (1) Bezos, in his alleged capacity as controlling stockholder, (2) all the directors on the demand board, and

(3) Bezos and Jassy, in their capacity as officers. *See* A124-27. The complaint also asserted a fourth claim for unjust enrichment, solely against Bezos. A127-28.

The complaint alleged that demand was futile because Bezos had a material interest in the challenged contracts and none of the other directors was independent of him. A122. Alternatively, the complaint alleged that demand was futile because all the directors faced a substantial likelihood of liability for approving the challenged contracts in bad faith, knowing they were acting "without adequate and material information, without adequate deliberation," and "with a controlled mindset." A119, A125-26.

Defendants moved to dismiss the complaint under Court of Chancery Rule 23.1 for failure to plead demand futility with particularity. As to the first demand futility theory: Defendants argued that the complaint failed to plead that any of the nine outside directors were not independent of Bezos, even assuming that he was Amazon's controlling stockholder. *See* A258-63; *see also* A285-92. Moreover, they argued, the complaint did not adequately plead that Bezos, who beneficially owned only 12.7% of Amazon's stock, was a controlling stockholder. *See* A263-65; *see also* A293-95. As to the second demand futility theory: Defendants argued that the complaint did not plead the extreme set of facts necessary to show that any of the nine outside directors, all concededly disinterested in the challenged contracts, intentionally disregarded their fiduciary duties in approving those contracts. *See* A265-75; *see also* A295-310.

The court granted the motion and ordered the dismissal of the complaint with prejudice. Pl.'s Br. Ex. A. The Vice Chancellor noted that he had "spent much time working on drafts" of an opinion, but "ultimately conclude[d] that I cannot say it better than Defendants' counsel has already said it." *Id.* at 3. He therefore ordered that the complaint "be dismissed for the reasons set forth in Parts A(1) and B of Defendants' opening brief . . . and Parts A(1) and B of Defendants' reply brief," "with which I agree entirely"—*i.e.*, that the complaint did not adequately plead that the outside directors either lacked independence from Bezos or acted in bad faith. *Id.* And because the complaint was dismissed for those reasons, he explained, he "need not address whether Plaintiff has adequately alleged controller status." *Id.*

The allegations of the complaint, the Vice Chancellor concluded, "amount, at bottom, to quibbles over the board's decision-making process" that do not sustain a bad-faith claim. *Id.* He added: "As Defendants' briefing aptly states: 'Taken as true, and drawing every strained inference in plaintiff's favor, the allegations suggest at most that the directors perhaps could have done more—asked more questions, reviewed more information, attended longer meetings. But that is not nearly enough to state a bad-faith claim. Directors can always do more. A bad-faith claim is reserved for disciplining directors who deliberately do essentially nothing, knowing they are breaching their duty. That is not remotely this case.'" *Id.*

The Vice Chancellor likewise rejected plaintiff's "second basis for demand excusal." *Id.* "Defendants persuasively explain that, 'even if Bezos had been both Amazon's controlling stockholder and "Superstar CEO" when the challenged

contracts were approved, that status would not relieve plaintiff of its burden of rebutting the presumption of director independence by pleading particularized allegations of "personal or other relationships" that would render the outside directors "beholden" to Bezos.'" *Id.* (quoting *Aronson* v. *Lewis*, 473 A.2d 805, 815 (Del. 1984)). "Defendants continue: 'To the contrary, the Delaware Supreme Court has more than once forcefully rejected that very proposition. Take *Beam ex rel. Martha Stewart Living Omnimedia, Inc.* v. *Stewart*, 845 A.2d 1040 (Del. 2004), a derivative action brought on behalf of the company Martha Stewart founded. At the time, Stewart was no doubt a "Superstar CEO"—perhaps one of the originals . . . . None of that led the Delaware Supreme Court to water down the holding of *Aronson*. Instead, the court confirmed it. . . . Here, the alleged "superstar" may be different, but the principle remains the same.'" *Id.* at 3-4.

Accordingly, the court held, "[d]emand is not shown to be excused." *Id.* at 4. In its view, "[t]his case ultimately concerns an independent board's exercise of its business judgment." *Id.*

ARGUMENT

I. THE COMPLAINT FAILS TO PLEAD DEMAND FUTILITY WITH PARTICULARITY

A. Question Presented

Whether the complaint pleads demand futility with particularity by adequately alleging that at least half of the members of the demand board face a substantial likelihood of liability for approving the challenged contracts in bad faith. A265-75, A295-310.

B. Scope of Review

The dismissal of a complaint under Court of Chancery Rule 23.1 for failure to plead demand futility with particularity is reviewed *de novo*. *See Brehm* v. *Eisner*, 746 A.2d 244, 253-54 (Del. 2000).

C. Merits of Argument

The complaint fails to plead demand futility with particularity and so was properly dismissed by the Court of Chancery. In this Court, plaintiff no longer contends that demand was futile because the rest of the directors were not independent of Bezos. Plaintiff's claim of error is confined to the argument that it adequately alleged that all the directors face a substantial likelihood of liability for approving the challenged contracts in bad faith.

The authority of a board of directors to govern corporate affairs "extends to decisions about what remedial actions a corporation should take after being harmed," including whether to initiate litigation. *United Food & Com. Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund* v. *Zuckerberg*, 262 A.3d

1034, 1047 (Del. 2021). A stockholder who does not make a pre-suit demand upon the board may therefore pursue a derivative claim only if demand is excused as futile. *See McElrath* v. *Kalanick*, 224 A.3d 982, 990-91 (Del. 2020). Rule 23.1 "implements the substantive demand requirement" and so requires that a derivative complaint plead with particularity that demand would have been futile as to at least half the members of the demand board. *Zuckerberg*, 262 A.3d at 1048, 1059.

The complaint does not meet that standard. Even assuming that demand upon Bezos and Jassy would have been futile, the complaint cannot satisfy Rule 23.1 without pleading that at least four of the other directors face a substantial likelihood of liability for bad-faith conduct. All nine of the remaining directors on the eleven-member demand board, however, are outside directors. And on appeal, plaintiff contests neither their independence nor their disinterest. The allegations of the complaint do not remotely plead the "extreme set of facts" necessary to state a bad-faith claim against concededly independent and disinterested directors. *Lyondell Chem. Co.* v. *Ryan*, 970 A.2d 235, 243 (Del. 2009). In arguing otherwise, plaintiff contradicts its own allegations of board action and ignores the "high hurdle" for pleading bad-faith conduct with the particularity required by Rule 23.1. *Kalanick*, 224 A.3d at 993.

1. The conceded record of board action is irreconcilable with a substantial likelihood of liability for bad-faith conduct

Bad-faith conduct by disinterested and independent directors is exceptional—and therefore exceedingly difficult to plead. Even "grossly negligent conduct,

without more, does not and cannot constitute a breach of the fiduciary duty to act in good faith." *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 65 (Del. 2006). Rather, directors are liable for bad-faith conduct only "when their conduct is motivated 'by an actual intent to do harm,' or when there is an 'intentional dereliction of duty, a conscious disregard for one's responsibilities.'" *Kalanick*, 224 A.3d at 991. To plead bad-faith conduct, a complaint therefore "must plead with particularity that the directors acted with scienter, meaning they had actual or constructive knowledge that their conduct was legally improper." *Id.* (internal quotation marks omitted). That requires pleading not only "that a director acted inconsistent with his fiduciary duties," but also, and "most importantly, that the director knew he was so acting." *Id.* at 991-92.

For these reasons, "[i]n the transactional context, an extreme set of facts is required to sustain a disloyalty claim premised on the notion that disinterested directors were intentionally disregarding their duties." *Lyondell*, 970 A.2d at 243. In assessing such a claim, the question is not "whether disinterested, independent directors did everything that they (arguably) should have done," but "whether those directors utterly failed to attempt to" fulfill their fiduciary duties. *Id.* at 244. As the Court of Chancery recently explained, that means plaintiffs "face an extraordinarily high bar to rebut the presumptive applicability of the business judgment rule to the conduct of disinterested and independent directors." *In re Trade Desk, Inc. Deriv. Litig.*, 2025 WL 503015, at *29 (Del. Ch. Feb. 14, 2025).

Stretching to reach that bar, plaintiff argues that the Amazon board did "virtually nothing" before approving the challenged contracts. Pl.'s Br. 1; *see also id.* at 50 (characterizing the board's "diligence and oversight" as "virtually nonexistent"). Plaintiff asserts that "[t]he Board did not even receive a presentation about these critical multi-billion-dollar contracts" and that "[t]he Board held no meetings to discuss these contracts before it approved them." *Id.* at 3; *see also id.* at 22 ("The Board did not even receive a presentation about the [redacted] contracts or any information beyond a short summary of terms."); *id.* at 50 ("The Audit Committee and the Board received no presentations."). And in a final rhetorical flourish, plaintiff declares: "It is certainly true that [the directors] could have done more—but it is hard to imagine how they could have done less." *Id.* at 50.

The problem with plaintiff's account is that it is conclusively refuted by the complaint's factual allegations. Those allegations show that the board held multiple meetings at which Project Kuiper and launch contracts were the subject of presentations and deliberations before the board approved the challenged launch contracts.

The complaint acknowledges that the board received detailed information about Project Kuiper long before it was asked to approve any launch contracts. In November 2020, the board received a comprehensive oral and written report on Project Kuiper from the executives in charge of the initiative. A078; B140-56; *see supra* pp. 6-7. That report expressly noted that Project Kuiper was engaged in an [redacted] B146. The complaint also confirms

that the board had already examined one launch contract and its important terms—the ULA contract approved in May 2021—before it considered the challenged launch contracts in 2022. A083-86.

The complaint also concedes that before the Audit Committee approved the challenged contracts as potential related-person transactions, it received a memorandum, prepared by management, that described the maximum payouts under each contract, the maximum amount to be paid under the ULA contract that ULA could be expected to pass on to Blue Origin as its engine supplier, and other "key" terms of the contracts. *See* A90-92; B181-84. And the meeting minutes record that the general counsel "reviewed" the contracts with the Committee and that the Committee approved them "[a]fter discussion." B170.

The complaint likewise concedes that before the board approved the challenged contracts, it also received a memorandum describing the "key" terms of the contracts. *See* A097-98; *see also* B194-96. The meeting minutes record that the head of Amazon's Devices and Services organization explained [redacted] that "[t]he directors then asked questions of management on aspects of the proposed LSAs, and discussion ensued." B189. Only after that discussion did the board "unanimously adopt[]" resolutions approving the contracts. B189-90.

The complaint's factual allegations are thus irreconcilable with the claim that the board "utterly failed" to even try to fulfill its duties in considering the contracts.

Lyondell, 970 A.2d at 244. Construed most generously, the complaint alleges (arguable) flaws in the process that the board undertook. But even assuming the process was indeed flawed, "there is a vast difference between an inadequate or flawed effort to carry out fiduciary duties and a conscious disregard for those duties." *Id.* at 243. The complaint does not allege that the board knowingly failed to undertake any process at all—and that is what is necessary to plead bad faith. *Id.* at 244.

This Court has repeatedly affirmed the dismissal of complaints, like this one, that confuse a critique of the process employed by disinterested and independent directors with a claim of bad faith. In *McElrath* v. *Kalanick*, 2019 WL 1430210, at *10-11 (Del. Ch. Apr. 1, 2019), *aff'd*, 224 A.3d 982, for example, the plaintiff claimed that Uber's directors acted in bad faith by approving an acquisition of a company founded by a former Google employee without adequately informing themselves of the risk of liability for misappropriation of Google's proprietary information. Because the plaintiff "acknowledge[d] that Uber's directors met, received a presentation, asked certain questions, and made a decision," the court dismissed the claim under Rule 23.1. *Id.* at *14. The court held that the allegations, accepted as true, showed only that the directors "approved a questionable transaction without fully informing themselves," not a "disregard [of duty] so profound that it raises an inference of scienter." *Id.* at *16. In affirming the decision, this Court held that the plaintiff's criticism that the directors should have "d[u]g deeper" into management's representations about the transaction—on which the directors were

entitled to rely under 8 *Del. C.* § 141(e)—was insufficient to plead a claim of bad faith. 224 A.3d at 993; *see* § 141(e) (the board "shall . . . be fully protected in relying in good faith upon the . . . information, opinions, reports or statements presented" by the corporation's officers). "It is not enough to allege that the directors should have been better informed," this Court emphasized, because that pleads only "a due care violation exculpated by the corporation's charter provision." *Kalanick*, 224 A.3d at 993.

The same analysis applies here. Plaintiff "acknowledges that [Amazon]'s directors met, received a presentation, asked certain questions, and made a decision." *Kalanick*, 2019 WL 1430210, at *14. Like Uber's directors in *Kalanick*, Amazon's directors were entitled to rely on management's representations about the transaction presented for consideration—the launch services agreements. And here too, plaintiff's criticism that the directors should have "d[u]g deeper" and demanded more information from management or questioned its representations at most shows "that the directors should have been better informed," not that they acted in "conscious disregard" of their fiduciary duties. *Kalanick*, 224 A.3d at 993.

City of Coral Springs Police Officers' Pension Plan v. *Dorsey*, 2023 WL 3316246, at *11 (Del. Ch. May 9, 2023), *aff'd*, 308 A.3d 1189 (Del. 2023), illustrates the same point. There, the Court of Chancery held that the pleaded facts—which showed that the board met, received information about the transaction from management, and asked questions—"fall short of supporting an inference of bad

faith." *Id.* at *10. All those facts are pleaded here too—and equally foreclose an inference of bad faith.

2. Plaintiff's contention that the Amazon board was subject to a "heightened standard" of good-faith conduct is without merit

Plaintiff does not attempt to argue that the complaint pleads a substantial likelihood of liability for bad-faith conduct under the principles articulated and affirmed in this Court's *Lyondell*, *Kalanick*, and *Dorsey* decisions. Indeed, plaintiff does not even mention those decisions. Instead, plaintiff asserts that the Amazon board was subject to a "heightened standard" of good-faith conduct because the challenged contracts were "a world apart from run-of-the-mill corporate transactions." Pl.'s Br. 32. And because the board's process supposedly did not meet that "elevated . . . 'course of conduct,'" plaintiff argues, the complaint adequately pleads bad-faith conduct. *Id.* at 33.

For the proposition that the Amazon board's conduct is to be tested by some "heightened" or "elevated" standard, plaintiff cites nothing at all. *See id.* at 32-33. And there is nothing it could have cited. The idea that some extraordinary standard for good-faith conduct applies when a board approves extraordinary transactions runs headlong into *Lyondell*—which holds just the opposite. In *Lyondell*, the plaintiff claimed that the directors had approved in bad faith a sale of the company—an extraordinary transaction under any test. 970 A.2d at 237. Yet this Court definitively rejected the trial court's holding that "unexplained inaction" could be a basis for inferring bad faith. *Id.* at 243-44. This Court explained that even in the

context of considering and approving an extraordinary transaction, the directors breached their duty of loyalty "[o]nly if they knowingly and completely failed to undertake their responsibilities." *Id.* at 243-44. A claim that "the directors failed to do all that they should have under the circumstances" was merely a claim that "they breached their duty of care." *Id.* at 243. The trial court thus employed "the wrong perspective." *Id.* at 244. "Instead of questioning whether disinterested, independent directors did everything that they (arguably) should have done to obtain the best sale price, the inquiry should have been whether those directors utterly failed to attempt to obtain the best sale price." *Id.*

As shown above, the factual allegations of the complaint do not sustain a claim that the Amazon board "utterly failed" to even attempt to undertake an adequate process in considering the challenged contracts. *Id.* at 244. And that remains true even taking into account the factors plaintiff says distinguish the challenged contracts from "run-of-the-mill" transactions. *See* Pl.'s Br. 32-41.

Bezos's interest in Blue Origin. Plaintiff asserts that "the Board handled this $[redacted] conflicted transaction exactly how it would handle a trivial, non-conflicted transaction." *Id.* at 37. Wrong—according to plaintiff's own allegations. A "trivial, non-conflicted transaction" would not have required board approval at all—not under Amazon's internal procedures or Delaware law. Instead, as the complaint alleges, the board's processes subjected the contracts to two separate approval requirements, for different reasons. First, approval by the Audit Committee, of which Bezos was not a member, because they qualified as related-person

transactions. *See* A070-74; *see also supra* pp. 7-9. And second, approval by the full board, at a special meeting from which Bezos was recused, because their maximum payouts exceeded $500 million. *See* A093; *see also supra* pp. 10-12. The notion that the Amazon board "did nothing to manage" the potential conflict of interest posed by Bezos's ownership of Blue Origin is fantasy, *see* Pl.'s Br. 37, not an inference reasonably drawn from the pleaded facts.

Plaintiff argues that the board faces a substantial likelihood of liability for bad-faith conduct because it did not direct Bezos to refrain from participating in negotiations of the challenged contracts. *See* Pl.'s Br. 47; *see also id.* at 48 (seeking pleading-stage inference of Bezos's involvement, contending that "[n]othing in Amazon's books and records production suggests that Bezos was recused from or uninvolved in the negotiations"). But the complaint does not plead particularized factual allegations to show that Bezos ever did participate in the negotiations, let alone that the board had reason to believe he did. Plaintiff suggests that Bezos must have been involved because of his executive role, but Bezos resigned as CEO in mid-2021—six months before the proposed final contracts were presented for a board-level approval. A030-31. While plaintiff is entitled to reasonable inferences that can be drawn in its favor from alleged particularized facts, "an inference cannot flow from the nonexistence of a fact, or from a complete absence of evidence as to the particular fact." *In re Asbestos Litig.*, 155 A.3d 1284, 1284 n.2 (Del. 2017).

Just as in *In re Oracle Corp. Derivative Litigation*, 2018 WL 1381331 (Del. Ch. Mar. 19, 2018), the facts alleged here are insufficient to plead a claim of bad

faith. In *Oracle*, the plaintiff challenged Oracle's acquisition of NetSuite, a company substantially owned by Oracle's CEO, Larry Ellison. *Id.* at *10-15. The plaintiff charged the Oracle directors with bad faith by approving the transaction when they should have been "on guard against the multi-billion dollar personal interest of Ellison in effecting a high-premium acquisition of NetSuite." *Id.* at *13. But, as the court explained, the complaint did not allege that Ellison participated in the directors' deliberations of the acquisition and "nothing in the Complaint suggest[ed] that the [directors] had any inkling of [self-interested] misconduct" in the negotiation of the acquisition. *Id.* Therefore, the court held, it could not "infer disloyalty or bad faith from the manner in which the [directors] addressed the conflicts presented by the NetSuite transaction." *Id.*

In any event, it makes no difference whether plaintiff is entitled to an inference as to Bezos's involvement. Even assuming that the complaint pleads that the directors knew that Bezos would participate in the negotiations, the complaint falls far short of pleading a "conscious disregard" of their duties. *Kalanick*, 224 A.3d at 991. *Dorsey* confirms the error in plaintiff's assumption. There the plaintiff claimed that the corporation's directors acted in bad faith by allowing the chairman and CEO "to handle negotiations" for the acquisition of a music streaming service in which his "friend" held a nearly 30% stake. *Dorsey*, 2023 WL 3316246, at *2, *10. The court dismissed the complaint, finding that the subsequent consideration and ultimate approval of the transaction by directors not alleged to be "in any way beholden to" the CEO did not support a bad-faith claim. *Id.* at *10-11.

Plaintiff's argument that SpaceX's supposed exclusion from the procurement process could support a bad-faith claim, *see* Pl.'s Br. at 36, 49, similarly ignores plaintiff's own allegations. To begin with, the complaint acknowledges that Amazon *did* contract with SpaceX for launch services—in 2023. A105-06. And even setting aside the SpaceX contract, the complaint does not allege facts to show that either management or the board "pin[ned] Project Kuiper's success" on Blue Origin. *See* Pl.'s Br. 36. To the contrary, as management informed the board, [redacted] B194. The complaint concedes that management proposed, and the board approved engaging not only Blue Origin, but also ULA and Arianespace as launch services providers. *See* A093-94. And the complaint does not contest Arianespace's complete independence from Amazon, Bezos, and Blue Origin. In short, nothing in the complaint supports an inference of some conspiracy to blackball providers unconnected to Blue Origin, let alone the endorsement of such a plan by the Amazon board.

The importance of the contracts. Plaintiff argues that because the challenged contracts were "vital" to Project Kuiper, the board acted in bad faith by "not retain[ing]" external "financial, legal, or industry advisors" to assist it in

considering them.[1] Pl.'s Br. 38. But Delaware law is clear that a board is not required to hire external experts or advisors to adequately inform its consideration of transactions or other matters. *See Zimmerman* v. *Crothall*, 2012 WL 707238, at *9 n.46 (Del. Ch. Mar. 5, 2012) ("There is no legal requirement that a board consult outside advisors, so long as the board has adequate information to make an informed judgment." (quoting *Chesapeake Corp.* v. *Shore*, 771 A.2d 293, 331 (Del. Ch. 2000))); *Buckley Fam. Tr.* v. *McCleary*, 2020 WL 1522549, at *11 (Del. Ch. Mar. 31, 2020) ("the amount and type of information a board considers is itself a matter of business judgment that is generally left to the directors' discretion"); *see also* 8 *Del. C.* § 141(e) ("[a] member of the board of directors . . . shall, in the performance of such member's duties, be fully protected in relying in good faith . . . upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors").

Here, the complaint acknowledges that both the Audit Committee and the board received relevant "information, opinions, reports or statements" presented by "the corporation's officers or employees" before approving the launch contracts.

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[1] In an attempt to emphasize the relative importance of the three launch contracts approved in 2022, plaintiff also asserts that their [redacted] cost . . . represented the second-largest capital expenditure in Amazon's history." Pl.'s Br. 38. The $[redacted] figure, however, is an approximation of all three contracts' maximum cost over their multi-year terms. While large in absolute dollar size, the annual expenditure on these contracts is tiny compared to Amazon's total annual expenses. In 2022, for example, Amazon's cash capital expenditures were $58.3 billion and its operating expenses were more than $500 billion. B027, B030.

§ 141(e). That is enough to show that the board made an effort to inform itself of relevant information. *See Kalanick*, 224 A.3d at 993 (no inference of bad-faith conduct by independent and disinterested directors where complaint conceded that they "heard a presentation that summarized the [challenged] transaction").

The satellite launch schedule. Plaintiff argues that the Amazon board acted in bad faith because Project Kuiper "faced substantial time pressure" when the challenged contracts were presented for approval, leaving the board "with no option but to say yes." Pl.'s Br. 39, 41. This is speculation heaped upon speculation.

The complaint alleges nothing to support plaintiff's contention that when the board considered the launch contracts in early 2022, Project Kuiper was under "substantial time pressure" to comply with the launch deadlines imposed by the FCC. Pl.'s Br. 39. At that point, the first deadline set by the FCC—in 2026—was more than four years away. A068. As the complaint recognizes, the terms of the proposed contracts with ULA and Blue Origin did not [redacted]. *See* B195. (The term of the Arianespace contract did not [redacted]. *See id.*)

The complaint alleges no particularized factual allegations to suggest that Amazon did not have time to renegotiate the proposed contracts or to negotiate new ones with other providers before the planned beginning of satellite launches in [redacted]. To the contrary, the complaint alleges that Project Kuiper did just that—when it negotiated another launch contract with SpaceX by December 2023. A105-06. Moreover, the complaint is devoid of any allegation that management informed the board there was no time to negotiate alternative contracts, and thus no reason at all

to infer that the board approved the contracts only because it believed it had "no option but to say yes." Pl.'s Br. 41. And even if the board approved the contracts due to a business exigency, its decision would reflect a business judgment about the best course of action among available alternatives, not bad faith.

3. This case is nothing like *Disney*

Plaintiff contends that the complaint pleads a substantial likelihood of liability for bad-faith conduct because it adequately alleges that the Amazon board "acted with even less diligence than the *Disney I* board did." Pl.'s Br. 41-42. The facts alleged here, however, bear no resemblance to those alleged in *In re Walt Disney Co. Derivative Litigation*, 825 A.2d 275 (Del. Ch. 2003).

In *Disney*, the allegations found adequate to plead bad-faith conduct were as follows: Michael Eisner, Disney's CEO, "unilaterally" decided to hire his "close friend," Michael Ovitz, as Disney's president, after broaching the idea to the Disney board in August 1995. 825 A.2d at 287. A month later, in September, the board's compensation committee, which received only a summary of the proposed terms and asked no questions about the draft agreement, approved hiring Ovitz and directed Eisner "to carry out the negotiations with regard to certain still unresolved and significant details." *Id.* The full board met immediately after the compensation committee and approved hiring Ovitz even though his employment agreement was still a "work in progress." *Id.* At both the meeting of the compensation committee and the board, no presentation was made regarding the agreement's terms. *Id.* Eisner and Ovitz reached a final agreement six weeks later and executed it "without

any board input beyond the limited discussion" at the board's meeting in September. *Id.* at 287-88. A little more than a year later, after Ovitz had performed poorly and sought to leave his position, Eisner and a single director approved a non-fault termination under a provision the board had not considered, triggering a severance payout in cash and stock worth $140 million. *Id.* at 288. No board member requested a meeting to discuss or review that decision. *Id.* at 288-89.

Plaintiff asserts that the Amazon board's alleged conduct "mirrored" that of the Disney board "in almost all key respects." Pl.'s Br. 44. The opposite is true. As alleged in the complaint, the Amazon board's conduct was as follows:

In July 2020, management informed the Audit Committee that Amazon planned to enter into negotiations for launch agreements with multiple parties in the fall of 2020; that it was currently in discussions with four launch providers, including Blue Origin and ULA; and that it expected to enter into agreements with [redacted] providers at estimated launch costs of [redacted] per satellite and total launch costs of at least [redacted]. A070-72; B104. The Audit Committee did not direct Bezos to carry out the negotiations, let alone authorize him or any other member of management to enter into any launch agreements. To the contrary, management told the Audit Committee that if it decided to pursue an agreement with Blue Origin or ULA, it would seek the Audit Committee's approval before entering into one, given the Committee's obligation to review agreements that qualify as related-party transactions under SEC rules. A071-72; B104.

Then, a year and a half later, management did exactly that. At an Audit Committee meeting in January 2022, management requested approval of contracts with Blue Origin and ULA. A086-87; B170. The Audit Committee received a memorandum describing the "key terms" of both contracts and the expected maximum payments under each. B181-84. Management reviewed the proposed transactions with the Committee and, "[a]fter discussion," the Committee unanimously approved them. B170.

Two months later, in March 2022, management requested approval of all three launch contracts—with Blue Origin, ULA, and Arianespace—at a special board meeting called solely to consider the contracts, from which Bezos was recused. A093-94; B189-90. The board received a memorandum summarizing the "key terms" of each contract. B194-96. The head of Project Kuiper's division gave a presentation on Project Kuiper and the proposed contracts, including [redacted] B189. After the directors "asked questions of management on aspects of the proposed LSAs" and engaged in discussion, the board unanimously approved all three contracts. *Id.*

As this recitation of plaintiff's allegations shows, a gulf divides the alleged abdication of the Disney board from the engagement of the Amazon board. That conclusion is reinforced by plaintiff's telling omission of any allegation that Amazon has incurred a significant payment obligation under the launch contracts that the board was unaware of when it approved the contracts. Whether viewed "holistically" or in isolation, plaintiff's allegations fail to clear the "high hurdle" for

pleading bad-faith conduct under Rule 23.1. *Kalanick*, 224 A.3d at 993; *see also Cent. Laborers' Pension Fund* v. *Karp*, 2025 WL 1213104, at *19 (Del. Ch. April 25, 2025) (although the court "must view well-pleaded facts holistically in assessing demand futility . . . the adequacy of a complaint is not measured by the quantity of allegations," but by whether it "qualitatively meet[s] the plaintiffs' pleading burden").

* * *

The pleading record confirms that the directors received information about key transaction terms, asked questions, and engaged in discussion. Plaintiff's criticisms therefore do not suggest even a breach of the duty of due care. Cases in which disinterested and independent directors intentionally disregard their fiduciary duties are extraordinary. This is not one of them.

CONCLUSION

For the foregoing reasons, the Court of Chancery's order dismissing the complaint under Rule 23.1 should be affirmed.

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