



IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYAN REILLY, individually on behalf
of himself and all others similarly situated,

Plaintiff-Below/
Appellant,

v.

KEITH L. HORN, ZACHARY TARICA,
THOMAS STAGGS, PETER
SCHLESSEL, MARTIN LUTHER KING
III, TERESA MILES WALSH, SHEILA A.
STAMPS, IDAN SHANI, SALIL MEHTA,
KEVIN MAYER, JEREMY TARICA,
FOREST ROAD ACQUISITION
SPONSOR LLC, AND THE FOREST
ROAD COMPANY, LLC,

Defendants-Below/
Appellees.

Case No. 426,2025

Court Below:
Court of Chancery
C.A. No. 2024-0654-LWW

Public Version
Filed: December 19, 2025

APPELLANT'S OPENING BRIEF

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NATURE OF PROCEEDINGS

Brian Reilly, Plaintiff below and Appellant here, commenced this action on June 17, 2024, seeking damages for himself and a class of similarly situated stockholders arising from the unlawful impairment of the redemption rights of public stockholders of Forest Road Acquisition Corp (“Forest Road”) in connection with a merger between Forest Road and The Beachbody Company LLC (“Legacy Beachbody”) and its affiliate Myx Fitness Holdings LLC (“Myx”) (the “Merger”), which closed on June 28, 2021. The action below was captioned *Reilly v. Horn, et al.*, and docketed at No. 2024-0654-LWW (Del. Ch.).

Plaintiff appeals the Order Granting Defendants’ Motion to Dismiss the Amended Complaint dated September 30, 2025 (Transaction ID 77204389). The basis for the trial court’s decision is set forth in the Memorandum Opinion issued the same date. (Transaction ID 77203941) (“Mem. Op.,” attached as Exhibit A).

SUMMARY OF ARGUMENT

1. The trial court's holding that Plaintiff's claims accrued when the Proxy was disseminated is incorrect for at least three reasons. First, under well-established Delaware precedent, claims seeking monetary relief stemming from an unfair merger accrue on the closing of that merger, not upon the publication of the proxy. Second, as the Court of Chancery repeatedly has recognized, a public stockholder's decision not to exercise redemption rights in connection with a de-SPAC merger is akin to a decision to invest in the post-merger entity. Under Delaware law, claims based on misleading information provided in connection with an investment accrue when the investment is made, not before. Third, Count V of the Complaint asserts a claim for unjust enrichment. A claim for unjust enrichment cannot accrue until the defendant is unjustly enriched. And Defendants here were not unjustly enriched until the Merger closed.

2. Even if Plaintiff's claim for the improper impairment of redemption rights accrued upon the publication of the Proxy, the trial court's holding that Plaintiff's claims are barred by laches is in error. The "doctrine of equitable tolling" precludes the "running of the limitations period" in breach of fiduciary duty actions charging self-dealing "until the stockholders knew or had reason to know of the facts

constituting the alleged wrong.”¹ “When a plaintiff has relied upon a fiduciary’s statements, then inquiry notice does not arise until the plaintiff had some reason to suspect that the fiduciary’s statements were inaccurate.”² The trial court held that “[b]y highlighting at least three omissions observable on the face of the proxy, the complaint pleads its own untimeliness[.]”³ This is incorrect. The trial court did not identify *anything* in the Proxy that would have alerted Forest Road’s public stockholders to the fact that *material* information was omitted.

The trial court noted that “the proxy allegedly lacked sufficient disclosures of the net cash per share that would be contributed in the merger.”⁴ But the Proxy did not disclose facts from which a public stockholder reasonably should have inferred that Forest Road was contributing cash *materially less than* the \$10 per share redemption price. And there was nothing in the Proxy that would have alerted Forest Road’s public stockholders to the fact that the actual net cash the Company was contributing to the Merger was materially below the \$10.00 per share redemption price that was disclosed in the Proxy.

¹ *In re MAXXAM, Inc.*, 659 A.2d 760, 769 (Del. Ch. 1995).

² *Ontario Provincial Council of Carpenters Pen. Trust Fund v. Walton*, 294 A.3d 65, 96 (Del. Ch. 2023).

³ Mem. Op. at 18.

⁴ *Id.*

The trial court also noted that “the proxy failed to discuss the potential effect on the Proxy Projections if Beachbody subscriptions returned to pre-COVID levels.”⁵ But what Plaintiff alleged was that the Proxy’s optimistic financial forecasts based on projections of subscriptions continuing to grow in a post-pandemic economy were belied by specific and repeated warnings provided to the Forest Road Board that such assumptions were misplaced. More specifically, Plaintiff alleged that the Proxy’s representation that the growth forecasted in the financial projections was “consistent with the [Legacy Beachbody] projections that have been provided annually ... for the past decade” was false.⁶ The Board was informed that Legacy Beachbody actually “had seen net revenue decline at CAGR of (10%) from 2015-2019.”⁷ Plaintiff also alleged that the Proxy contained myriad other material omissions including the “Base Case” projections compiled by Forest Road that were materially lower than the proxy projections, “Key Risk Factors,” “Potential downside scenarios,” and a “Parade of Horribles.” Plaintiff also alleged that the Proxy failed to disclose the “high degree of litigation risk” related to Legacy Beachbody’s coach compensation, which came to fruition when a class action

⁵ *Id.*

⁶ A1093.

⁷ A1056.

lawsuit was filed challenging Beachbody's compensation practices. These allegations demonstrated that the Proxy failed to counterbalance the rosy forecasts with specific information in the Board's possession that undermined such optimism. And each of these allegations was based on confidential information Plaintiff obtained through his Section 220 investigation, which confirmed that the Forest Road Board had such information and failed to disclose it.

Finally, the trial court said that the Proxy omitted "key facts" regarding a \$1.5 billion sale of Legacy Beachbody securities by unnamed executives, highlighting Plaintiff's allegation that the Complaint did not disclose the basis for that valuation.⁸ But as alleged in the Complaint, that omission was material because that valuation was consistent with Forest Road's preliminary valuation of \$1.5 - \$2 billion, which was assessed and provided to the Board just a month before the Proxy Projections were created. Again, Plaintiff was only able to make these allegations with the benefit of the Section 220 documents.

3. The trial court erred in holding that Defendants established their laches defense. Defendants did not establish that Plaintiff had knowledge of the basis for his claims when the Proxy was disseminated, that Plaintiff unreasonably delayed in filing the action, or that Defendants were prejudiced by any unreasonable delay.

⁸ Mem. Op. at 18.

STATEMENT OF FACTS

A. PARTIES

Plaintiff Bryan Reilly purchased shares of Forest Road Class A common stock on February 12, 2021, and has held such shares since that date.

Each of the Defendants was either the sponsor, a managing member, a director, and/or an officer of Forest Road, a special purpose acquisition company (“SPAC”), that merged with Legacy Beachbody and its affiliate Myx⁹ in a transaction that closed on June 25, 2021.¹⁰ Post-Merger, Forest Road was renamed The Beachbody Company, Inc. (“New Beachbody”), and started trading on the New York Stock Exchange (“NYSE”) on June 28, 2021.¹¹

B. FACTUAL BACKGROUND

1. Forest Road Is Formed With A Structure That Provided Defendants With Economic Incentives That Conflicted With Those of Forest Road’s Public Stockholders

Forest Road was incorporated in Delaware on September 24, 2020,¹² as a SPAC that had the purpose of merging with a to-be-identified private entity. Under

⁹ A1026, A1035-A1044.

¹⁰ Mem. Op. at 7.

¹¹ A1044, A1081.

¹² A1047.

its charter, Forest Road had until November 30, 2022, to complete a business combination or Forest Road would be forced to liquidate.¹³

Forest Road was controlled by Forest Road Acquisition Sponsor LLC (the “Sponsor”), which was in turn controlled by Forest Road Company LLC (“FRC”), the Sponsor’s managing member, which had voting control and investment discretion over the Sponsor’s stock.¹⁴ The Sponsor held 7,503,750 shares of Forest Road Class B stock (“Founder Shares”), and 5,333,333 private placement warrants.¹⁵ The Sponsor paid \$25,000 for the Founder Shares, and \$8 million for the private placement warrants.¹⁶ All of the individual defendants had a direct or indirect interest in the Sponsor and its Founder Shares.¹⁷

Forest Road completed its initial public offering (“IPO”) on November 30, 2020.¹⁸ Public stockholders purchased 30,000,000 public units (“Public Units”), which included one share of Forest Road Class A common stock and one-third of

¹³ A1049.

¹⁴ A1036-A1037, A1043-A1044, A1047, A1050-A1052.

¹⁵ A1027-A1028.

¹⁶ *Id.*

¹⁷ A1036-A1043.

¹⁸ A1048, A1053.

one warrant, for \$10 each, generating gross IPO proceeds of \$300,000,000 that were placed in a trust for the benefit of Forest Road stockholders.¹⁹

Forest Road's Class A common shares carried redemption rights.²⁰ In the event Forest Road identified a partner for a business combination, Class A stockholders would have the option of redeeming their shares in exchange for the return of their \$10 per share purchase price, plus interest.²¹ If Forest Road were liquidated, stockholders would be refunded their stock investment based on the remaining funds in the trust.²²

Because Founder Shares did not carry any redemption rights, the Founder Shares would expire as worthless—and the Sponsor would lose its investment—if a Forest Road did not complete a business combination.²³ This structure caused the Sponsor's economic interests to diverge from those of Forest Road's public stockholders.²⁴ The Sponsor had every interest to pursue *any* transaction, even a bad one, because in a liquidation its investment would be worthless. In contrast, Forest

¹⁹ *Id.*

²⁰ A1048.

²¹ *Id.*

²² A1026, A1048.

²³ A1028-1029, A1049.

²⁴ A1027.

Road's public stockholders would be economically incentivized to support a transaction that promised more than the \$10 per share they could expect through redemption or liquidation. And because every one of Forest Road's directors had a direct or indirect interest in the Sponsor's Founder Shares, the economic interests of the entire board were aligned with those of the Sponsor.²⁵

2. The Merger Process Revealed Significant Negative Information Regarding Legacy Beachbody to Forest Road's Directors and Officers

Prior to the Merger, Legacy Beachbody was a privately held entity providing fitness programs and nutritional products to promote the wellness of its customers. Myx was a privately held science-backed health and wellness technology company providing an in-home solution for holistic fitness. On November 11, 2020, Legacy Beachbody and Myx entered into a letter of intent providing for a business combination between Legacy Beachbody, Myx, and a to-be-identified special purpose acquisition company.²⁶

The Sponsor identified Legacy Beachbody as an acquisition target even before Forest Road completed its IPO.²⁷ On December 3, 2020, Forest Road gained

²⁵ A1036-A1043.

²⁶ A1052-A1053.

²⁷ A0147; A1026.

access to Legacy Beachbody’s virtual data room.²⁸ By December 5, 2020, Forest Road had retained two financial advisors in connection with a potential merger with Legacy Beachbody.²⁹ The next day, certain directors and officers were provided an initial due diligence presentation that valued Legacy Beachbody on its then-current financial projections at an enterprise valuation range of between [REDACTED] [REDACTED] based on DCF, Comparable Companies, and Sum-of-the-Parts analyses.³⁰ This report also explained that Legacy Beachbody’s revenue [REDACTED] [REDACTED] [REDACTED]³¹

On December 9, 2020, the Forest Board’s officers and directors were provided with a second due diligence presentation that disclosed Forest Road’s preliminary valuation of Legacy Beachbody at \$1.5-\$2 billion.³² In addition, this presentation disclosed that a merger with Legacy Beachbody would face “Key Risk Factors” including [REDACTED] [REDACTED]

²⁸ A1053.

²⁹ A1054.

³⁰ A1054-A1056.

³¹ A1054-A1057.

³² A1058, A1059-A1060.

[REDACTED]

[REDACTED]

[REDACTED].³³

[REDACTED]

On December 11, 12 and 13, 2020, Forest Road directors, officers, and the Sponsor met with the Company’s legal and financial advisors. During these meetings, the advisors identified “Risks and Conditions,” one of which was that Legacy Beachbody’s “[REDACTED]” and that the company faced “[REDACTED]”

³³ *Id.*

[REDACTED]

[REDACTED]³⁴ In addition, the presentations provided a layout of “Potential downside scenarios / “Parade of Horribles,” which included “[REDACTED]

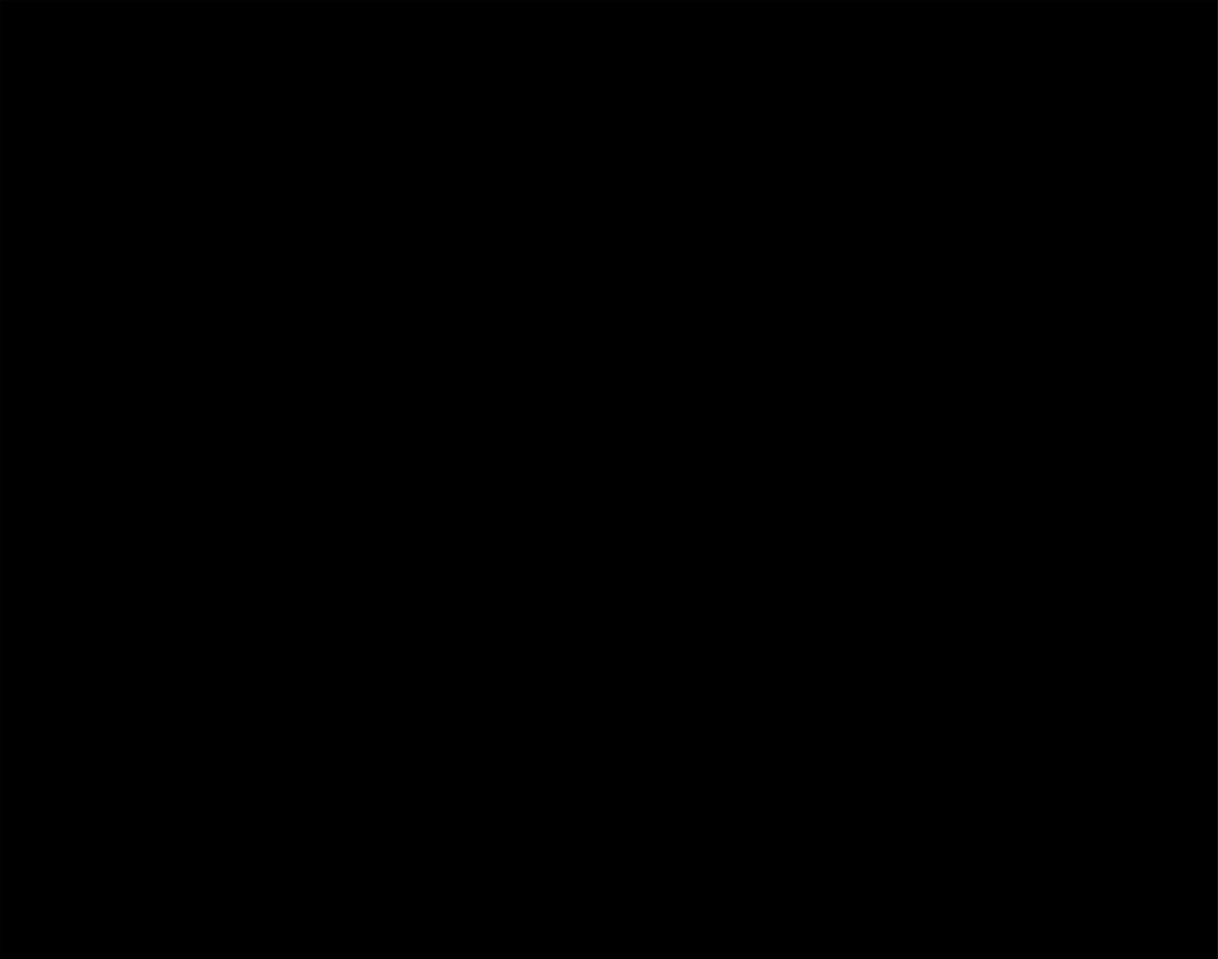
[REDACTED]

[REDACTED]

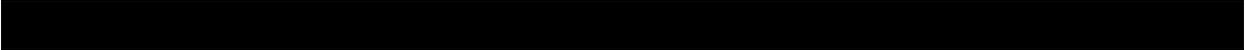
[REDACTED]³⁵.

³⁴ A1059-A1060.

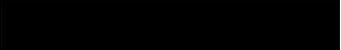
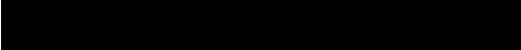
³⁵ A1064.



The presentations also included a set of “Base Case” financial projections for Legacy Beachbody that were developed by FRD and Forest Road management described as a “



”³⁶ This “Base Case”



as



³⁶ A1060-A1063.

compared to the financial projections prepared by Legacy Beachbody management.³⁷ A DCF valuation based on the Base Case put an enterprise valuation on Legacy Beachbody of between [REDACTED], compared to a valuation of [REDACTED] based on the projections by Legacy Beachbody’s management.³⁸

By December 16, 2020, Forest Road and Legacy Beachbody had approved a Letter of Intent (“LOI”) that assumed a pre-money valuation of Legacy Beachbody of \$2.9 billion, and valued post-Merger New Beachbody stock at \$10 per share.³⁹

Between December 21 and 24, 2020, Forest Road’s Board received an “[i]nterim [d]ue [d]iligence Review and Key Takeaways” focused on the litigation risk and financial exposure of Legacy Beachbody regarding “MLM Revenue.”⁴⁰

This presentation informed the Board to be “[REDACTED]
[REDACTED]
[REDACTED]”⁴¹ It also disclosed a previous FTC investigation of Herbalife Nutrition, [REDACTED]

³⁷ *Id.*

³⁸ A1063.

³⁹ A1065-A1066.

⁴⁰ A1067-A1070.

⁴¹ A1067.

[REDACTED], that resulted in a \$200 million penalty.⁴² On January 6, 2021, Forest Road’s Board was presented with another due diligence report focused on MLM, highlighting public scrutiny and increased regulatory standards related to the MLM structure and a “[REDACTED]

[REDACTED]⁴³

On January 8, 2021, Defendants learned that in December 2020, certain existing shareholders of [Legacy] Beachbody, including “a limited number of current management” had sold their equity based on an enterprise valuation of \$1.5 billion (the “December Sale”).⁴⁴

On January 11, 2021, Legacy Beachbody finalized the Proxy Projections, which were provided to the Board in a presentation dated February 3, 2021.⁴⁵ The Proxy Projections projected a 30% compound annual growth rate from 2021 through 2025 and were materially higher than the “bottoms up” Base Case model constructed by Forest Road’s management and FRC.⁴⁶

⁴² A1070.

⁴³ A1071-A1072.

⁴⁴ A1073-A1077.

⁴⁵ A1077.

⁴⁶ A1077-A1079.

Forest Road and Legacy Beachbody executed the Merger Agreement on February 9, 2021, and announced it the same date.⁴⁷

3. The Defendants Publish A Materially Deficient Proxy

On May 28, 2021, Defendants disseminated the Proxy to stockholders.⁴⁸ The Proxy informed stockholders they would have the right to redeem their Forest Road stock for approximately \$10 per share, no later than the redemption deadline of June 22, 2021.⁴⁹ The Proxy also informed stockholders that the stockholder vote date for the Merger was set for June 24, 2021.⁵⁰ The Proxy was materially incomplete.⁵¹

First, the Proxy represented that Merger stock would have an “illustrative” value of \$10 per share, “calculated using a \$10.00 reference price,” which matched the redemption value of the Class A shares.⁵² This was misleading, at best. As explained below, net cash that Forest Road would be contributing to the Merger would be no more than \$7.10 per share.

⁴⁷ A1080.

⁴⁸ A1080.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ The Proxy also stated that the Board met at least five times during the Merger, but New Beachbody only produced one set of minutes in the 220 documents, and New Beachbody counsel stated they could not locate any other board minutes. A1085-A1086.

⁵² A0197; A1087-A1090.

Second, the Proxy failed to disclose material information that undermined the Proxy Projections. The Proxy stated that the Proxy Projections’ revenue increase of 30% CAGR over five years was in line with Legacy Beachbody’s financial results. This was false because Legacy Beachbody’s net revenue actually had [REDACTED] [REDACTED].⁵³

The Proxy also did not disclose the Base Case projections, a “bottoms-up” model with “more conservative growth and margin expectation in the outer years.”⁵⁴ The Base Case, which was prepared only one month before the Proxy Projections were finalized, included assumptions for projected revenue and subscriptions for both Legacy Beachbody and Myx, and had drastically lower (i.e., 18.4% lower) overall Adjusted EBITDA than the Proxy Projections.⁵⁵ The Proxy reassured stockholders they should expect growth in online health and fitness subscriptions to continue even after COVID subsided, which would maintain the upsurge in the Proxy Projections:⁵⁶

- “66% of customers prefer home fitness solutions to gyms, and we believe we will continue to benefit from this”

⁵³ A1093-A1094.

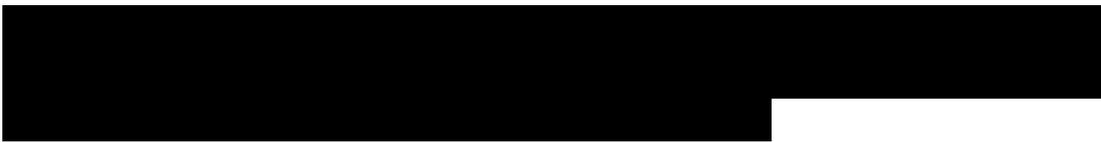
⁵⁴ A1099-A1100.

⁵⁵ A1099-A1102.

⁵⁶ A1097-A1098.

- “while the COVID-19 pandemic drove significant subscriber growth, 59% of Americans say they do not plan on renewing their gym membership”
- “Many of these customers” that have invested in digital fitness “plan on continuing to use these digital services, even as gyms reopen”
- “Although COVID-19 increased consumer demand for our digital solutions ... we anticipate that this structural change to the fitness industry will continue after COVID-19”
- “we believe that a significant percentage of gym goers do not plan to return to the gym even after widespread distribution of the COVID-19 vaccine”
- Legacy Beachbody had “compelling macro tailwinds for at home fitness industry, particularly post-COVID”
- Legacy Beachbody was “position[ed] ... to capitalize on the disrupted post-COVID fitness landscape”
- Legacy Beachbody had an “*Attractive Post-COVID Fitness Landscape*”⁵⁷

However, the Proxy did not disclose the “Key Risk Factors,” “Potential downside scenarios,” or “Parade of Horribles” the Board had received that undermined the assumptions concerning increases in digital subscription and “current COVID boosts” that inflated revenue in the Proxy Projections:⁵⁸

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⁵⁷ A0160.

⁵⁸ A1058, A1064, A1096.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The materiality of these *known and specific* risks was proven by the dramatic drop in subscriptions after the Merger as public and private gyms reopened.⁵⁹ Total subscriptions for 2021 dropped by 23.3% as compared to the Proxy Projection assumptions in the Proxy, declined by 58.3% in 2022, and 69.5% in 2023.⁶⁰

Third, the Proxy reported that the December Sale did not cause the Forest Road’s board to reduce their assessment of the enterprise valuation of Legacy Beachbody, because the “sellers in the December sale had agreed to sell their shares at a significant discount to Beachbody’s estimated value for a variety of personal reasons” and “other factors such as anticipated synergies, operating efficiencies, tax or other cost savings resulting from the Business Combination, which were not considered in the December Sale implied valuation.”⁶¹ But they did not disclose that

⁵⁹ A1098.

⁶⁰ *Id.*

⁶¹ A0152-A0153.

the \$1.5 billion enterprise valuation implied in the December Sale matched the preliminary valuation of [REDACTED] that Forest Road’s management initially assessed for Legacy Beachbody in December 2020.⁶²

Fourth, the Proxy failed to disclose the “high degree” of litigation risk associated with Legacy Beachbody’s coach compensation, which materialized on May 22, 2023, when a former New Beachbody coach filed a lawsuit accusing New Beachbody of depriving its coaches of millions of dollars in compensation.⁶³

⁶² A1091.

⁶³ A1031-A1034, A1102-A1107.

ARGUMENT

I. PLAINTIFF'S CLAIMS DID NOT ACCRUE UNTIL THE MERGER CLOSED

A. QUESTION PRESENTED

Do claims seeking damages for the impairment of redemption rights that resulted in Plaintiff and the class investing in an unfair merger accrue when the proxy asking stockholders to vote in favor of the merger was published, or, instead, when the stockholders' redemption rights were terminated or the merger closed?

This issue was preserved.⁶⁴

B. STANDARD OF REVIEW

The time at which a claim accrues is a question of law and is reviewed *de novo*.⁶⁵ All well-pleaded allegations in the operative complaint are accepted as true, and all reasonable inferences are drawn in Plaintiff's favor.⁶⁶

C. MERITS OF ARGUMENT

In Delaware, "a cause of action accrues 'at the time of the wrongful act,'" which, "[f]or tort claims, ... the wrongful act occurs at the time of injury."⁶⁷ "A

⁶⁴ See A1266-A1267

⁶⁵ See *Connelly v. State Farm Mutual Auto. Ins. Co.*, 135 A.3d 1271, 1274 (Del. 2016).

⁶⁶ *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727, 731 (Del. 2020).

⁶⁷ *ISN Software Corp.*, 226 A.3d at 732.

breach of fiduciary duty is an equitable tort.”⁶⁸ Here, Plaintiff asserted direct claims for damages arising from the unlawful impairment of his redemption rights as a Forest Road public stockholder, and a claim for unjust enrichment seeking damages from faithless fiduciaries who profited at the expense of Plaintiff and Forest Road’s other public stockholders. A stockholder being lulled into approving an unfair merger is injured when the merger closes. And a claim for unjust enrichment cannot accrue until the disloyal fiduciary receives an equitable gain.

Delaware courts repeatedly have held that direct equity claims seeking damages arising from an unfair merger accrue when the merger closes, not when the proxy seeking stockholder support for that merger was published. In *Tuckman v. Aerosonic Corp.*, the Court of Chancery held that the “causes of action” that sought money damages, accrued on “January 12, 1970, the date of the merger” and not the “date of the challenged proxy solicitation material [of] December 16, 1969.”⁶⁹ Similarly, in *In re Trados Inc. Shareholder Litigation*, the Court of Chancery held that the claim accrues, and the three-year statute of limitations begins to run, when the merger closes.⁷⁰ As the U.S. District Court for the District of Delaware has

⁶⁸ *In re Rural Metro Corp. S’holders Litig.*, 88 A.3d 54, 98 (Del. Ch. 2014).

⁶⁹ 1975 WL 1959, at *1 (Del. Ch. Oct. 21, 1975).

⁷⁰ 2009 WL 2225958, at *5 (Del. Ch. July 24, 2009).

recognized, a stockholder “could not have sued for damages until the [M]erger was actually accomplished—until that time, [he] had suffered no injury by the [D]efendants’ acts.”⁷¹ Direct claims that seek “redress” arising from a merger are “unripe” if “the merger fails to close.”⁷²

Further, a public stockholder’s decision not to exercise redemption rights at the time of a de-SPAC merger is akin to an affirmative decision to invest in the merged entity. As the Court of Chancery explained in *In re Multiplan Corp. Stockholders Litigation*,⁷³ “the public stockholders’ funds held in trust did not belong to [the Company] until those stockholders opted not to redeem but to invest in the post-merger combined entity.”⁷⁴ In this regard,

[Forest Road’s] public stockholders were faced with two choices: whether to exercise their redemption right and whether approve the merger. The former choice was a call for stockholder action in the form of an ‘investment decision’ not unlike ‘purchasing and tendering stock or making an appraisal election.’ ... The public stockholders’ investment cumulated thus: divest or invest in the post-merger entity, approve or disapprove the merger.⁷⁵

⁷¹ *Dofflemyer v. W.F. Hall Printing Co.*, 558 F. Supp. 372, 379 (D. Del. 1983) (citing *Kaufman v. Albin*, 447 A.2d 761 (Del. Ch. 1982)).

⁷² *In re Straight Path Comm’n’s Inc. Consol. S’holder Litig.*, 2017 WL 5565264, at *3 (Del. Ch. Nov. 20, 2017).

⁷³ 268 A.3d 784 (Del. Ch. 2022)

⁷⁴ *Id.* at 802.

⁷⁵ *Id.* at 808 (quoting *In re CBS S’holder Class Action & Deriv. Litig.*, 2021 WL 268779, at *23 (Del. Ch. Feb. 4, 2021)).

A claim seeking damages arising from an investment decision accrues when the investment is made. In *In re Dean Witter Partnership Litigation*,⁷⁶ for example, the court held that “plaintiffs’ injuries occurred *when they purchased* their Partnership interests as a result of defendants’ alleged misrepresentations. Thus, plaintiffs’ cause of action accrued when they invested in the allegedly fraudulent Partnerships.”⁷⁷ Here, Plaintiff’s investment decision occurred *no earlier* than the Redemption Deadline⁷⁸—and Plaintiff did not *actually invest* in New Beachbody until the Merger closed. Under *Dean Witter*, Plaintiff’s claim did not accrue until—at the earliest—the Redemption Deadline when he decided not to redeem his Forest Road stock “as a result of [D]efendants’ alleged misrepresentations.”⁷⁹ Because the decision not to redeem is a decision to invest in the Merger, the claim cannot accrue until the Merger

⁷⁶ 1998 WL 442456 (Del. Ch. July 17, 1998).

⁷⁷ *Id.* at *4.

⁷⁸ See *In re TS Innovation Acquisitions Sponsor, LLC Stockholder Litig.*, 2025 WL 1892466, at *1 (Del. Ch. Jul. 9, 2025) (“Before the redemption deadline, public stockholders must decide whether to redeem their shares or invest in the de-SPACed company. But after they make that decision, the redemption right is extinguished, a fundamental change that ‘transmogrifies’ the stock to sever the related breach of fiduciary duty claims.”).

⁷⁹ *Id.* The trial court cited extensively to *Dean Witter*’s general references to “inquiry notice” in the assessment of equitable tolling, Mem. Op. at 17-19 (citing *Dean Witter*, 1998 WL 4425456, at *6-7), but did not address the fact that the claims could not accrue until the plaintiff actually made his investment. *Dean Witter*, 1998 WL 4425456, at *4.

closes or, at the very earliest, when the redemption deadline expires and the redemption right is extinguished.

The trial court's holding below ignored these basic principles. Instead, citing *ISN Software*,⁸⁰ the trial court noted that “[t]he statute of limitations can start to run before any actual or substantial damages occur,”⁸¹ and characterized Plaintiff's claim as asserting an “informational injury” that occurred upon the publication of the Proxy.⁸² But in *ISN Software*, a case involving a claim for legal malpractice relating to a merger, this Court held that the cause of action accrued at the close of the merger, when the client suffered injury arising from the incorrect legal advice, not the earlier date when the incorrect advice was given:

Under the Delaware occurrence rule, injury is distinct from damages. The statute of limitations can start to run before any ‘actual or substantial damages’ occur. *Here, the unintended consequences of the merger injured ISN when the transaction closed because it could not proceed without new liabilities – providing additional appraisal rights than intended or unwind the merger.*⁸³

Similarly, here, Plaintiff and the class were injured when the Merger closed or, at the earliest, when his redemption rights were extinguished, not, as recognized

⁸⁰ *ISN Software*, 226 A.3d 727.

⁸¹ Mem. Op. at 13.

⁸² *Id.* at *12.

⁸³ *ISN Software*, 226 A.3d at 735.

in *ISN Software*, when the incorrect information was provided, in this case through the Proxy.⁸⁴

Moreover, Plaintiff complains of much more than a simple “informational injury.” Plaintiff has asserted that Defendants breached their fiduciary duties of loyalty by (1) negotiating and approving an unfair Merger, (2) depriving Plaintiff of the right to make a fully informed decision as to whether to redeem his shares or invest in the Merger, (3) depriving Plaintiff of the right to make a fully informed decision as to whether to vote in favor of the Merger, and (4) causing Plaintiff and the class to invest the funds held in trust for their benefit to be invested in an unfair merger at an unfair price.⁸⁵ In short, Plaintiff’s “allegations give rise to a single claim where the deficient disclosures are ‘inextricably intertwined’ with the disloyal

⁸⁴ The trial court also cites to *Albert v. Alex Brown Management Services, Inc.*, 2005 WL 1594085, at *18 (Del. Ch. June 29, 2005) to support the position that Plaintiff’s claims accrued when the Proxy was disseminated. But *Albert* has nothing to do with a proxy dissemination. It is based entirely on whether private investors in hedge funds were well advised, based on private “Sales Memos” that informed investors that “contributed securities” were “heavily weighted,” and whether investors were on inquiry notice when they decided to invest and the funds closed. *Albert*, 2005 WL 1594085, at *2-6, *19-20. Indeed, the plaintiffs conceded that “the entire structure of the Fund[s] was fatally flawed from the outset,” thus were aware of and “harmed as soon as the alleged wrongful acts occurred,” and “could have sought injunctive relief.” *Id.* at *13, *18. Thus they were harmed and damaged as soon as the funds closed, which was when the statute of limitation began to run. By contrast, in a merger, a stockholder cannot be harmed until the merger closed.

⁸⁵ A1027-A1031, A1034, A1035, A1048-A1049, A1050-A1107, A1114-A1121.

behavior that caused them.”⁸⁶ This is why the court in *Gig3* explained: “To view the disclosures in a vacuum would evade any meaningful assessment of whether the redemption choice was manipulated to maximize the sponsor’s profits at public stockholders’ expense.”⁸⁷

Finally, the trial court’s holding that Plaintiff’s claims accrued upon the publication of the Proxy ignored Count V of the Complaint, which asserted a claim for unjust enrichment. The elements of unjust enrichment are “(1) an enrichment, (2) an impoverishment, (3) a relation between enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law.”⁸⁸ These “unjust enrichment claims accrued at closing” of the Merger, which was when the fiduciaries were unjustly enriched.⁸⁹ “Just as there is no unjust enrichment before there has been enrichment, there is no unjust enrichment before the defendant’s retention of a benefit becomes unjust.”⁹⁰

⁸⁶ *Delman v. GigAcquisitions3 LLC*, 288 A.3d 692, 714 (Del. Ch. 2023) (citing to *MultiPlan*, 268 A.3d at 800 & n.92).

⁸⁷ *Gig3*, 288 A.3d at 714.

⁸⁸ *Cantor Fitzgerald, L.P. v Cantor*, 724 A.2d 571, 585 (Del. Ch. 1998).

⁸⁹ *Lehman Bros. Holdings, Inc. v. Kee*, 268 A.3d 178, 196 (Del. 2021); *see also Buttonwood Tree Value Partners, L.P. v. R. L. Polk & Co., Inc.*, 2023 WL 9053173, at *10 (Del. Ch. Dec. 29, 2023) (unjust enrichment claims accrued when minority shareholders chose to tender their stock).

⁹⁰ *Taplin v. Schuitemaker*, 2019 WL 126981, at *8 (Del. Super. Ct. Jan. 7, 2019).

Before the Merger closed, the Sponsor held 7,503,750 Founder Shares purchased for \$25,000, at a price of \$0.0035 per share, and 5,333,333 Private Placement Warrants purchased for \$8 million, \$1.50 per warrant.⁹¹ All of the Forest Road officers and directors had a direct or pecuniary interest in the Founder Shares and/or the Private Placement Warrants.⁹² All of these Founder Shares and Private Placement Warrants would have been worthless absent the close of the Merger (or some other business combination).⁹³ But once the Merger closed, the Defendants held economic interests in New Beachbody stock. As of December 22, 2021, the first trading day after the lock-up period for the Founder Shares expired (180 days after the Merger closed), New Beachbody stock closed at \$2.34. As of that date, Founder Shares were worth \$17.55 million, a return of 70,200% return on the Sponsor's investment.⁹⁴ By contrast, the stockholders were impoverished because Defendants convinced them not to redeem their Forest Road stock, and the conversion of their Forest Road stock into New Beachbody stock caused them almost immediately to suffer a significant financial loss. Thus, Defendants were

⁹¹ A1027-A1028, A1047-A1048.

⁹² A1036-A1042.

⁹³ A1028-A1029, A1048.

⁹⁴ A1035.

unjustly enriched by impoverishing stockholders, and these unjust enrichment claims could not, and did not, accrue until the Merger closed.

II. THE PROXY DID NOT PROVIDE PLAINTIFF WITH INQUIRY NOTICE OF HIS CLAIMS.

A. QUESTION PRESENTED

Under the facts as alleged in the Complaint, did the Proxy provide Plaintiff with material facts sufficient to provide inquiry notice of his claims?

This issue was preserved.⁹⁵

B. STANDARD OF REVIEW

This Court reviews *de novo* whether a claim is barred by a statute of limitations. This Court accepts as true all well-pleaded allegations in the Complaint, and all reasonable inferences are drawn in Plaintiff's favor.⁹⁶

C. MERITS OF ARGUMENT

The doctrine of equitable tolling precludes accrual of the running of the limitations period in breach of fiduciary duty actions “charging actionable self-dealing, “until the shareholders knew or had reason to know of the facts constituting the alleged wrong.”⁹⁷ “When a plaintiff has relied upon a fiduciary’s statements, then inquiry notice does not arise until the plaintiff had some reason to suspect that the fiduciary’s statements were inaccurate.”⁹⁸

⁹⁵ See A1267-A1270.

⁹⁶ *ISN Software*, 226 A.3d at 731.

⁹⁷ *MAXXAM, Inc.*, 659 A.2d at 769.

⁹⁸ *Walton*, 294 A.3d at 96.

The trial court ruled that equitable tolling did not apply. The trial court reasoned that “[b]y highlighting at least three omissions observable on the face of the proxy, the complaint pleads its own untimeliness,” and provided three examples:

First, the proxy purportedly omitted key facts surrounding the December Sale, which the plaintiff mentions over a dozen times in the complaint. For example, the plaintiff alleges that although the proxy ‘state[d] that the enterprise valuation of the December Sale was \$1.5 billion,’ it ‘d[id] not disclose the basis for this valuation.’ Second, the proxy allegedly lacked sufficient disclosures of the net cash per share that would be contributed in the merger. Third, the proxy failed to discuss the potential effect on the Proxy Projections if Beachbody subscriptions returned to pre-COVID levels.⁹⁹

The trial court’s holding in this regard was wrong. Nothing within the Proxy put Plaintiff on inquiry notice that Defendants withheld material information.

1. Net Cash Per Share

The only asset a SPAC (such as Forest Road) contributes to a merger is cash, whether held in its trust account, or raised through a PIPE transaction. As such, the actual amount of cash per share being contributed to a merger by the SPAC, net of fees and expenses incurred in connection with the merger (“net cash per share”), is a relevant metric to the SPAC’s public stockholders because it could be expected to reflect the value of what the SPAC’s public stockholders could expect to receive in the merger.

⁹⁹ Mem. Op. at 18.

However, as the court recognized in *Genius Sports*, “there’s no per se requirement that a net cash per share figure be disclosed outright. I don’t view this as a strict liability claim.”¹⁰⁰ Indeed, as stated in *Solak v. Mountain Crest Capital LLC*, “our caselaw has noted [that] failure to disclose net cash per share is not, in itself a *per se* breach of duty.”¹⁰¹ Only “[i]f there is a significant delta between what one would be investing in a combined entity versus the fixed \$10 per share redemption price ... it may be reasonably conceivable that the information is material to the public stockholders’ redemption decision.”¹⁰² Thus, net cash per share is only *material* if the “difference between the \$10 of value per share [] stockholders expected and [] net cash per share”¹⁰³ was material to their redemption decision.¹⁰⁴

¹⁰⁰ *Offringa v. dMY Sponsor II*, C.A. No. 2023-0929-LWW, at 21 (Del. Ch. July 30, 2024) (“*Genius Sports*”) (TRANSCRIPT) (Tab J).

¹⁰¹ *Solak v. Mountain Crest Capital, LLC*, 2024 WL 4524682, at *9 (Del. Ch. Oct. 18, 2024).

¹⁰² Tab J _____ at 21.

¹⁰³ *Gig3*, 288 A.3d at 725.

¹⁰⁴ See *Gig3*, 288 A.3d at 724; *Solak*, 2024 WL 4524682, at *11; *Laidlaw v. GigAcquisitions2, LLC*, 2023 WL 2292488, at *11-12 (Del. Ch. Mar 1, 2023); *In re XL Fleet Fleet (Pivotal) S’Holder Litig.*, Consol. C.A. No. 2021-0808-KSJM, at 21 (Del. Ch. June 9, 2023)(TRANSCRIPT) (“*XL FLEET*”) (Tab L); *In re Finserv Acquisition Corp. SPAC Litig.*, C.A. No. 2022-0755-PAF, at 12 (Del. Ch. Nov. 1, 2023) (TRANSCRIPT) (Tab D); *Farzad v. Trasimene Capital, FT, LP II*, C.A. No. 2023-0193-JTL, at 55 (Del. Ch. Jan. 30, 2024) (TRANSCRIPT) (Tab C); *In re Kensington-QuantumScape De-SPAC Litig.*, C.A. No. 2022-0721-JTL, at 71 (Del. Ch. Feb. 21, 2024) (TRANSCRIPT) (Tab E); *In re Nikola Corp. Deriv. Litig.*, C.A. No. 2022-0023-KSJM, at 35 (Del. Ch. Apr. 9, 2024) (TRANSCRIPT) (Tab I); *In re*

The Proxy informed Forest Road’s public stockholders that they could redeem their shares for \$10 per share.¹⁰⁵ The Proxy also suggested that the publicly traded shares following the merger with Legacy Beachbody would be worth \$10 per share.¹⁰⁶ However, nothing in the Proxy would have alerted a reasonable stockholder that the net cash per share being contributed by Forest Road to the Merger was *materially below* the \$10 per share price represented in the Proxy. And the trial court’s opinion does not suggest that there was.

To calculate the net cash per share that Forest Road would be contributing to the Merger, one begins with the total cash, subtracts costs, and divides that number by Forest Road’s pre-Merger shares outstanding:

$$\text{Net Cash per Share} = \frac{\text{Cash} - \text{Costs}}{\text{Pre-Merger Shares}}$$

Momentus, Inc. S’holders Litig., Consol. C.A. No. 2022-1023-PAF, at 16 (Del. Ch. May 29, 2024) (TRANSCRIPT) (Tab F); *Newman v. Sports Acq. Hldgs. LLC*, C.A. No. 2023-0538-LWW, at 18-23 (Del. Ch. May 28, 2024) (TRANSCRIPT) (Tab H); Tab J___ at 24; *Sezonov v. Longview Investors LLC*, C.A. No. 2023-1238-NAC, at 18 (Del. Ch. Nov. 25, 2024) (TRANSCRIPT) (Tab K); *Drulias v. Affeldt*, C.A. No. 2024-0161-BWD, at 29 (Del. Ch. Jan. 31, 2025) (TRANSCRIPT) (“*Blade*”) (Tab B); *In re Archer Aviation, Inc. S’holder Litig.*, C.A. No. 2024-0527-LWW, at 24 (Del. Ch. July 21, 2025) (TRANSCRIPT) (Tab A); *Montealegre v. You*, C.A. No. 2024-0869-BWD, at 29 (Del. Ch. Sept. 29, 2025) (TRANSCRIPT) (Tab G).

¹⁰⁵ A0041.

¹⁰⁶ A0197.

But this calculation is not as straightforward as it would seem. Total cash would include “funds in the [SPAC] trust account ... and funds to be received ... pursuant to [a] PIPE agreement.”¹⁰⁷ Total costs would include “(1) transaction costs ... (2) the market value of public warrants ... [and] (3) the value of the warrants in the private placement units.”¹⁰⁸ And to determine the number of pre-merger shares, one would need to know “(1) public shares issued in the IPO ... (2) the [i]nitial [s]tockholder [s]hares ... (3) the [i]nsider [s]hares ... (4) shares to be issued at closing pursuant to [a] PIPE agreement ...; and (5) shares issued as part of the private placement units.”¹⁰⁹ The calculation, therefore, is based on information that would have been uniquely in the hands of Forest Road’s officers and directors, and not generally available to the Company’s public stockholders.¹¹⁰

Here, Defendants did not dispute that the net cash per share Forest Road contributed to the Merger was less than \$7.10 per share. Defendants also conceded

¹⁰⁷ *Gig3*, 288 A.3d at 724.

¹⁰⁸ *Id.* at 724-25.

¹⁰⁹ *Id.*

¹¹⁰ *Laidlaw v. GigAcquisitions2, LLC*, 2023 WL 2292488, at *12 (Del. Ch. Mar. 1, 2023) (“Moreover, it is reasonable to expect that the defendants understood the importance of net cash per share to the value of the mergers and had such information readily available to them. The defendants touted their experience and qualifications elsewhere to justify their decision not to retain a financial advisor. Nothing prevented the defendants from disclosing Gig2’s net cash per share in a straightforward manner.”).

that this net cash per share metric was not disclosed in the Proxy. Instead, they argued that a reasonable stockholder could calculate this number on its own based on information contained in an investor presentation that was not distributed with the Proxy, and on figures that could be found on different pages of the Proxy.¹¹¹ Yet “numerous cases under similar facts have rejected that very argument.”¹¹² As the Court of Chancery has recognized, even when it is “possible that the proxy disclosed financials sufficient for a sophisticated investor, with time to spare and potentially with training, to calculate the net cash per share for themselves,” it is “‘reasonably inferable that a rational and perhaps more realistic investor would simply look to the \$10 per share consideration and assume that the net cash per share roughly matched this figure,’ making it ‘reasonably conceivable that the failure to disclose the net cash per share figure outright constitute[s] a breach under’ the court’s past precedents.”¹¹³

This Court made a similar assessment in *City of Dearborn Police & Fire Revised Retirement System v. Brookfield Asset Management Inc.*¹¹⁴ The Court agreed that “Delaware law does not require a stockholder to engage in a ‘scavenger hunt’

¹¹¹ A0943-A0951.

¹¹² Tab B___ at 27.

¹¹³ Tab L___ at 32-33; *see also* Tab B___ at 27-28.

¹¹⁴ 314 A.3d 1108 (Del. 2024).

in which they must ‘piece together the answer from information buried in the disclosures.’”¹¹⁵ The Court noted that “[i]nformation disclosed in a proxy statement should be presented in a ‘clear and transparent manner,’” and the proxy at issue “included a complex formula to calculate Brookfield’s management fees,” and, thus, even if “stockholders are assumed to be ‘skilled readers,’ the disclosure of anticipated management fees was inadequate.”¹¹⁶ Only when the proxy provided multiple charts with all the “inputs needed for such a calculation” “within a few pages of each other” to assess the “5% dilution of dividends” could a “skilled reader” “calculate the dilutive effect of the [m]erger on dividends” “unlike the situation with the management fees.”¹¹⁷

The trial court’s decision below simply ignored this precedent. The trial court did not hold that the net cash per share metric was not material, or that a reasonable stockholder could have been expected to reach this calculation on its own based on numbers that could be obtained on disparate pages of the Proxy and an entirely different document. Rather, the trial court held that the mere fact that net cash per share was omitted from the Proxy *itself* provided Plaintiff with inquiry notice of his

¹¹⁵ *Id.* at 1140 (citing *Salladay v. Lev*, 2020 WL 954032, at *16 (Del. Ch. 2020)).

¹¹⁶ *Brookfield Asset Mgmt.*, 314 A.3d at 1137-38.

¹¹⁷ *Id.* at 1139-40.

claim: “the proxy allegedly lacked sufficient disclosures of the net cash per share that would be contributed in the merger.”¹¹⁸ But in the absence of clear disclosures that the net cash being contributed was *materially below* the \$10 per share redemption price, Forest Road’s public stockholders were not put on inquiry notice that material information was omitted from the Proxy.

2. The Failure To Disclose Material Information To Counterbalance The Proxy Projections

The trial court acknowledged:

[T]he proxy did not include the base case projections developed by Forest Road’s team but disclosed a more optimistic set (the ‘Proxy Projections’). The Proxy Projections forecasted a compound average growth rate of 30%, which was reliant on a surge in digital subscriptions due to gym closures. *The information was not counterbalanced by risks of unsustainable growth post-pandemic.*¹¹⁹

Although acknowledging that the rosy Proxy Projections were not “counterbalanced” with downside risks, the trial court nevertheless held that Plaintiff had “inquiry notice” of his claims based on the mere fact that “the proxy failed to discuss the potential effect on the Proxy Projections if Beachbody subscriptions returned to pre-COVID levels.”¹²⁰ In other words, according to the trial court, the Proxy’s failure to disclose adverse countervailing information *in and of itself* put

¹¹⁸ Mem. Op. at 18.

¹¹⁹ *Id.* at 6 (emphasis added).

¹²⁰ *Id.* at 18.

Plaintiff and the rest of Forest Road’s public stockholders on inquiry notice that the Forest Board directors withheld material information.

The trial court’s analysis does not withstand scrutiny. “[T]he shareholders of a Delaware corporation are entitled to rely upon their board of directors to discharge each of their three primary fiduciary duties at all times.”¹²¹ It would be illogical—and contrary to Delaware law—to expect Forest Road’s stockholders to assume that their Board knew of and failed to disclose information that undermined the financial story set forth in the Proxy, based simply on the fact that the Proxy failed to disclose such information. In *In re Hennessey Capital Acquisition Corp. IV Stockholder Litigation*,¹²² the court held that the plaintiff did not state a valid claim for the impairment of redemption rights where he failed to allege facts or information that was known or knowable to the directors and withheld from the company’s stockholders. Distinguishing prior cases where motions to dismiss were denied, the court observed:

In these cases (and others since), concrete facts about the merger target’s prospects were kept from public stockholders. The information was known or knowable by directors and officers acting consistent with their fiduciary duties. It also would have been material to stockholders deciding whether to redeem their shares or invest in the post-de-SPAC

¹²¹ *Emerald Partners v. Berlin*, 787 A.2d 85, 90 (Del. 2001).

¹²² 318 A.3d 306 (Del. Ch. 2024), *affirmed* 337 A.3d 1214 (Table) (Del. 2024).

entity. As a result, the court found it reasonably conceivable that the opportunity to redeem was not the product of fair dealing.

No such material facts that were known or knowable by the defendants are raised here.¹²³

It simply cannot be that Forest Road’s public stockholders were put on inquiry notice of claims based on the fact that the Proxy did not disclose countervailing information that, without access to the Company’s confidential files, stockholders would not have had any clue existed. This is precisely why Plaintiff exercised his rights under Section 220 to inspect the books and records of Forest Road pertaining to the Merger. And his investigation uncovered facts *that were in the Defendants’ possession* that would have been material to a public stockholder considering its redemption decision.

As explained above, the Proxy was replete with representations that Legacy Beachbody was poised for significant growth in a post-COVID economy. And, importantly, the Proxy advised stockholders that they should believe in the Proxy Projections because they were “consistent with the [Legacy Beachbody] projections provided annually ... for the past decade.”¹²⁴ These representations were materially misleading.

¹²³ 318 A.3d at 324.

¹²⁴ A1093.

First, the Proxy’s representation that the Proxy Projections were “consistent with” a “decade” of projections from Legacy Beachbody conveniently omitted the fact that for the five years preceding the pandemic, Legacy Beachbody “ [REDACTED] [REDACTED] ”¹²⁵ Plaintiff only learned this fact through his 220 investigation, not from the Proxy.

Second, the Company’s 220 production revealed that Forest Board’s directors not only *knew* that the growth forecasted in the Proxy Projections was inconsistent with [REDACTED] that Legacy Beachbody experienced in the years before COVID, but that they were repeatedly warned of specific risks facing Legacy Beachbody’s business model that were also omitted from the Proxy. The Forest Road Board was warned that the “Key Risk Factors” and “Parade of Horribles” noted above informed the Board of *specific downside risks* that were not disclosed in the Proxy.¹²⁶

Thus, the mere fact that “the proxy failed to disclose the potential effect on the Proxy Projections if Beachbody subscriptions returned to pre-COVID levels” *did not* mean Proxy alerted Plaintiff to the fact that the Board had specific information that undermined the Proxy’s rosy financial projections. Only through his 220

¹²⁵ A1056-A1057.

¹²⁶ A1064.

investigation did Plaintiff discover that Defendants *had and failed to disclose* material information that undermined the Proxy's optimistic story of Legacy Beachbody's business.

3. The December Sale

Finally, the trial court observed: “the proxy purportedly omitted key facts surrounding the December Sale ... For example, the plaintiff alleges that although the proxy ‘state[d] that the enterprise valuation of the December Sale was \$1.5 billion,’ it ‘d[id] not disclose the basis for this valuation.’”¹²⁷ Again, this does not “demonstrate” that Plaintiff was on inquiry notice of his claims.

The basis for the December Sale's valuation was material was because it was in line with Forest Road's initial enterprise valuation of Legacy Beachbody from [REDACTED].¹²⁸ That initial valuation was not disclosed in the Proxy, even though it was created just one month before the Proxy Projections were finalized. Plaintiff did not discover this fact until he was provided with the 220 documents. Plaintiff was only able to allege that the basis for the \$1.5 billion valuation in the December Sale was *material* because of confidential information obtained through the 220 investigation, not simply the Proxy itself.

¹²⁷ Mem. Op. at 18.

¹²⁸ A1058.

III. DEFENDANTS DID NOT CARRY THEIR BURDEN OF PROVING A LACHES DEFENSE

A. QUESTION PRESENTED

Did Defendants establish that (1) Plaintiff had inquiry notice of his claims when the Proxy was filed; (2) Plaintiff unreasonably delayed filing this action; and (3) Defendant suffered undue prejudice as a result of such unreasonable delay?

This issue was preserved.¹²⁹

B. STANDARD OF REVIEW

The standard of review is *de novo* because the appeal involves the “interpretation and application of legal precepts, such as the statute of limitations and the doctrine of laches ...”¹³⁰

C. MERITS OF ARGUMENT

To establish their laches defense, Defendants were required to demonstrate: (1) Plaintiff’s knowledge of “a basis for legal action”; (2) “unreasonable delay in bringing a lawsuit”; and (3) “prejudice suffered by the [D]efendant[s] as a result of

¹²⁹ See A1264-A1265.

¹³⁰ *Levey v. Brownstone Asset Mgmt., LP*, 76 A.3d 764, 768 (Del. 2013); see also *Reid v. Spazio*, 970 A.2d 176, 182 (Del. 2009).

the [P]laintiff's unreasonable delay."¹³¹ Defendants did not establish any of these elements.

First, Plaintiff was not on inquiry notice of his claims the moment the Proxy was filed for the reasons discussed above.¹³²

Second, Defendants did not establish that Plaintiff unreasonably delayed filing his action. Plaintiff commenced this action within a month of the Company's production of the Section 220 documents.¹³³

Finally, Delaware law requires a showing of prejudice as an essential element of a laches defense.¹³⁴ After all, "the laches inquiry is principally whether it is

¹³¹ *Meso Scale Diagnostics, LLC v. Roche Diagnostics GmbH*, 62 A.3d 62, 77 (Del. Ch. 2013) (citing *Tafeen v. Homestore, Inc.*, 2004 WL 556733, at *7 (Del. Ch. Mar. 22, 2004)).

¹³² *See supra* Section II.

¹³³ The Company made its last production on May 16, 2024. Plaintiff filed his Complaint on June 14, 2024.

¹³⁴ *See Kallop v. McAllister*, 678 A.2d 526, 532 (Del. 1996) ("The defense of laches is only tenable when a defendant is prejudiced by a plaintiff's unreasonable delay in bringing suit."); *see also Hudak v. Procek*, 727 A.2d 841, 843 (Del. 1999) ("Change of position on the part of those affected by non-action, and the intervention of rights are factors of supreme importance." (quoting *Federal United Corp. v. Havender*, 11 A.2d 331, 345 (Del. 1940))); *Nationwide Mut. Ins. Co. v. Starr*, 575 A.2d 1083, 1088-89 (Del. 1990) ("[an] action will not be barred in the absence of some showing that the delay caused the defendant to suffer a detrimental change in position"); *Hillside Inv., Inc. v. Rodel, Inc.*, 577 A.2d 753 (Del. 1990) (TABLE) ("Mere delay, with an accompanying change of position resulting in prejudice to the party asserting such a defense is insufficient as a matter of law to establish laches."); *Collins v. Burke*, 418 A.2d 999, 1003-04 (Del. 1980) ("in the absence of any showing that

inequitable to permit a claim to be enforced, the touchstone of which is inexcusable delay leading to an adverse change in the condition or relations of the property or the parties.”¹³⁵ The laches defense exists only “to protect defendants from the burdens and prejudice arising from the passage of time, such as lost documents, faded memories, or missing witnesses—not to limit a court’s authority to hear the claim.”¹³⁶

Here, Defendants “have not shown that they suffered any prejudice by the delay,” and thus they “have not borne their burden of showing the existence” of their laches defense.¹³⁷ The only prejudice Defendants could even claim (had they attempted to do so) are the costs incurred in defending this action. But these costs

appellants suffered a detrimental change of position as a result of the delay, the action will not be barred by laches”).

¹³⁵ *Reid*, 970 A.2d at 183; *see also Robert O. v. Ecmel A.*, 460 A.2d 1321, 1325 (Del. 1983), *overruled on other grounds by Sanders v. Sanders*, 570 A.2d 1189 (Del. 1990) (“The defense of laches depends on more than the issue of unreasonable delay in the assertion of one’s rights. It is ‘principally a question of the inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition or relations of the property or the parties. Where no one has been misled to his harm in any legal sense by the delay, and the situation has not materially changed, the delay is not fatal.’”) (quoting 2 Pomeroy’s Equity Jurisprudence §419d, at 177-78 (5th ed. 1941)).

¹³⁶ *PXP Producing Co. LLC v. MitEnergy Upstream LLC*, 342 A.3d 402, 408 (Del. Ch. 2025).

¹³⁷ *Wechsler v. Abromowitz*, 1984 WL 8244, at *4 (Del. Ch. Aug. 30, 1984).

do not constitute prejudice—let alone undue prejudice.¹³⁸ Defendants did not provide any evidence or showing—or even make any claim—that witnesses are unavailable or memories faded due to the passage of time, or “that material facts at issue in this litigation are now unavailable as a result of [Plaintiff’s] alleged delay.”¹³⁹ Thus, Defendants did not demonstrate that any purported delay had impacted their ability to defend themselves and have therefore failed to identify any prejudice.

Although Defendants did not claim any prejudice, the trial court—*sua sponte*—suggested that prejudice was “presumed.”¹⁴⁰ In doing so, the trial court erred, both because any presumption of prejudice is rebuttable and because it is rebutted here.

For the proposition that prejudice is presumed, the trial court cited *Forman v. CentriflyHealth, Inc.*, a Court of Chancery decision which indicated that, for

¹³⁸ See *City Investing Co. Liquidating Trust v. Continental Cas. Co.*, 1992 WL 65411, at *4 (Del. Ch.), *aff’d*, 624 A.2d 1191 (Del. 1993) (recognizing that incurring expense of defending a case is not sufficient prejudice); *Wilmington Hospitality, LLC v. New Castle Cnty.*, 2002 WL 31261267, (Del. Ch. Sept. 19, 2002) (even “defending against the same claims in a second lawsuit does not constitute ‘plain legal prejudice’”) (internal citation omitted).

¹³⁹ *Whittington v. Dragon Group L.L.C.*, 2008 WL 4419075, at *8 (Del. Ch. June 6, 2008) (revised Sept. 30, 2008).

¹⁴⁰ Mem. Op. at 16 n.79.

equitable claims seeking legal relief, prejudice is presumed when a claim is brought after the analogous statute of limitations period.¹⁴¹ *Forman*, in turn, cited *Kraft v. WisdomTree Investments, Inc.*, which noted that where there is a presumption of laches, the presumption is rebuttable.¹⁴²

Importantly, no presumption of prejudice should apply to Plaintiff's claims. Decisions imputing the statutory limitations period and enforcing a presumption of prejudice have indicated that the presumption applies to claims which are legal in nature or for which a plaintiff is seeking a legal remedy.¹⁴³ Here, Plaintiff is pressing equitable claims for breaches of fiduciary duty and unjust enrichment, and Plaintiff seeks, among other forms of relief, "rescission or rescissory damages to Plaintiff and the Class."¹⁴⁴ Rescission and rescissory damages are equitable in nature.¹⁴⁵ The

¹⁴¹ *Forman v. CertifyHealth, LLC*, 2019 WL 1810947, at *10 (Del. Ch. Apr. 25, 2019).

¹⁴² *Kraft v. WisdomTree Investments, Inc.*, 145 A.3d 969, 983 (Del. Ch. 2016).

¹⁴³ See, e.g., *U.S. Cellular Inv. Co. of Allentown v. Bell Atl. Mobile Sys. Inc.*, 677 A.2d 497, 502 (Del. 1996) (noting that it is when a "plaintiff seeks a legal remedy in a court of equity and a statute of limitations exists for analogous action at law" that the Court may dispense with a "traditional laches analysis" and apply a statutory limitations period).

¹⁴⁴ A0904.

¹⁴⁵ See *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1134, 1137 (Del. Ch. 1995), *aff'd* 663 A.2d 1156 (Del 1996) (referring to rescissory damage as an equitable remedy); *In re Cornerstone Therapeutics Inc. S'holder Litig.*, 115 A.3d 1173, 1181 n.32 (Del. 2015) (referring to rescission as an equitable remedy).

presumption of prejudice that may sometimes apply to legal claims or claims seeking legal remedies, therefore, does not apply here, and the trial court erred in applying it, rather than conducting a traditional laches analysis.

But, even if the presumption applied, the trial court erred in failing to consider whether the presumption was rebutted—or, after discovery, could be rebutted.¹⁴⁶ This is likely because Defendants never argued they were prejudiced in any way. Here, several factors rebut the presumption of prejudice and make the strict application of a limitations period inequitable. First, Plaintiff was pursuing his claim before the expiration of the limitations period: he began a Section 220 investigation in February 2024, during the limitations period, and filed his Complaint within a month of the Section 220 production. As explained in *Levey*, this is one of the factors that the court should consider when determining whether laches bars a claim.¹⁴⁷

¹⁴⁶ Because the laches defense—including whether the element of prejudice has been met—frequently requires fact-intensive inquiries, courts have often ruled that it is inappropriate to resolve such defenses at the pleading stage. *See, e.g., Homestore, Inc. v. Tafeen*, 888 A.2d 204, 211 (Del. 2005) (“Whether or not [the three elements of laches] exist is generally determined by a fact-based inquiry. Accordingly, it is seldom possible to grant a plaintiff’s motion for summary judgment when a laches defense is raised.”); *Stein v. Blankfein*, 2019 WL 2323790, at *10 (Del. Ch. May 31, 2019).

¹⁴⁷ *Levey*, 76 A.3d at 769 (noting that “whether a plaintiff had been pursuing his claim, through litigation or otherwise, before the statute of limitations expired” is one of the factors the court should consider).

Second, Defendants likely were aware during the limitations period that they would face a claim. After all, the stated purpose of the Section 220 demand was to “investigate whether Forest Road’s directors and officers breached their fiduciary duties of care and/or loyalty.”¹⁴⁸ It is inferable—and discovery would likely show—that the Company alerted Defendants to the Section 220 demand—and thus the likelihood that a claim would be lodged against them—soon after it was served. This “aware[ness] of, or participat[ion] in, any prior proceedings” is an additional factor weighing against a finding of laches.¹⁴⁹

Because the trial court erred in failing to consider whether the presumption of prejudice was rebuttable, and because circumstances in this case rebutted any presumed prejudice, the laches defense collapses and the trial court’s decision should be reversed.

¹⁴⁸ A0724-A0806.

¹⁴⁹ *Levey*, 76 A.3d at 770.

CONCLUSION

For the foregoing reasons, the trial court's decision should be reversed.

Dated: December 5, 2025

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