



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

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APPELLANT'S REPLY BRIEF

GRANT & EISENHOFER P.A.

Michael J. Barry (#4368)

Kelly L. Tucker (#6382)

123 S. Justison Street, 7th Floor

Wilmington, DE 19801

Tel: (302) 622-7000

mbarry@gelaw.com

ktucker@gelaw.com

Counsel for Plaintiff-Below/Appellant Bryan Reilly

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INTRODUCTION

Defendants' Answering Brief ("AB")¹ misstates the nature of Plaintiff's claims and fails to meaningfully address Plaintiff's arguments.

First, by arguing that Plaintiff merely suffered an "informational injury," both Defendants and the court below distort the nature of Plaintiff's claims. Plaintiff's claim is not simply that Forest Road's public stockholders were lied to, but that they were deprived of the opportunity to effectively exercise their redemption rights and were injured when they relinquished ownership of their funds held in trust to contribute to the Merger. That happened when the Merger closed, not when the Proxy was published.

Second, even if Plaintiff's claims accrued when the Proxy was published (they did not), the claims were equitably tolled until a reasonable stockholder would have had inquiry notice of potential claims. The court below acknowledged that material countervailing information was omitted from the Proxy,² precluding a finding that a reasonable stockholder could have had notice of that information when the Proxy was published. The Proxy did not alert Forest Road's stockholders that they were being lied to. The Proxy did not give Forest Road's stockholders reason to believe

¹ Capitalized terms not otherwise defined herein have the meaning as defined in Plaintiffs' Complaint and Opening Brief ("OB"). All citations to caselaw herein excludes citation to internal quotations.

² Mem. Op. at 6-7.

that the actual net cash per share being contributed to the Merger was *materially below* the redemption price. The Proxy's generic risk disclosures do not excuse Defendants for concealing the detailed and specific risks repeatedly provided to Forest Road's Board. And the Proxy's disclosure regarding the implied valuation of the December Sale did not inform stockholders that *Forest Road* internally and independently had arrived at a commensurate valuation before making substantial changes that doubled the price to justify the Merger.

Finally, Defendants do not identify any prejudice to justify their laches defense, and to the extent prejudice can be presumed, it is rebutted.

The trial court's decision should be Reversed.

ARGUMENT

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

Unjust enrichment claims accrue when all elements of that claim are met.³

When the alleged unjust enrichment is effectuated by a Merger, the claim accrues at closing.⁴ “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.”⁵ Defendants assert the trial court “correctly held that Plaintiff’s unjust enrichment claims ... were barred by laches.”⁶ But the trial court made no such holding. It simply dismissed the entire complaint without *any* analysis of when Plaintiff’s claim for unjust enrichment accrued. Beyond acknowledging the existence of the claim, the trial court did not purport to explain how a claim that Defendants were unjustly enriched through the Merger accrued before they were, in fact, enriched. Defendants’ argument that “unjust enrichment claims rise and fall” with the underlying fiduciary claims only holds water when the trial court rules on

³ *Lehman Bros. Holdings, Inc. v. Kee*, 268 A.3d 178, 196 (Del. 2021).

⁴ *Id.*; see also *Buttonwood Tree Value P’rs, 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 tendered their stock).

⁵ *Taplin v. Schuitemaker*, 2019 WL 126981, at *8 (Del. Super. Jan. 7, 2019).

⁶ AB-30.

the merits of those fiduciary claims,⁷ which it did not do here. The trial court’s failure to address this point constitutes a clear error and must be reversed. Plaintiff’s unjust enrichment claim (Count V) is not barred by laches.

Plaintiff’s claims arising from the impairment of his redemption rights (Counts I – IV) also are not time-barred. Plaintiff does not dispute that “a cause of action accrues ‘at the time of the wrongful act, even if the plaintiff is ignorant of the cause of action.’”⁸ But the “wrongful act” that Plaintiff challenges was not solely the publication of a deficient Proxy, but Defendants’ frustration of Plaintiff’s redemption right by causing Plaintiff to invest his funds in an unfair Merger engineered by a self-dealing controlling stockholder and subject to entire fairness review. Plaintiff did not simply suffer an “informational injury,” as Defendants and the court below contend, but an injury directly tied to his investment in an unfair Merger.

In de-SPAC merger transactions, “deficient disclosures are ‘inextricably intertwined’ with the disloyal behavior that caused them[.]”⁹ This disloyal conduct

⁷ See *Monroe Cnty. Emps.’ Ret. Sys. v. Carlson*, 2010 WL 2376890 (Del. Ch. June 7, 2010) (dismissing fiduciary and unjust enrichment claims under Rule 12(b)(6)); *Urdan v. WR Cap. P’rs, LLC*, 2019 WL 3891720 (Del. Ch. Aug. 19, 2019) (dismissing unjust enrichment claim as duplicative of fiduciary claims, which the court dismissed on the merits).

⁸ *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.2d 727, 732 (Del. 2020) (quoting *Wal-Mart Stores, Inc. v AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004)).

⁹ *Delman v. GigAcquisitions3, LLC*, 288 A.2d 692, 714 (Del. Ch. 2023).

by conflicted controllers “mandates the application of entire fairness review” of unfair price and process.¹⁰ “In order to state a direct claim with respect to a merger, a stockholder must challenge the validity of the merger itself, usually by charging the directors with breaches of fiduciary duty resulting in unfair dealing and/or unfair price.”¹¹ Although the false and misleading disclosures are indicia of unfair process, they do not tell the full story, because in a self-dealing transaction, “[e]ntire fairness review considers various indicia of fair dealing including a transaction’s ‘timing and initiation, structure, negotiations[,] and approval.’”¹² As the court explained in *Gig3*: “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.”¹³

The redemption claim, therefore, challenges the fairness of the transaction itself. Delaware courts long have held that direct claims seeking damages arising from breaches of fiduciary duty in connection with an unfair transaction do not

¹⁰ *Id.*

¹¹ *See Parnes v. Bally Ent. Corp.*, 722 A.2d 1243, 1245 (Del. 1999).

¹² *In re Hennessy Cap. Acquisition Corp. IV S’holder Litig.*, 318 A.3d 306, 321 (Del. Ch.), *aff’d*, 337 A.3d 1214 (Del. 2024).

¹³ *Gig3*, 288 A.3d at 714.

accrue until the transaction is complete.¹⁴ It “is a basic principle of limitations law that a cause of action does not accrue before the right to institute a suit arises.”¹⁵ This is because “[i]f the merger fails to close, any decision on whether a direct claim has been stated ... would be advisory.”¹⁶ Because Plaintiff seeks damages in connection with the impairment of his redemption rights and resultant loss of his funds, his breach of fiduciary duty claims did not arise until the Merger closed when he lost ownership of his funds held in trust on his behalf.¹⁷ Plaintiff did not have the “ability to seek immediate redress” for unfair dealing or unfair price “when the proxy is issued” because these claims do not accrue until the Merger closed.¹⁸

¹⁴ See *ISN*, 226 A.2d at 731; see also *Tuckman v. Aerosonic Corp.*, 1975 WL 1959, at *1 (Del. Ch. Oct. 21, 1975); *In re Trados Inc. S’holder Litig.*, 2009 WL 2225958, at *5 (Del. Ch. July 24, 2009); *Dofflemyer v. W.F. Hall Printing Co.*, 558 F. Supp. 372, 379 (D. Del. 1983); *In re Straight Path Commc’ns Inc. S’holder Litig.*, 2017 WL 5565264, at *3 (Del. Ch. Nov. 20, 2017); *In re Dean Witter P’ship Litig.*, 1998 WL 442456, at *4 (Del. Ch. July 17, 1998); *In re Multiplan Corp. S’holders Litig.*, 268 A.2d 784, 802, 808 (Del. Ch. 2022); *In re TS Innovation Acquisitions Sponsor, LLC S’holder Litig.*, 2025 WL 1892466, at *1 (Del. Ch. July 9, 2025).

¹⁵ *Dofflemyer*, 558 F. Supp. at 379.

¹⁶ *In re Straight Path Commc’ns Inc. Consol. S’holder Litig.*, 2017 WL 5565264, at *3 (Del. Ch. Nov. 20, 2017) (staying an action seeking damages resulting from a self-dealing transaction as unripe where the “merger closure is contingent on regulatory approval”).

¹⁷ *Straight Path*, 2017 WL 5565264, at *3.

¹⁸ AB-30. See also *Kaufman v. Albin*, 447 A.2d 761,764 (Del. Ch. 1982) (holding the statute of limitations did not start to run in connection with a claim of breach of fiduciary duty in connection with a tender offer, because “the tender offer was contingent upon it being accepted by the tendering of at least 52% of the outstanding shares of Hunt stock”).

As the Court recognized in *Dean Witter*, “plaintiffs’ injuries occurred *when they purchased* their Partnership interests as a result of defendants’ alleged misrepresentations.”¹⁹ Similarly, here, Plaintiff was not injured until his redemption right was taken away, which occurred when the Merger closed. As the Court of Chancery explained in the *Multiplan* de-SPAC merger action, “the public stockholders’ funds held in trust did not belong to [the SPAC] until those stockholders opted not to redeem but to invest in the post-merger combined entity.”²⁰

Defendants argue that Plaintiff improperly conflates *injury* with *damages*.²¹ Not so. Plaintiff agrees that “injury is distinct from damages,” and that the “statute of limitations can start to run before any ‘actual or substantive damages’ occur.”²² That distinction is proved in this case. Plaintiff suffered *injury* when his funds were used to fund the Merger. But Plaintiff did not suffer cognizable *damages* until the New Beachbody shares he held following the Merger fell below the \$10 per share

¹⁹ *Dean Witter*, 1998 WL 442456, at *4.

²⁰ *Multiplan*, 268 A.3d at 802; *see also Laidlaw v. GigAcquisitions2, LLC*, 2023 WL 2292488, at *6 (Del. Ch. Mar. 1, 2023) (“*Gig2*”) (recognizing the injury pleaded in a de-SPAC merger litigation is “the loss of [stockholders’] own cash from the trust”); *Brown v. Matterport, Inc.*, 2024 WL 2745822, at *13 (Del. Ch. May 28, 2024) (observing that “the post-closing shares are an economically different security than the SPAC’s shares”), *aff’d in part, rev’d in part on other grounds sub nom. Matterport, Inc. v. Brown*, 2025 WL 1166116 (Del. Apr. 22, 2025).

²¹ AB-26.

²² *ISN*, 226 A.3d at 735.

redemption price. On June 28, 2021, the date the Merger closed, New Beachbody stock traded at \$12.74 per share and traded over \$10 per share on multiple days for nearly a month thereafter.²³

Defendants and the court below argue that accepting Plaintiff's position would "create an untenable result where stockholders could not sue to correct a flawed proxy before a vote' because they would not yet have a ripe claim."²⁴ This is also wrong. If Plaintiff's claim were based solely on an inadequate disclosure, then perhaps such claim would accrue when the Proxy was published. But that is not this case. Plaintiff challenges the fairness of the Merger itself; those claims accrue when the Merger has closed and the investment on unfair terms has been made.²⁵

Defendants' reliance on *Stein v. Blankfein*²⁶ is misplaced. There, the plaintiff alleged that the company improperly omitted specific information required by a Treasury regulation in disclosures seeking stockholder approval for a director

²³<https://finance.yahoo.com/quote/BODI/history/?period1=1624838400&period2=1627344000>. New Beachbody effectuated a 1-for-50 reverse stock split as of November 22, 2023. New Beachbody, Form 8-K (Nov. 27, 2023). Using unadjusted numbers, on June 28, 2021, New Beachbody stock traded at \$12.47: $\$637/50 = \12.74 .

²⁴ AB-27 (quoting Mem. Op. at 14).

²⁵ *Straight Path*, 2017 WL 5565264, at *3 (staying action seeking damages resulting from a self-dealing transaction as unripe where the "merger closure is contingent on regulatory approval").

²⁶ 2019 WL 2323790 (Del. Ch. May 31, 2019).

compensation plan.²⁷ The *only* injury alleged by the plaintiff, therefore, was an “informational injury”: the proxy failed to include information specifically required by the Treasury regulation. The court held that this omission was “obvious” from the face of the proxy itself, because the proxy referenced the very regulation that purportedly was violated.²⁸ In that context, the court held that the plaintiff’s equitable claim seeking to rescind all payments made pursuant to that plan was barred by laches.²⁹ *Stein* has no application here. First, as discussed above, Plaintiff was injured when he lost his redemption right and his funds were used in the Merger. This claim for monetary damages is fundamentally different from the pure informational injury at issue in *Stein*. Second, nothing in the Proxy specifically alerted Forest Road’s stockholders to omitted information the way the Treasury regulation did in that case.

None of the other cases Defendants cite helps them. In *ISN*, a law firm informed its client (incorrectly) that appraisal rights would not be available to certain stockholders in connection with a merger. After the merger closed, some of those purportedly excluded stockholders filed appraisal actions, resulting in a substantial

²⁷ *Id.* at *4.

²⁸ *Id.* at *11 (“The Proxy Statement, in fact, refers specifically to the Treasury Regulation in light of which, per the Plaintiff, it is deficient.”).

²⁹ *Id.*

judgment against the company. Thereafter, the client filed a malpractice claim against the law firm, seeking damages based on the appraisal judgment. The court held the claim was barred by laches. Notably, the court held that the claim accrued *not at the time that law firm gave the wrong advice*, but when the client was *injured* by that advice, which was when the merger closed and the purported excluded stockholders obtained their appraisal rights.³⁰ Similarly here, Forest Road’s public stockholders did not lose their redemption rights when the deficient Proxy was filed. They lost their redemption rights when the Merger closed.

In *Gallagher Industries, LLC v. Addy*,³¹ consistent with Plaintiff’s argument here, the court held that the cause of action accrued at the time of the merger, which happened contemporaneously with the publication of the merger materials, when the plaintiff “had ample evidence that the merger was unfair, and its interest undervalued.”³² Here, at the time of the Merger, Forest Road’s stock price exceeded

³⁰ *ISN*, 226 A.3d at 735-36 (“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. ISN’s legal malpractice suit was not subject to dismissal for being premature. Once injured, ISN could have brought a legal malpractice claim and the court could have stayed the litigation until the extent of damages was certain.”).

³¹ 2020 WL 2789702 (Del. Ch. May 29, 2020).

³² *Id.* at *1.

the \$10 redemption price, and the Proxy did not provide “ample evidence” that the Merger with Legacy Beachbody was unfair and overvalued.

*In re Coca-Cola Enterprises, Inc.*³³ is irrelevant. There, plaintiffs filed a derivative action in 2007 claiming that corporate directors breached their fiduciary duties by causing the company to comply with the terms of a contract that was entered in 1987. The court held that action was time-barred because the alleged wrongful act took place when the company entered into the purportedly improper contract – twenty years ago.³⁴ Here, the wrongful act occurred when Defendants used Plaintiff’s trust funds in the Merger, which happened at the closing, not when they lied.³⁵ And neither *Lebanon County Employees’ Retirement Fund v. Collis*³⁶ nor *In re Ebix Inc. Shareholder Litigation*³⁷ involved claims arising in connection with a corporate merger.³⁸

³³ 2007 WL 3122370 (Del. Ch. Oct. 17, 2007), *aff’d sub nom. Int’l Bhd. Teamsters v. Coca-Cola Co.*, 954 A.2d 910 (Del. 2008).

³⁴ *Id.* at *6.

³⁵ *ISN*, 226 A. 3d at 733.

³⁶ 287 A.3d 1160 (Del. Ch. 2022).

³⁷ 2014 WL 3696655, at *1 (Del. Ch. July 24, 2014).

³⁸ *Lebanon* and *Ebix* support Plaintiff’s argument that, regardless of when the underlying claims accrued, such claims were equitably tolled for *at least* a month after the Proxy was published, placing Plaintiff’s complaint well within the three-year period that the trial court deemed to apply. *See infra* at Section II.

II. THE PROXY DID NOT PUT FOREST ROAD'S PUBLIC STOCKHOLDERS ON INQUIRY NOTICE OF PLAINTIFF'S CLAIMS

Even if Plaintiff's claims accrued when the Proxy was published (they did not), equitable tolling precludes the running of any limitations period until stockholders were on inquiry notice of the claims.³⁹ Under Delaware law,

[The] [s]tatute of limitations is tolled for claims of wrongful self-dealing, even in the absence of actual fraudulent concealment, where a plaintiff reasonably relies on the competence and good faith of a fiduciary.

Underlying this doctrine is the idea that even an attentive and diligent investor may rely, in complete propriety, upon the good faith of fiduciaries, and may be completely ignorant of transactions that constitute self-interested acts injurious to the partnership.⁴⁰

Further, in *Lebanon*, which Defendants cite to on page 25 in their Answering Brief, the court held that the plaintiff's claims were equitably tolled because a stockholder "should receive credit for serving a demand and obtaining books and records without the need for an enforcement action" where the plaintiff "pursue[d] the demand diligently to gain a benefit" and moved "[t]he process ... forward with deliberate speed."⁴¹ Here, Plaintiff served his 220 demand on February 7, 2024. New

³⁹ *In re MAXXAM, Inc./Federated Development S'holders Litig. v. MAXXAM, Inc.*, 659 A.2d, 760 (Del. Ch. 1995); *Ontario Provincial Council of Carpenters' Pension Tr. Fund v. Walton*, 294 A.3d 65, at 96 (Del. Ch. 2023).

⁴⁰ *Albert v. Alex Brown Mgmt. Servs.*, 2005 WL 1594085 at *19 (Del. Ch. June 29, 2005).

⁴¹ 287 A.3d at 1211.

Beachbody did not agree to produce any documents until April 11, 2024 and did not complete its production until May 16, 2024. Plaintiff commenced this action within a month of receiving the final production.⁴²

Despite Plaintiff's entitlement to rely on Defendants' good faith, and diligent pursuit of his inspection rights, Defendants (and the court below) argue that the Proxy itself put Plaintiff and all of Forest Road's public stockholders on inquiry notice that they were being lied to. Defendants are wrong.

A. NET CASH PER SHARE

Defendants argue that the failure to disclose the net cash per share Forest Road was expected to contribute to the Merger "was obvious from the face of the Proxy,"⁴³ but do not dispute that the net cash per share metric is only *material* such that it must be disclosed where it is *significantly below* the redemption price. Instead, Defendants argue that Plaintiff does not point to information *after* the Proxy was published that put stockholders on inquiry notice that this metric may have been material, that Plaintiff's own calculation is based on information that was disclosed

⁴² OB-48.

⁴³ AB-34.

in the Proxy, and that “Plaintiff should have inquired if he believed more information was needed.”⁴⁴ Defendants’ arguments are factually and legally incorrect.

Defendants’ suggestion that no post-Proxy event would have put Forest Road’s stockholders on inquiry notice that the actual cash contributed in the Merger was materially below the redemption right is wrong. At the time of the Merger, Forest Road’s stock was trading at over \$12 per share.⁴⁵ Public investors would have had no reason to question what Forest Road had contributed to the post-closing entity was materially less than that amount, let alone materially below the \$10 redemption price. Forest Road stockholders had no reason to believe they had been lied to until New Beachbody’s post-Merger performance fell far short of the lofty Proxy Projections—which happened months after the Proxy was published.

Defendants’ “Plaintiff should have inquired” defense is at odds with Delaware law. In *Ebix*,⁴⁶ for example, the court found that the plaintiffs’ claims were equitably tolled because “[t]he [p]laintiffs reasonably relied on the good faith of the Board as fiduciaries to disclose accurately all material information regarding the terms of the [challenged transaction].”⁴⁷ “Under the theory of equitable tolling, the statute of

⁴⁴ *Id.*

⁴⁵ *See supra* n.23 and accompanying text.

⁴⁶ 2014 WL 3696655.

⁴⁷ *Id.* at *11.

limitations is tolled for claims of wrongful self-dealing, even in the absence of actual fraudulent concealment, where a plaintiff reasonably relies on the competence and good faith of a fiduciary.”⁴⁸ In order to be put on inquiry notice of a potential claim, “[f]irst, sufficient information must be available to arouse a reasonable stockholder’s suspicions. Second, the reasonable stockholder must be able to commence an investigation and discover the facts necessary to plead the claim and survive the motion to dismiss.”⁴⁹ Here, Forest Road’s public stockholders had no reason to believe that the Board was concealing material information until they had reason to question the Merger’s fairness. Forest Road’s stockholders only had reason to question whether they were misled when New Beachbody did not perform in line with the Proxy projections and its stock price collapsed. Defendants’ claim that the Plaintiff “should have inquired” about net cash per share where the Proxy did not provide any basis for a reasonable stockholder to suspect that they were being deceived fails under Delaware law.

Defendants’ claim that the scattered disclosure of information about the price Defendants paid for the Founders’ Shares and the sources and uses of funds in the Merger was sufficient to put Forest Road’s stockholders on inquiry notice that the

⁴⁸ *In re Primedia, Inc. S’holders Litig.*, 2013 WL 6797114, *12 (Del. Ch. Dec. 20, 2013).

⁴⁹ *Id* at *12.

net cash per share being contributed to the post-Merger entity was materially below the redemption price. The Court of Chancery has rejected this argument fourteen times.⁵⁰ “[R]ational and perhaps more realistic [public stockholder] investor[s]”⁵¹ are not required to “engage in a ‘scavenger hunt’ in which they must ‘piece together the answer from information buried in the disclosures.’”⁵² Only if the Proxy provided multiple charts with all the “inputs needed for such a calculation” “within a few pages of each other,” could a public stockholder, even if a “skilled reader,” be on inquiry notice to calculate actual net cash per share.⁵³

Defendants claim that a “Sources and Uses” table in Forest Road’s “Investor Presentation” (not the Proxy) disclosed the net cash per share that Forest Road would contribute to Beachbody.⁵⁴ Defendants are wrong. At best, it shows “Cash to [Beachbody’s] balance sheet.”⁵⁵ That is *not* net cash per share as defined in *Gig3* and the thirteen other cases decided since. Net cash per share is the amount of cash

⁵⁰ OB-32-33 n.104.

⁵¹ *In re XL Fleet (Pivotal) S’Holder Litig.*, Consol. C.A. No. 2021-0808-KSJM, at 32-33 (Del. Ch. June 9, 2023) (*XL Fleet Tr.*) (TRANSCRIPT); *see also Drulias v. Affeldt*, C.A. No. 2024-0161-BWD, at 27-28 (Del. Ch. Jan. 31, 2025) (*Blade Tr.*) (TRANSCRIPT).

⁵² *City of Dearborn Police & Fire Revised Ret. Sys. v. Brookfield Asset Mgmt. Inc.*, 314 A.3d 1108, 1140 (Del. 2024).

⁵³ *Id.* at 1140.

⁵⁴ AB-18-20.

⁵⁵ *Id.* at 18.

a SPAC will deliver to a post-Merger company on a per share basis. Where the delta between net cash per share and the redemption price is significant, such information is material because, as the Chancery Court stated in *Gig3*, the value the SPAC will contribute to the merger is a reasonable indication of the value SPAC shareholders can expect to receive in exchange.⁵⁶

“Cash to the [Beachbody’s] balance sheet” is something else entirely. It does not reflect Forest Road’s shareholder’s contribution to the Merger, and it is calculated differently than net cash per share. First, “Cash to [Beachbody’s] balance sheet” in the Investor Presentation excludes cash paid to certain of the target’s stockholders (the “Myx shareholders”). Net cash per share *includes* cash paid to target shareholders. Whether cash goes to target shareholders or to the target balance sheet has no relationship to what a SPAC’s shareholders can expect in return from their contribution to a merger. Second, “Cash to [Beachbody’s] balance sheet” excludes the dilutive impact of warrants on the value of shares that SPAC shareholders will hold in the post-Merger company, while calculating net cash per share requires including the dilutive impact of the warrants.⁵⁷

⁵⁶ *Gig3*, 288 A.3d at 724-25.

⁵⁷ *See Blade Tr.* at 27 (“[N]ot all inputs were disclosed because the proxy did not disclose the cost imposed by the warrants.”); *see also Gig3*, 288 A.3d at 724-25 (the “cash component of the numerator” would include “the market value of public warrants” and “the value of warrants in the private placement units”).

Even more importantly, Defendants concede that some of this information is not actually in the Proxy, but in a separate “Investor Presentation.”⁵⁸ As held in *Ebix*, if “[d]iscovering the alleged harm would have required a careful and close reading of multiple SEC filings ... the Court cannot say, at the pleading stage, that such effort is required of a reasonably diligent stockholder for laches purposes.”⁵⁹

Finally, that Plaintiff was able—with the assistance of sophisticated counsel, including a Stanford Law professor who has written extensively on de-SPAC mergers—to allege that net cash per share was approximately \$7.60 does not mean that the disclosures in the Proxy were sufficient to put reasonable public stockholders on inquiry notice that that the net cash per share Forest Road was contributing to the Merger was materially below the redemption price.⁶⁰ Such expertise is not expected of a reasonable public stockholder.⁶¹

B. MATERIAL INFORMATION UNDERMINING THE PROXY PROJECTIONS

Defendants contend that Plaintiff was on inquiry notice that the Proxy Projections were false and misleading because he should have known, based on

⁵⁸ AB-18-19.

⁵⁹ *Ebix*, 2014 WL 3696655, at *10.

⁶⁰ *A Sober Look at SPACs*, 39 YALE J. REG. 228 (2022).

⁶¹ *XL Fleet Tr.* at 33 (“[I]t’s reasonably inferable that a rational and perhaps more realistic investor would simply look to the \$10 per [s]hare consideration and assume that the net cash per share roughly matched this figure.”).

“general disclaimers” in the Proxy, that New Beachbody subscriptions would return to pre-COVID levels. Defendants essentially ignore all the material information not contained in the Proxy that Plaintiff only uncovered in the 220 production. The trial court acknowledged that the Proxy Projections were not “counterbalanced by risks of unsustainable growth post-pandemic.”⁶² These undisclosed facts included: (i) the Proxy Projections were wildly inconsistent with Legacy Beachbody’s past performance (a net revenue [REDACTED] [REDACTED])⁶³ and (ii) the Board was presented with specific “Key Risk Factors” and a “Parade of Horribles” that counterbalanced the Proxy Projections.⁶⁴ Defendants, in fact, continue to withhold this information more than four-and-a-half years after the Proxy was disseminated by redacting it from Plaintiff’s Opening Brief (“OB”). Defendants’ continued steps to shield this information from public disclosure belies their claim that Plaintiff was on inquiry notice of these facts.

Moreover, Delaware law is clear that the vanilla “general disclaimers” that Defendants ask the Court to focus on are insufficient to provide information to counterbalance overly rosy financial projections:

⁶² Mem. Op. at 18.

⁶³ OB-17.

⁶⁴ OB-18.

It is reasonably conceivable ... that at the time these [general disclaimer] disclosures were made, the directors painted an overly rosy picture of [the company's] development forecast -- despite having information to the contrary ... It is reasonably conceivable that the directors had hoped to satisfy their disclosure obligations through a general disclaimer. *But in my view, that is not what we expect of loyal fiduciaries.*⁶⁵

C. THE DECEMBER SALE

The trial court held that Plaintiff was on inquiry notice of disclosure deficiencies regarding the December Sale because the Complaint alleged that the Proxy did not disclose “the basis for” the \$1.5 billion enterprise valuation implied in that sale.⁶⁶ Defendants do not dispute that the fact that this valuation matching Forest Road’s initial valuation of Legacy Beachbody was *material* and that this information was not disclosed in the Proxy. Defendants also do not dispute that Plaintiff was only able to allege that this omission was *material* because of documents he obtained through his Section 220 investigation. Indeed, recognizing the non-public nature of this fact, Defendants redacted this fact in the public version of Plaintiff’s Opening Brief.

⁶⁵ *Newbold v. McCaw*, C.A. No. 2022-0439-LWW at 28-29 (Del. Ch. July 21, 2023) (TRANSCRIPT) (emphasis added); see also *Newman v. Sports Entm’t Acquisition Holdings LLC*, C.A. No. 2023-0538-LWW at 24 (Del. Ch. May 20, 2024) (TRANSCRIPT).

⁶⁶ Mem. Op. at 18.

Instead, Defendants argue that the Proxy put Plaintiff on inquiry notice because Plaintiff was able to allege that (i) \$1.5 billion valuation disclosed in the Proxy was “nearly 50% lower than the valuation of Legacy Beachbody in the LOI,”⁶⁷ and (ii) the Proxy failed to disclose the identities of management who participated in the December sale and their “personal and unique” reasons for doing so.⁶⁸ But disclosing that Legacy Beachbody valued itself at \$1.5 billion did nothing to alert stockholders that *Forest Road* conducted its own valuation that matched that amount before accepting significant changes that nearly doubled its price. And neither the trial court nor Defendants here argue that the identity of the individuals who participated in the sale or their reasons for doing so was material information as a matter of Delaware law. As Defendants argued below, “[t]he specific identities of those executives and their equity sold is irrelevant—let alone material.”⁶⁹

Defendants do not dispute that without the documents Plaintiff obtained through his Section 220 demand, Plaintiff and the rest of Forest Road’s public stockholders would have had no reason to suspect that the \$1.5 billion enterprise

⁶⁷ AB-33.

⁶⁸ *Id.*

⁶⁹ A-1173.

valuation implied in the December Sale was directly in line with the enterprise valuation that Forest Road independently had placed on Legacy Beachbody.

III. DEFENDANTS DID NOT ESTABLISH THEIR LACHES DEFENSE

Defendants contend that the statute of limitations should be a “*shorter*” period because Plaintiff “seeks ‘rescission or rescissory damages.’”⁷⁰ Defendants ignore that Plaintiff also seeks actual monetary damages for tort claims, which requires application of the full three-year statute of limitations.⁷¹ Defendants do not cite a single case in which the court applied a shorter limitations where a plaintiff sought monetary damage.⁷² Moreover, where, as here, “the passage of time ... renders rescission impractical and requires the deployment of rescissory damages as the functional equivalent,” there is no basis to shorten the three-year statute of limitations period.⁷³

Defendants assert they were presumed to be prejudiced by the timing of Plaintiff’s complaint filing, and that Plaintiff cannot rebut this presumption. But

⁷⁰ AB-39.

⁷¹ See *Coca-Cola*, 2007 WL 3122370, at *4 (“Where ... a plaintiff seeks money damages for breach of fiduciary duties, the claim will ‘be subject to the three-year limitations period ...’ and this Court need not engage in traditional laches analysis.”).

⁷² See *Central Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 2012 WL 3201139, at *15 (Del. Ch. Aug. 7, 2012) (“mandatory injunction or rescission”); *Gotham P’rs, L.P. v. Hallwood Realty P’rs, L.P.*, 817 A.2d 160, 174 (Del. 2002) (“injunction or rescission”); *Midland Grange No. 27 Patrons of Husbandry v. Walls*, 2008 WL 616239, at *1 (Del. Ch. Feb. 28, 2008) (“rescission of a real estate sale”); *Stein v. Blankfein*, 2019 WL 2323790, at *10 (Del. Ch., May 31, 2019) (“rescission and declaratory relief”).

⁷³ *In re Orchard Ent., Inc. S’holder Litig.*, 88 A.3d 1, 40-41 (Del. Ch. 2014) (In fact, the “Supreme Court reiterated in 1993 that rescissory damages could be awarded if the transaction, then ten years in the past, failed the test of fairness.”).

“[t]he [D]efendants have not pointed to any prejudice that could render the [P]laintiff[’s] suit untimely ... [t]here are no indications that evidence has been lost” or “that the [D]efendants have suffered any other disadvantage in their ability to litigate the case.”⁷⁴ And, they concede Plaintiff filed his Complaint “10 days shy of three years after the merger closed.”⁷⁵

Moreover, as this Court recently held in *Moelis & Company v. West Palm Firefighters’ Pension Fund*, any presumption of prejudice can be rebutted when “the plaintiff ha[s] been pursuing the claim during the relevant limitations period,” which Plaintiff did here through his 220 investigation.⁷⁶ “Equity aids the vigilant, not those who slumber on their rights.”⁷⁷ As the Court of Chancery held in *Lebanon*, a stockholder who effectively pursues a Section 220 demand “should receive credit for serving the demand and obtaining books and records without the need for an enforcement action.”⁷⁸

⁷⁴ *Lebanon*, 287 A.3d at 1221.

⁷⁵ AB-41.

⁷⁶ 2026 WL 184868, at *16 (Del. Jan. 20, 2026).

⁷⁷ *Reid v. Sapzio*, 970 A.2d 176, 182 (Del. 2009).

⁷⁸ *Lebanon*, 287 A.3d at 1211.

Defendants' reliance on *Fireman's Retirement System*⁷⁹ for the proposition that Plaintiff's 220 demand cannot "rebut the presumption of prejudice"⁸⁰ is misplaced. The court there noted that "a stockholder's dogged pursuit of its statutory books and records rights provides basis for tolling," but declined to toll because the plaintiff there waited eleven months after serving an inspection demand to commence a plenary action. Here, Plaintiff filed a plenary complaint just four months after serving his Section 220 demand and less than a month after the Company completed its production. This Court has recognized that "whether the plaintiff had been pursuing his claim, through litigation or otherwise, before the statute of limitations expired" is a factor that may be considered in "determining whether a plaintiff's delay in filing suit is unreasonable."⁸¹ Plaintiff submitted his Section 220 demand well before any limitations period expired and did not unreasonably delay the filing of his lawsuit, so to the extent prejudice can be presumed, the presumption has been rebutted.

⁷⁹ *Fireman's Ret. Sys. of St. Louis ex rel. Marriott Int'l v. Sorenson*, 2021 WL 4593777 (Del. Ch. Oct. 5, 2021).

⁸⁰ A.B-41-42.

⁸¹ *Levey v. Brownstone Asset Mgmt, LP*, 76 A.3d 764, 770 (Del. 2013).

CONCLUSION

The trial court's dismissal of Plaintiff's Complaint should be Reversed.

Dated: January 30, 2026

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry

Michael J. Barry (#4368)

Kelly L. Tucker (#6382)

123 S. Justison Street, 7th Floor

Wilmington, DE 19801

Tel: (302) 622-7000

Fax: (302) 622-7100

Counsel for Plaintiff-Below/

Appellant Bryan Reilly

WORDS: 5,491/5,500