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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL PATTERSON, Defendant Below, Appellant, v. LADY BENJAMIN PD CANNON, f/k/a Ben Cannon, Plaintiff Below, Appellee.	)))))))))))	No. 505, 2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2021-0171-PAF

OPENING BRIEF OF APPELLANT MICHAEL PATTERSON

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NATURE OF PROCEEDINGS

This case arises from Lady Benjamin Cannon's (f/k/a Ben Cannon) attempt to secure a staggering $40 million judgment from Michael Patterson after Cannon defaulted on a $20,000 loan. Cannon's theory flouts the parties' contracts, defies their undisputed intent, and offends fundamental principles of equity and common sense. This Court should reverse.

Facing criminal charges in California Superior Court, Cannon asked Patterson for help funding her defense. Patterson agreed to loan Cannon $20,000, which she promised in writing to repay. As collateral for the loan, Cannon pledged a warrant to purchase shares of Romeo Systems, Inc., a privately held Delaware corporation founded by Patterson. Cannon had received the warrant as partial consideration for resolving a payment dispute with the company over less than $10,000 of consulting work.

To memorialize the pledge and secure Patterson's $20,000 loan, Cannon executed a pledge agreement drafted by outside counsel. Cannon did not object to the agreement's description of the collateral—the warrant and its proceeds—and she affirmatively and repeatedly represented that she owned the pledged assets as described. She separately confirmed by email that she was pledging "whatever [s]he has in Romeo" as collateral for the loan.

After Cannon completed the paperwork, Patterson transferred her $20,000. One year later, Cannon defaulted on the loan without repaying a dime.

Patterson subsequently transferred the warrant into his name, exactly as the pledge agreement permitted, and sold the underlying shares for $141,023.49. After deducting attorneys' fees and expenses and satisfying the loan's outstanding principal and accrued interest, Patterson remitted $108,802.24 to Cannon—a significant windfall for a delinquent debtor. This story should have ended there.

Instead, in 2020, after Romeo Systems announced it intended to go public, Cannon suddenly claimed that she was entitled to five percent of the company's equity citing the warrant. Romeo's counsel produced the promissory note and pledge agreement and noted Cannon's undisputed failure to repay Patterson's loan.

Instead of repaying the loan and redeeming the collateral, Cannon filed suit, asserting claims against Romeo Systems, its successor entity, and Patterson. Cannon never contested the validity of the loan or her failure to repay Patterson. She even acknowledged that she had fully intended to "pledge her 'Romeo shares'" as collateral for the loan.

Cannon nevertheless insisted that: (i) the collateral description she agreed to in the pledge agreement—*and repeatedly affirmed*—was inaccurate in one respect and therefore legally insufficient under Article 9 of the Uniform Commercial Code; and, as a result, (ii) no valid security interest ever attached to the warrant. Thus,

according to Cannon, Patterson's exercise of his clear contractual rights following her default constituted conversion.

After years of litigation and a three-day trial, the Court of Chancery issued its post-trial opinion, ruling in Cannon's favor on her challenge to the pledge agreement's collateral description, holding Patterson personally liable for conversion, and awarding *over $40 million* in damages and interest to Cannon. In short, Cannon turned her own $20,000 default into a $40 million windfall.

The trial court's judgment rests on multiple errors of law and cannot be reconciled with equity or common sense. This Court should reverse.

SUMMARY OF ARGUMENT

1. The trial court's judgment hinges on the conclusion that a valid security interest never attached to Cannon's warrant because the pledge agreement supposedly misdescribed the warrant. But under basic equitable principles (and U.C.C. authority), Cannon cannot challenge that description now. Cannon admitted—and the record confirms—that she intended to pledge whatever interest she had in Romeo as collateral. She also repeatedly represented that she owned the pledged assets as described and induced Patterson to extend a $20,000 loan she never repaid.

2. Even if the collateral description contained a factual inaccuracy, that would not invalidate Patterson's security interest. Delaware law requires only that a description "reasonably identif[y] what is described," such that "the identity of the collateral is objectively determinable." 6 *Del. C.* § 9-108(a)-(b). The pledge agreement met that standard: Cannon had one—and only one—Romeo warrant, and the agreement identified it as the collateral. Her *post hoc*, made-for-litigation claim that the agreement misidentified the total number of shares its holder was entitled to purchase does not render the description insufficient as a matter of law.

3. The collateral description was accurate in any event. It correctly identified the warrant Romeo issued to Cannon for the right to purchase one million shares. Cannon's contrary claim depended on undisclosed alterations she made to the

warrant before returning it for Patterson's signature. She failed to prove any meeting of the minds on a warrant of far greater value.

4. The pledge agreement independently bars liability. It exculpates Patterson for "acts, omissions, errors or mistakes *with respect to the Pledged Assets*," absent "gross negligence or willful misconduct." Although Patterson raised exculpation before, during, and after trial, the trial court deemed the argument waived because Patterson did not specify that exculpation would apply if a security interest did not attach. But exculpation is relevant only if a security interest does not attach. Patterson preserved the issue.

5. The damages award cannot stand. The trial court awarded Cannon more than $40 million arising from *her* default on a $20,000 loan—based on speculative assumptions and stock Patterson never received. The award constitutes an abuse of discretion.

STATEMENT OF FACTS

Patterson founded Romeo Systems, Inc. ("Romeo") in 2014. Romeo initially focused on designing a portable device to capture and store kinetic energy. *See* Post-Trial Opinion ("PTO") 3. In late December 2014, Romeo agreed to pay Cannon $575 per day to consult on Romeo's work. PTO 5.

A. The Payment Dispute

On August 10, 2015, Cannon emailed Patterson a letter demanding $9,156.97 for allegedly unpaid services and $22,050.00 for "late" and "termination" fees. *Id.*[1] Unless Romeo immediately paid, Cannon "threatened to 'commence legal action' against" Romeo Systems, Patterson, "Patterson's previous company, InAuth, and … an InAuth investor." *Id.* at 6.

B. Warrant Negotiations

On August 19, 2015, Cannon and Patterson negotiated a settlement of the payment dispute. Patterson offered to "pay you $13k" and "grant you equity of 1%." Cannon responded: "Assuming a non-dilution guarantee, Done." PTO 6.

Cannon and Patterson executed a "Full and Final Release" later that day. In the release, Cannon agreed to a:

> full release upon receipt of $13,000.00 on or before 8/21/15, and a document(s) … guaranteeing [her] 1%, "full ratchet" non-dilatable [*sic*], shares of Romeo

[1] The consulting agreement did not entitle Cannon to any late or termination fees. PTO 5.

> Systems … to be issued to CANNON no later than Aug 31, 2015.

Id.

On August 30, Patterson sent Cannon an email attaching a draft in Microsoft Word of a "Warrant to Purchase Shares Common Stock of Romeo Systems, Inc." A1232-1233; Patterson Tr. A564.

The draft warrant entitled its holder to purchase up to 1% of Romeo's common stock at issuance. *See* PTO 7 ("Warrant to Purchase [Up to 1.0% of ROMEO SYSTEMS, Inc. On a Fully Diluted Basis *at the Time of Issuance*.]") (original emphasis). Patterson intended to grant Cannon the right to purchase 100,000 shares, which reflected 1% of Romeo's then-authorized 10 million shares. Tr. 198:7-10 (Patterson).[2]

Patterson asked Cannon to review the warrant, and "if you are good with the agreement," then "return to me and we will both sign." A1231. Cannon responded nearly four months later—on Christmas day—attaching "the signed" agreement (in PDF format, with her signature) and requesting that Patterson "counter-sign and return" a copy:

[2] At this time, Romeo had issued only 9 million of the 10 million authorized shares. As a result, a 100,000-share grant actually reflected *more* than 1% on issuance (i.e., 90,000 shares). *See* PTO 69.

> Hi Mike, Merry Christmas! I'm using the holiday to catch up on some much needed things :) *Attached please find the signed stock agreement. If you could counter-sign and return that would be great*. Best! -Ben.

A1336 (emphasis added).

Cannon did not indicate that she had any concerns with the draft warrant from Patterson or disclose that she had altered its terms. Consistent with standard business practice, Cannon routinely flagged even minor changes she wanted to make in *other* documents (and specifically requested Patterson's permission to make those changes). *See infra* p.37-38 (collecting examples).

Patterson countersigned the version Cannon sent, believing that it was the version he had sent her to sign. A1353; Patterson Tr. A566. On December 28, Patterson emailed the completed signature page to Romeo's counsel and reported to Cannon, "You are recorded as of today." PTO 10.

C. Cannon Surreptitiously Altered the Draft Warrant

Unbeknownst to Patterson, "the signed" agreement Cannon returned to him on Christmas day was *not* the same version that he had sent her in August. Cannon had sent that warrant to her counsel, who revised its terms to favor Cannon, and returned to Cannon a redlined version incorporating his proposed revisions. Cannon accepted her counsel's revisions, converted the document to PDF, and executed and returned the altered version, without alerting Patterson to the changes. *See* A1252; A1272; A1292; A1336.

Cannon's undisclosed revisions materially (and dramatically) altered the draft warrant's terms. Most notably, by switching the share total from 1% at "issuance" to 1% on "exercise" of the warrant, Cannon's revisions would effectively entitle its holder to *eight times* as many shares.[3] This inconspicuous, agreement-altering word change is easy to miss.

Compare 8/31/15 Version Patterson Sent (A1233):

WARRANT TO PURCHASE SHARES COMMON STOCK
of
ROMEO SYSTEMS, INC.

Dated as of 8/31/15
Void after the date specified in Section 8

No. 102

Warrant to Purchase
[Up to 1.0% of ROMEO SYSTEMS, Inc.
On a Fully Diluted Basis at the Time of Issuance]

With Altered Version Cannon Returned on 12/25/15 (A1272):

WARRANT TO PURCHASE SHARES COMMON STOCK
of
ROMEO SYSTEMS, INC.

Dated as of 8/31/15
Void after the date specified in Section 8

No. 102

Warrant to Purchase
[Up to 1.0% of ROMEO SYSTEMS, Inc.
On a Fully Diluted Basis at the Time of Exercise]

[3] *See* PTO 2 (noting that Patterson received "121,730 shares of the post-merger company" by exercising the warrant, while Cannon "contends the warrant would have entitled her to 965,246 [post-merger] shares").

D. Cannon's Undisclosed Changes Evade Detection

Patterson provided the executed version of the warrant to Romeo's CFO, Lauren Webb, who worked with Romeo's counsel at Orrick, Herrington & Sutcliffe ("Orrick") to register it on Romeo's capitalization table. A2805; A1480.

Romeo always treated the warrant as one for a fixed number of shares—not as an evergreen claim on 1% stock ownership upon "exercise." And when Romeo issued other 1% equity grants to employees around the same time, each 1% grant, even if it was "fully diluted," was booked as 100,000 shares. *See* Webb Tr. A650-653, A668; A2927-29; Kuehne Tr. A739; A1480. Webb did not believe Romeo would ever issue an "on exercise" warrant because it would be difficult to obtain future financing given the looming uncertainty of an "evergreen" warrant. Webb Tr. A655; *see* Kuehne Tr. A742. Unsurprisingly, both of Romeo's auditing firms from 2016-2018 independently reviewed the executed warrant and arrived at the same conclusion: it entitled the holder to a fixed number of shares. Webb Tr. A653-654; A1500; Patterson Tr. A568; A2987; A2990; A2991; A2993.

On February 7, 2017, Romeo's Board executed a written consent ratifying the issuance of Cannon's "warrant to purchase 100,000 shares of Common Stock." A1506, A1515; A1500; Webb Tr. A655-656. On February 21, 2017, Romeo completed a 10:1 stock split and subsequently updated its capitalization table to

reflect that the warrant was now for one million shares. A473, A486; A1745; Webb Tr. A656.

E. Cannon Pledges Her Warrant as Collateral

In 2017, facing criminal charges in California, PTO 13, Cannon sent Patterson a plea for help. A1700. Patterson agreed to help Cannon find an attorney. A1703.

Once Cannon found an attorney, Patterson agreed to lend Cannon $20,000, payable directly to her criminal defense counsel (in two $10,000 installments), on the condition that Cannon pledge her Romeo equity as collateral. A1703; A1705; A474-5 ¶¶43-44; Patterson Tr. A571. Patterson requested that Orrick "deliver [Cannon] a 1 year note where [s]he pledges h[er] Romeo shares to me" if she does not "pay me back by 3/1/18." PTO 14.

On March 2, an Orrick attorney emailed Cannon a promissory note (the "Note") and pledge agreement (the "Pledge Agreement"). A1709. Cannon executed and returned both documents. PTO 16.

After receiving the executed documents, Patterson wired the first $10,000 installment to Cannon's counsel. *Id.* Before sending the next $10,000, Patterson emailed Webb, copying Cannon. Patterson sought confirmation that Cannon had pledged her "shares and options/warrants([*sic*] (*whatever [s]he has in Romeo*…) as collateral." PTO 17 (emphasis added). Cannon confirmed that she had: "I think

we're all set there, Lauren?" Webb responded: "Confirmed. We have documentation of the stock pledged to Mike." *Id.*; A1741.

The next day, without disputing that the warrant was collateral now subject to a security interest, Cannon inquired about the second wire transfer: "Thanks Lauren, can you guys advise when the second wire has been completed?" A1741.

F. The Promissory Note and Pledge Agreement

In the Note, Cannon promised "to pay to Michael Patterson … the principal sum of … $20,000." A1733. She agreed that "[p]rincipal and any accrued but unpaid interest … shall be due and payable on March 1, 2018...." *Id.* Cannon also represented that "[t]his Note is secured by a Stock Pledge Agreement of even date herewith." *Id.*

The Pledge Agreement specified that Cannon "has" and agreed to pledge as collateral "a warrant to purchase Common Stock in [Romeo] for one million shares" and "all proceeds of any of the foregoing." A1735 ¶¶1, 4(a). The Pledge Agreement included multiple express representations and warranties by Cannon, including that she owned the one-million-share warrant described and had the power to grant Patterson a security interest in it. *See infra* p.21-22 (detailing provisions).

Everyone (including Cannon, Patterson, and Romeo) understood which "warrant to purchase Common Stock" Cannon was pledging as collateral. Cannon held only one: the warrant for one million shares of (post-split) Romeo common

stock. Cannon never told anyone that the warrant entitled her to *more* than one million shares, that she held more than one Romeo warrant, or that she was only pledging a portion of the warrant. *See, e.g.*, Patterson Tr. A574; Webb Tr. A661. In sworn discovery responses, Cannon confirmed she intended "to pledge her 'Romeo shares'" when she signed the Pledge Agreement. A114.

G. The Pledge Agreement's Remedies

The Pledge Agreement detailed the parties' rights if Cannon defaulted. Cannon agreed that Patterson "may, after the occurrence and during the continuance of a default …, without notice and at [his] option, transfer or register the Pledged Assets or any part thereof into [his] … name with or without any indication that such Pledged Assets [are] subject to the lien created hereunder." A1737 ¶8(a).

The Pledge Agreement granted Patterson "all of the rights and remedies with respect to the Pledged Assets of a secured party under the Uniform Commercial Code," and, "after the occurrence of a default," entitled him to "such powers of sale and other powers as may be conferred by applicable law." *Id.* ¶8(b).

The Pledge Agreement also contained broad language exculpating Patterson from any liability for "any acts, omissions, errors of judgment or mistakes of fact or law, *including, without limitation, acts, omissions, errors or mistakes with respect to the Pledged Assets*," absent gross negligence or willful misconduct. PTO 16, n.60 (emphasis added); *infra* p.22-23.

H. Cannon Defaults; Patterson Transfers the Warrant

The Note matured on March 1, 2018. Cannon "did not repay any portion" of the principal or interest owed and defaulted. PTO 17; *see also* Patterson Tr. A575; Webb Tr. A662.

On November 16, 2018, more than eight months after the Note matured, Patterson exercised his right under the Pledge Agreement to have Romeo register the warrant in his name. A1746-47; A475 ¶50. Cannon expressly agreed in the Pledge Agreement that Patterson could transfer the warrant into his own name "without notice" and "without any indication that [the warrant] is subject to the lien." A1737 ¶8(a). At no time before this lawsuit did Cannon object to Romeo's transfer of the warrant to Patterson. Patterson Tr. A576; Webb Tr. A661.

I. Patterson Exercises the Warrant; Cannon's Counsel Reaches Out

On September 4, 2020, Patterson stepped down as CEO of Romeo. A476 ¶52. On October 5, 2020, RMG Acquisition Corp. announced that it had entered into a merger agreement to acquire Romeo (the "de-SPAC Merger"). PTO 18.

On October 27, Patterson exercised the warrant. A476 ¶51; A2695; A2697. Romeo listed Patterson as the registered owner of an additional 1,000,000 shares of Romeo Systems common stock. A2769 (at "Warrants Report" tab).

On November 23, Cannon's counsel contacted Romeo's deal counsel, claiming that Cannon was entitled to five percent of the Company's equity and raised

the warrant. A2708. Romeo's counsel sent the Note and Pledge Agreement Cannon had executed, noting her failure to repay Patterson's loan. Cannon's counsel claimed that she did not even "recall the loan until you provided the documents this weekend." A2745; Indeglia A527.

Meanwhile, an entity Cannon controlled issued a false press release claiming that she "t[ook] EV battery Romeo Systems public through a $1.33 billion SPAC deal" when she had not worked for Romeo for years. *See* A2698; Indeglia Tr. A538.

J. The de-SPAC Merger and Patterson's RMO Stock

On December 29, 2020, the de-SPAC Merger closed. PTO 82. The one million shares Patterson had received from exercising the warrant converted into 121,730 shares of common stock in Romeo Power (trading post-merger as "RMO"). PTO 21. The warrant shares were the only equity Patterson ever received from Romeo in connection with any warrant previously held by Cannon. Patterson Tr. A576. Romeo's Form S-4 confirmed that "[a] warrant for 1,000,000 shares of … common stock … was transferred to Michael Patterson from a former employee after it was pledged as security for a loan." PTO 19.

After the expiration of the applicable 180-day lock-up period, *see infra* p.47-50, Patterson began to sell RMO shares to diversify his portfolio. Patterson Tr. A578.

K. Patterson Sells the Collateral; Remits the Surplus to Cannon

In early 2022, Patterson sent Cannon a formal notice explaining that Patterson intended to dispose of the collateral by selling the 121,730 warrant shares. The notice indicated that Cannon was "entitled to an accounting of the unpaid indebtedness" and "may redeem the collateral." A2811-12; Patterson Tr. A578. Even after receiving this notice, Cannon failed to repay her debt.

On April 22, Patterson's counsel sent Cannon's counsel an accounting for her then-current indebtedness. A2813. Despite another opportunity to redeem the collateral, Cannon never paid a cent. *See* Indeglia A539.

On May 3, Patterson sold the 121,730 warrant shares, generating $141,023.49 in proceeds. After deducting amounts for the debt, attorney fees and accrued, unpaid interest, Patterson paid the entirety of the $108,802.24 surplus (i.e., more than five times Patterson's original loan) to Cannon. A2815; A2952; Patterson Tr. A578-79.

L. The Litigation

Cannon never attempted to pay back the loan, never sought forbearance, and never sought to redeem her collateral. Patterson Tr. A575. Having received the benefit of her bargain (and then some), Cannon purportedly forgot that she had any obligation to repay Patterson $20,000, though she "[did] not dispute that she borrowed the money." A2709.

Instead of honoring her promises, Cannon filed this lawsuit in February 2021, naming Romeo, Romeo Power, and Patterson as defendants. Cannon alleged that the Pledge Agreement did not adequately describe the warrant as collateral and thus Patterson never obtained a valid security interest in it. Cannon further accused Patterson of conversion based on his actions in transferring the warrant.

Following years of litigation, a default judgment against the corporate defendants (after an unrelated acquisition and subsequent insolvency), and a three-day trial, the Court of Chancery issued its post-trial opinion.

The court first concluded that Patterson lacked a valid security interest in the warrant. The court acknowledged that Cannon held only one warrant of Romeo stock, that Cannon affirmed that she owned the warrant described in the Pledge Agreement, and that the warrant had consistently been recorded in Romeo's books as a fixed share warrant. *See* PTO 1, 11. The court nevertheless concluded that the collateral description was insufficient because it misdescribed the warrant as a warrant for one million shares, rather than a warrant for 1% of the Company's outstanding shares at the time of exercise. PTO 60-68. The court rejected Patterson's argument that Cannon should be barred from challenging the sufficiency of the collateral description despite her repeated acknowledgements that she intended to pledge the warrant. PTO 72-76.

Because, in the court's view, Patterson lacked a valid security interest in the warrant, the court further concluded that Patterson's transfer of the warrant amounted to conversion. PTO 83. The court declined to address Patterson's argument that he was protected from liability under the Pledge Agreement's exculpation provision. The court recognized that Patterson had relied on the provision but still treated the argument as waived because Patterson purportedly failed to specifically argue that the provision would apply even if a security interest did not attach. PTO 71-72.

Finally, the court awarded *over $40 million* in damages and interest. Exhibit B. The court based the damages not on the 121,730 shares Patterson actually received from the warrant but rather on the hypothetical number of shares he would have received if Cannon's view of the warrant were correct. The court also ignored the lock-up period entirely, calculating damages at the prices the shares would have received had they been sold at the most advantageous time possible. *See* PTO 92.

This appeal followed.

ARGUMENT

The trial court found Patterson personally liable for conversion based solely on its conclusion that Patterson lacked a valid security interest in the warrant. That holding was erroneous—and Cannon's conversion claim fails—for at least three reasons: (1) Cannon relinquished any challenge to the validity of the security interest created by the Pledge Agreement; (2) the Pledge Agreement reasonably identified the warrant as collateral even if it contained inaccuracies; and (3) that description of the warrant was accurate in any event.

Even if no security interest attached, the Pledge Agreement exculpated Patterson for "mistakes of fact or law." The trial court wrongly deemed exculpation waived. Finally, the trial court abused its discretion in awarding Cannon over $40 million in damages.

I. CANNON CANNOT CHALLENGE THE SUFFICIENCY OF THE PLEDGE AGREEMENT'S COLLATERAL DESCRIPTION

A. Question Presented

Did the trial court err in allowing Cannon to challenge the sufficiency of a collateral description whose own accuracy she repeatedly affirmed? Patterson raised the issue below (A444-47, A819-20), and the court considered it (PTO 72-77).

B. Scope of Review

This Court reviews questions of law *de novo* and factual findings for clear error. *Bandera Master Fund LP v. Boardwalk Pipeline P'rs, LP*, __ A.3d __, 2025 WL 3537343, at *14 (Dec. 10, 2025).

C. Merits of Argument

Cannon repeatedly: (i) represented that she owned the collateral described in the Pledge Agreement; and (ii) affirmed that she intended to pledge all of her interests in Romeo as collateral for the loan from Patterson. Both equitable principles and U.C.C. authorities preclude Cannon from disavowing those same representations now.

1. Cannon Repeatedly Affirmed the Pledge Agreement's Collateral Description

The parties' Pledge Agreement is unambiguous. At the outset, it recites that Patterson "agreed to pay certain obligations of the Pledgor [Cannon] in consideration for a pledge of *a warrant Pledgor has* to purchase certain securities of Romeo Systems, Inc…." A1735 (emphasis added).

The first numbered paragraph defines the "Pledged Assets" at issue, stating that Cannon "hereby pledges to the Secured Party [Patterson], and grants to the Secured Party a first priority security interest in the following property":

- "a warrant to purchase Common Stock in the Issuer [Romeo Systems, Inc.] *for one million shares*"; and

- "all proceeds of any of the forgoing."

Id. ¶1 (emphasis added).

The Pledge Agreement then includes multiple representations and warranties by Cannon, including that she owns the one-million-share warrant described and has the power to grant Patterson a security interest in it. *See, e.g., id.*:

- ¶4(d) (Cannon representing that she "*is the sole legal and beneficial owner of the Pledged Assets*") (emphasis added);

- ¶4(e) (Cannon representing that she "*has the right to assign, deposit, pledge and grant a security interest in or otherwise transfer the Pledged Assets*") (emphasis added);

- ¶4(a) (Cannon representing that she "*has the ... power and authority to ... grant the pledge contemplated hereby*") (emphasis added);

- ¶4(g) (Cannon representing that the "*pledge of the Pledged Assets pursuant to this Agreement creates a valid and first priority security interest in the Pledged Assets, in favor of the Secured Party [Patterson]*") (emphasis added); and

- ¶4(b) (Cannon representing that the Pledge Agreement "*constitutes a legal, valid and binding obligation of the Pledgor [Cannon]*, enforceable in accordance with its terms") (emphasis added).

Cannon did *not* object to the Pledge Agreement's description of (or representations regarding) her warrant, propose alternative language, or indicate that the warrant actually entitled its holder to a different number of shares. *See* A1709; A1723; A1724. Instead, she executed the agreement and accepted Patterson's money, leaving him to rely on her representations regarding the pledged collateral.

Cannon also contemporaneously confirmed that she was pledging "whatever [s]he has in Romeo … as collateral" for the loan. A1741. She likewise represented during this litigation that she had intended to "pledge her 'Romeo shares'" as collateral for the loan. A114.

The trial court declined to reach "the issue of whether or not both Patteson[*sic*] and Cannon understood, at the time the Pledge Agreement was executed by the two parties, what was being pledged by Cannon." PTO 55-56, n.172. But the Pledge Agreement's definition of the "Pledged Assets" leaves no room for doubt: Cannon agreed to pledge the warrant she "has" to purchase "one million shares" of Romeo common stock (and the proceeds thereof), PTO 60-61; A1735, and Cannon only ever "had" one warrant. That is consistent with Patterson's understanding of what Romeo agreed to grant her in 2015, and how Romeo recorded the transaction. *See supra* p.8, 10. If Cannon had a different understanding, she could have testified. She made the strategic decision to avoid the stand (and thereby avoid cross examination), leaving the factual record Patterson developed unrebutted. *See* PTO 29-30.

2. Equity Precludes Cannon from Challenging the Collateral Description

Because Cannon repeatedly affirmed the accuracy of the Pledge Agreement's collateral description, two fundamental equitable principles preclude her from now disputing its accuracy—or the validity of the resulting security interest.

First, the doctrine of equitable estoppel prevents her from repudiating a collateral description she affirmed. "[T]he doctrine of equitable estoppel may apply 'when a party by his conduct intentionally or unintentionally leads another, in reliance upon that conduct, to change position to his detriment.'" *Flintkote Co. v. Aviva PLC*, 769 F.3d 215, 223 (3d Cir. 2014) (quoting *Wilson v. Am. Ins. Co*., 209 A.2d 902, 903-04 (Del. 1965)); *Nevins v. Bryan*, 885 A.2d 233, 249 (Del. Ch. 2005).

Here, Cannon accepted and enjoyed all the benefits of her agreement with Patterson. She received $20,000 in 2017 and never paid a cent of principal or interest. In 2022, Patterson sold the collateral and paid *her* the surplus. *Supra* p.17. Yet Cannon now seeks a more-than $40 million windfall because of a purportedly inaccurate collateral description that she affirmed.

To deny Patterson the benefit of his consideration for the loan—a security interest in her warrant—and saddle him with an exorbitant personal judgment would be highly inequitable. "The doctrine of equitable estoppel prevents" one from "accepting the benefits of the agreement without also accepting its burdens" in this manner. *Florida Chem. Co., LLC v. Flotek Indus., Inc*., 262 A.3d 1066, 1074 (Del.

Ch. 2021); *see also Weygandt v. Weco, LLC*, 2009 WL 1351808, at *4-6 (Del. Ch. May 14, 2009) (enforcing agreement against party who embraced benefits of related contract); *Town of Smyrna v. Kent County Levy Court*, 2004 WL 2671745, at *4 (Del. Ch. Nov. 9, 2004); *Green Tree Fin. Corp. v. Stone*, 2000 WL 1610637, at *5 (Del. Super. Sept. 29, 2000) (rejecting as "patently absurd and inequitable" attempt by debtor who defaulted on his payment obligations to profit from alleged technical violation of U.C.C. notice requirement), *aff'd,* 781 A.2d 696 (Del. 2001).

Second, through her conduct, Cannon waived any argument that her warrant entitled its holder to purchase *more* than one million shares of Romeo common stock. The Pledge Agreement manifested Cannon's intent to pledge a one-million-share warrant to Patterson. A1735 (defining "Pledged Assets" Cannon "has" as "a warrant to purchase Common Stock in [Romeo] for one million shares" and "all proceeds" of the warrant). Her contemporaneous communications and sworn interrogatory responses in this litigation affirmed that she intended to pledge her entire interest in Romeo as collateral for the loan. *Supra* p.12, 23.

Cannon's representations and affirmations constitute a waiver of any argument that the warrant somehow entitled her to more than one million shares. *See Bantum v. New Castle County Vo-Tech Educ. Ass'n*, 21 A.3d 44, 50-51 (Del. 2011); *Pepsi-Cola Bottling Co. of Asbury Park v. PepsiCo, Inc.*, 297 A.2d 28, 33 (Del. 1972); *Klein v. Am. Luggage Works, Inc.*, 158 A.2d 814, 818 (Del. 1960).

The trial court erroneously declined to apply these basic equitable principles. The court reasoned that there was "no persuasive evidence that Cannon disclaimed" the terms of the warrant she had altered, and it faulted Patterson for failing to catch Cannon's subterfuge. *See* PTO 46-47. That framing misunderstands Patterson's argument. The question is not whether Cannon disclaimed the terms of the warrant or whether Patterson signed the altered warrant. Rather, the question is whether Cannon—by repeatedly affirming that she was pledging her warrant as collateral to secure Patterson's loan—relinquished any argument that the Pledge Agreement inadequately described that collateral. The trial court failed to consider the evidence that Patterson marshaled in support of that position, all of which demonstrates Cannon's acquiescence in and understanding of the collateral at issue in the Pledge Agreement. *See supra* p.12, 23.

The trial court similarly erred in holding that equitable estoppel is unavailable in the context of a security agreement. *See* PTO 72 (stating that the "court is not persuaded to apply equity to establish a valid security interest in the Warrant"). The U.C.C. makes clear that "principles of law and equity, including … estoppel … supplement" the provisions of the Code "[u]nless displaced by the particular provisions of the [U.C.C.]." 6 *Del. C.* § 1-103. The court failed to identify any Code provision that displaces the doctrine of equitable estoppel. The court's concern that, if equitable estoppel applied, third parties would be unable to assess security

interests "based on the face of the security agreement" was misplaced. A security agreement need only put the third party on notice that the collateral might be encumbered, raising red flags warranting further investigation. *See In re Brown*, 479 B.R. 112, 119 (Bankr. D. Kan. 2012). Here, the agreement satisfied that requirement. *See infra* p.32-35.

3. U.C.C. Authorities Support Patterson

U.C.C. authorities have also repeatedly rejected debtors' attempts to challenge the sufficiency of collateral descriptions when the parties understood the collateral the debtor intended to pledge.

As a leading treatise explains, "if the parties to the agreement understand what collateral was pledged, the security interest cannot be challenged on the basis that the agreement insufficiently describes the collateral." C.J.S., *Secured Transactions* § 44 (2025). Many courts have reached the same conclusion. *See, e.g.*, *In re Michelle's Hallmark Cards & Gifts, Inc.*, 219 B.R. 316, 320 (Bankr. M.D. Fla. 1998) (parties to agreement cannot challenge collateral description's sufficiency where they "understand what collateral was pledged"); *In re Wharton*, 2017 WL 586427, at *7 (B.A.P. 9th Cir. Feb. 13, 2017) ("Debtors cannot challenge … the security interest in the '1965 Corvette' on the basis that the promissory note insufficiently described the collateral."); *In re O & G Leasing, LLC*, 456 B.R. 652, 663 (Bankr. S.D. Miss. 2011) (finding "meeting of the minds between the Debtor and [lender] as

to the specific collateral … pledged"); *River Oaks Chrysler-Plymouth, Inc. v. Barfield*, 482 S.W.2d 925, 928 (Tex. Civ. App. 1972) (collateral description sufficient where "dispute is between the creditor and debtor, not between the creditor and a third party" and "debtor is fully aware of what collateral is concerned").

The trial court erred in dismissing these statements as outdated dicta. PTO 60. Several of the cited decisions explicitly held that a party to the security agreement cannot challenge the sufficiency of the collateral description where, as here, the parties clearly understand what collateral was pledged. In *In re O&G Leasing LLC*, for example, the court found "that the Debtor intended to pledge, and did so pledge, . . . five drilling rigs as collateral" to secure a loan. 456 B.R. at 664. On that basis, the court concluded that the Debtor could not "challenge the description as being insufficient." *Id*. That the court went on to consider whether the debtor-in-possession could challenge the sufficiency of the description as a "third party" does not diminish the significance of that holding.

Nor do these authorities "represent a minority view[.]" PTO 60. The cases the trial court cited for the purported majority view do not actually address whether parties are barred from challenging the sufficiency of a collateral description in these circumstances. Several involved actions by third parties. *See, e.g.*, *Bank of Middletown v. Town & Country Ford Tractor, Inc.*, 1979 WL 30047 (Wis. Cir. Ct. July 25, 1979); *In re Middle Atl. Stud Welding Co.*, 503 F.2d 1133, 1135 (3d Cir.

1974). In others, no evidence confirmed that the parties agreed on what was pledged as collateral. *See In re Bradel*, 1990 WL 86714 (Bankr. N.D. Ill. 1990); *Landen v. Prod. Credit Ass'n of Midlands*, 737 P.2d 1325, 1329 (Wyo. 1987). And in the remaining cases, the parties apparently never raised the argument. *See Berkshire Bank v. Kelly*, 296 A.3d 742 (Vt. 2023).

Delaware law does not and should not permit a debtor who fully understood what she was pledging and repeatedly affirmed the accuracy of the agreement's collateral description to later challenge that same description.

II. THE ALLEGED ERROR IN THE COLLATERAL DESCRIPTION DID NOT INVALIDATE PATTERSON'S SECURITY INTEREST

A. Question Presented

Did the trial court err when it concluded that the Pledge Agreement's collateral description failed to reasonably identify Cannon's one (and only) warrant to purchase Romeo common stock? Patterson raised the issue below (A443-44, A820-26), and the court considered it (PTO 60-72).

B. Scope of Review

This Court reviews questions of law *de novo* and factual findings for clear error. *Supra* p.21. "The sufficiency of the description of collateral in a security agreement is a question of law for the court." C.J.S., *Secured Transactions* § 44 (2025) (citations omitted).

C. Merits of Argument

Even accepting Cannon's allegation that the Pledge Agreement's collateral description was inaccurate in one respect, that does not—as a matter of law—invalidate Patterson's security interest because the description still "reasonably identified" Cannon's only warrant to purchase Romeo stock.

1. The Bar for "Reasonably Identifying" Collateral is Low

Under the U.C.C. (and Delaware law), a collateral description is "sufficient" if it "reasonably identifies what is described," such that "the identity of the collateral is objectively determinable." 6 *Del. C.* § 9-108(a)-(b); PTO 51. As the trial court

correctly recognized, this standard presents a low bar. *See* PTO 63 (collecting authorities). "Minor discrepancies in otherwise accurate descriptions *will not defeat security interests* if the statement would nonetheless enable third persons to identify the property." *Id.* (emphasis added) (quoting *Bank of Middleton*, 1979 WL 30047); *see also id.* ("A typographical error where the rest of the description sufficiently describes the collateral is not seriously misleading.") (collecting authorities).

That lenient standard makes sense. As the U.C.C. commentary explains, "the purpose of requiring a description of collateral in a security agreement … is evidentiary. The test of sufficiency of a description … is that the description do the job assigned to it: make possible the identification of the collateral described." 6 *Del. C.* § 9-108 cmt. To nevertheless "deny secured status" to a lender "based upon a typographical error in the description of the collateral would represent a warrantless reliance on formalism and violate the general rule that the UCC be liberally construed and applied to promote its underlying purposes and policies." *In re Bucala*, 464 B.R. 626, 630-31 (Bankr. S.D.N.Y. 2012) (cleaned up).

Applying these principles, courts have found that collateral descriptions that contained inaccuracies reasonably identified the collateral where additional information and context confirmed what collateral was described. In *In re Brown*, for example, the court held that a collateral description was sufficient even though it misidentified the LLC units pledged as "shares of preferred stock." *In re Brown*,

479 B.R. at 119. The court acknowledged that "LLCs don't issue stock," but nevertheless found the description sufficient because (i) the agreements correctly identified the "name and address" of the borrower and issuer; (ii) third parties "could easily contact the [the issuer] … for further information"; and (iii) "the quantum of [the borrower's] interest in the LLC was accurately depicted, even if its legal nature was not." *Id.* at 119-20. In short, "[a] party does not lose its secured status just because the description includes an inaccura[cy]" if there is "additional information that provides a 'key' to the collateral's identity." *In re Pickle Logging, Inc.*, 286 B.R. 181, 184 (Bankr. M.D. Ga. 2002); *In re Bucala*, 464 B.R. 626, 630-31 (Bankr. S.D.N.Y. 2012) (similar); *see also* C.J.S., *Secured Transactions* § 46 (2025) (security agreement is valid "where there is no question" that the parties "knew exactly where the collateral was located and *failed only in their attempt at exactitude*" in identifying it) (emphasis added).

2. The Pledge Agreement Reasonably Identified Cannon's Warrant

Here, the Pledge Agreement identified the collateral Cannon "has" and agreed to pledge as "a warrant to purchase Common Stock in [Romeo] for one million shares" and "all proceeds of any of the foregoing." A1735 ¶¶1, 4(a).

This description provides at least eight distinct points of detail concerning the pledged collateral: (1) the type of asset ("a warrant"); (2) the quantity ("a [singular] warrant"); (3) the type of warrant ("to purchase Common Stock"); (4) the

corresponding class of stock ("Common Stock"); (5) the issuer (Romeo); (6) the current holder of the warrant (Cannon); (7) the number of shares the warrant's holder could purchase ("one million shares"); and (8) the fact that the collateral included all proceeds from any disposition of the warrant.

Cannon did not contest the accuracy or specificity of seven out of eight of these identifiers. Instead, she challenged *only* the number of shares the warrant's holder was entitled to purchase. A1216. While that challenge fails as a factual matter, *see infra* p.36, even *assuming* the Pledge Agreement misdescribed the share total, the remaining accurate details are sufficient as a matter of law for third parties (and Cannon) to reasonably identify Cannon's singular Romeo warrant as the collateral for the loan.[4] Courts regularly hold that collateral descriptions are adequate (despite containing an inaccuracy) where other details correctly identify the collateral. *See, e.g.*, *In re Snelson*, 330 B.R. 643, 649-50 (Bankr. E.D. Tenn. 2005) (security interest formed "irrespective of the mistakenly listed model year" of pledged mobile home where agreement correctly identified "size, make, model, and its [Vehicle Identification Number]"). That is particularly true where, as here, the

[4] As this is a dispute between the *original* parties to a pledge agreement, whether the collateral description reasonably identified the collateral should be assessed from Cannon's perspective and understanding, not from that of a third party. *See Bramble Transp., Inc. v. Sam Senter Sales, Inc.*, 294 A.2d 97, 100 (Del. Super. Ct. 1971), *aff'd*, 292 A.2d 104 (Del. 1972). The description, however, was more than sufficient when judged from either perspective.

pledgor owns only one of the particular type of collateral. *Appleway Leasing, Inc. v. Wilken*, 591 P.2d 382, 384 (Or. Ct. App. 1979) (description "was sufficient to reasonably identify" tractor despite listing incorrect serial number where "the farmer only owned one Model 9600 Ford tractor"); *In re Fla. Bay Trading Co.*, 177 B.R. 374, 381 (Bankr. M.D. Fla. 1994) (rejecting collateral description challenge where it "is without any doubt … that all parties to the security agreement … knew that the *Debtor's one and only asset which was intended to be the collateral* were the Tegue lizard skins") (emphasis added).

The trial court disagreed, concluding that Cannon's undisclosed changes to make the warrant percentage-based rendered the Pledge Agreement's description of a one-million-share warrant fatally inaccurate. *See* PTO 68-69. But the court offered no support for its suggestion that a reference to a fixed-share warrant cannot, as a matter of law, reasonably describe a percentage-based warrant. That kind of categorical rule would ignore the importance of context in determining whether a collateral description is seriously misleading. If there were multiple warrants issued by the same corporation to one person—some fixed and others percentage-based—then a reference to a fixed-share warrant would not reasonably identify the collateral. But in this circumstance, where all agree that Cannon had only one warrant for Romeo stock and Romeo routinely issued only fixed-share warrants, *see supra* p.10

(collecting citations), the description was more than sufficient to identify the collateral and put a third party on notice that the warrant might be encumbered.

For similar reasons, the trial court erred in suggesting that courts cannot consider evidence outside of the security agreement in determining whether the collateral description is sufficient. *See* PTO 55; 69-71. Courts routinely do so. As described, in *In re Brown*, the court considered the fact that "LLCs typically do not issue 'stock'" in concluding that the agreement's reference to preferred stock "was, in fact, a membership interest." 479 B.R. at 120. Likewise, the court in *Bank of Middletown* considered the facts that the pledgor "was known to be in the landscaping business" and "possessed many pieces of equipment" in concluding that the description of a tractor there was insufficient. 1979 WL 30047.

In short, Cannon's conversion claim fails because the Pledge Agreement was effective, meaning Patterson never exercised wrongful dominion over the warrant. *See Van Dyke v Pa. R. Co*., 86 A.2d 346, 351 (Del. Super. 1952). Cannon's conversion claim fails for a separate reason, too: once Patterson secured lawful control of the collateral following her default, Cannon failed to make a pre-suit demand that Patterson return the collateral. *See Malca v. Rappi, Inc*., 2021 WL 2044268, at *5 (Del. Ch. May 20, 2021); PTO 81-83.

III. THE COLLATERAL DESCRIPTION WAS ACCURATE

A. Question Presented

Did the trial court err by endorsing Cannon's surreptitious alterations to the draft warrant (and thereby deeming inaccurate a collateral description reflecting what Romeo had agreed to issue her)? Patterson raised the issue below (A449-55, A826-50), and the court considered it (PTO 32-47).

B. Scope of Review

This Court reviews questions of law *de novo* and factual findings for clear error. *Supra* p.21.

C. Merits of Argument

The Pledge Agreement's collateral description was accurate: it correctly identified the warrant to purchase one million shares that Romeo agreed to issue Cannon. Cannon, by contrast, claimed through this litigation that the warrant entitled her to nearly *eight times* as many shares, because she surreptitiously altered the warrant's terms when Patterson sent it to her for signature. Cannon failed to satisfy her burden of demonstrating a meeting of the minds between the parties on a warrant of that magnitude.

1. Cannon Surreptitiously Altered the Warrant's Terms

In transmitting the warrant to Cannon, Patterson specifically requested that Cannon review and, "if you are good with the agreement," then "return to me and we will both sign." PTO 7; A1232. Cannon responded nearly four months later—

on Christmas Day—attaching "the signed" agreement (in PDF format, with her signature) and requesting that Patterson "counter-sign and return" a copy:

> Hi Mike, Merry Christmas! I'm using the holiday to catch up on some much needed things :) *Attached please find the signed stock agreement. If you could counter-sign and return that would be great*. Best! -Ben.

A1336 (emphasis added).

Cannon's response implied that she was "good with" the draft Patterson had sent—she returned a signed copy, did not indicate that she had any concerns with it, and did not disclose that she had made any alterations to its terms.

Patterson countersigned the version Cannon sent, believing that it was the same version he had sent her to sign. PTO 36; Patterson Tr. A566. That belief was reasonable—consistent with standard business practice, Cannon routinely flagged even minor changes she wanted to make in *other* agreements (and specifically requested Patterson's permission to make those changes). *See, e.g.*, A1693 (Cannon noting that "2.99% should say 3.99%" in draft agreement and requesting Patterson's "*Permission to change and sign?*"); (emphasis added); A1355 (Cannon noting that agreement has "errors in the stock section…. I fixed them … like we discussed. *Nothing else was changed*.") (emphasis added); A1229 (Cannon: "Hi Mike, [the agreement] looks good, but I corrected the amount per the most recent invoice (corrected agreement and invoice attached)."); A331 (Cannon explaining revision to draft agreement: "I gave us till Aug 31 to draw up the stock docs.").

Patterson then emailed the completed signature page to Romeo's counsel and reported to Cannon, "You are recorded as of today," confirming that the draft warrant he had sent to Cannon was to be calculated as 1% "at issuance" (not 1% "on exercise," as Cannon had altered the warrant to read). *See* Patterson Tr. A565-66; A1353. Romeo recorded the 1% "at issuance" warrant in its books, and its board subsequently ratified the grant (believing it represented a right to acquire a fixed number of shares). *See* A1480; A1505; A1748.

2. There Was No Meeting of the Minds on a Warrant of the Magnitude Cannon Now Claims

To support her conversion claim, Cannon sought to establish that the operative version of the warrant was not the 1% "at issuance" version Patterson had sent, but the 1% "on exercise" version she had surreptitiously altered. Cannon claimed that Patterson's signature on that version demonstrated a meeting of the minds on all material terms, though she declined to testify (or otherwise support her arguments regarding the parties' understanding and intent in entering into the warrant). A803, A831.

The trial court agreed, concluding that Cannon and Patterson's signatures sufficiently "manifested an intent to be bound" by the terms of Cannon's altered warrant. PTO 46. That was legal error.

While "[a]t first glance, a wet ink, signed version of a contract looks to be solid evidence of a meeting of minds," it is "not evidence so powerful that it negates

all other evidence to the contrary." *Kotler v. Shipman Assocs., LLC.*, 2019 WL 4025634, at *17 (Del. Ch. Aug. 21, 2019). "Put another way, even if a purported agreement is executed by both parties, when the parties' 'understandings of [a contractual] prohibition or permission are incompatible,' and where the plaintiff 'offered no further evidence indicating' a meeting of the minds, 'no enforceable agreement [is] created.'" *Id.* (citations omitted).

The trial court recognized that general principle. *See* PTO 34 ("'When presented with a facially valid contract, the court will defer to the parties' signed writing *unless there is evidence to the contrary*.'") (emphasis added) (quoting *Restanca, LLC v. House of Lithium, Ltd.*, 2023 WL 4306074, at *18 (Del. Ch. June 30, 2023)). But it failed to apply that principle here, effectively ignoring the unrebutted evidence that Patterson/Romeo never agreed to a warrant for *eight times* as many shares as the one offered to Cannon. *See Limestone Realty Co. v. Town & Country Fine Furniture & Carpeting, Inc.*, 256 A.2d 676, 679 (Del. Ch. 1969) (no enforceable contract despite a signed agreement, where offeree knew or should have known that the offer was unintended by the offeror).[5]

Instead, the trial court repeatedly faulted Patterson for not catching Cannon's subterfuge, noting that he could have run a redline comparison of the versions, asked

[5] Nor did Romeo's board ever ratify a grant of that magnitude. *Supra* p.10-11.

Cannon if she had made any undisclosed changes, or reviewed more closely the version she sent him on Christmas. *See* PTO 10, 46-47. But Patterson had no reason to suspect those actions were necessary given that he had specifically asked if Cannon was "good with" the version he sent, and Cannon identified no concerns with that version. Indeed, considering their prior interactions—where Cannon routinely flagged and requested permission to make even minor changes to other documents—Patterson reasonably understood Cannon's silence here to suggest that she had agreed to the original version. *Supra* p.37-38. Contrary to the trial court's suggestion, this case is similar to *Kotler*, where the company's executive, "did not re-read whatever Kotler mailed her or any other version of the warrant agreement" because she assumed it was a signature page for the execution version of the warrant she had last seen. 2019 WL 4025634, at *9.

In sum, Patterson's failure to catch Cannon's subterfuge does not mean he assented to her dramatically different version of the warrant. Cannon's challenge to the Pledge Agreement's description of the warrant fails.

IV. THE PLEDGE AGREEMENT EXCULPATES PATTERSON FROM ALL LIABILITY

A. Question Presented

Did the trial court err in failing to apply the Pledge Agreement's exculpation provision? Patterson raised the issue below (A411, A424 A457-58, A795, A840-41), and the court considered it (PTO 71-72).

B. Scope of Review

This Court reviews questions of law and contract interpretation *de novo*. *Supra* p.21.

C. Merits of Argument

In the Pledge Agreement, Cannon agreed that Patterson would not be liable for "acts, omissions, errors or mistakes with respect to the Pledged Assets"—absent "gross negligence or willful misconduct." PTO 16 n.60. Patterson repeatedly raised this exculpatory provision as a defense—before, during, and after trial. The trial court nevertheless deemed exculpation waived and held Patterson personally liable, in violation of the Pledge Agreement's plain language.

1. The Pledge Agreement Exculpates Patterson from Liability Absent Gross Negligence or Willful Misconduct

The Pledge Agreement includes broad language exculpating Patterson, the "Secured Party," from all liability related to the Pledge Agreement, absent a showing that he engaged in gross negligence or willful misconduct. The exculpation

provision specifies that protection extends to Patterson's actions taken with respect to the "Pledged Assets":

> The Secured Party *shall not be liable* for any acts, omissions, errors of judgment or mistakes of fact or law, *including, without limitation, acts, omissions, errors or mistakes with respect to the Pledged Assets*, except for those arising out of or in connection with such person's gross negligence or willful misconduct.

PTO 16, n.60 (emphasis added); A1738.

Through this language, the Pledge Agreement allocates the risk of legal error and mistaken judgment to the "Pledgor" (Cannon) and preserves personal liability only for conduct that crosses into gross negligence or willful misconduct. Delaware law enforces these contractual allocations of risk according to their terms. *See Metro. Life Ins. Co. v. Tremont Gp. Hldgs., Inc.*, 2012 WL 6632681, at *20-21 (Del. Ch. Dec. 20, 2012); *Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 847-48 (Del. Ch. 2022).

2. Patterson's Conduct Fell Within the Exculpation Provision

Following Cannon's default on the loan, Patterson transferred the collateral she had pledged (*i.e.,* her Romeo warrant) into his name, as the parties' Pledge Agreement expressly permitted. *See* PTO 17-18; A1737. More than four years after Cannon's default, and after giving advance notice to Cannon, Patterson sold the warrant shares for $141,023.49. After deducting attorneys' fees and expenses and

satisfying Cannon's debt and the accrued interest, Patterson remitted the remaining $108,802.24 to Cannon. *Supra* p.17.[6]

Because those actions were all "with respect to the Pledged Assets," Patterson cannot be held liable for them unless he was grossly negligent or engaged in willful misconduct. But the trial never found that Patterson was grossly negligent or engaged in willful misconduct when exercising his contractual remedies following Cannon's default. Instead, the court emphasized that conversion can occur even where a defendant "mistakenly believes that his or her conduct is legal[.]" PTO 78-79 (quoting *Segovia v. Equities First Hldgs., LLC*, 2008 WL 2251218, at *19 (Del. Super. Ct. May 30, 2008)); PTO 79 ("'[E]ven though *the record is devoid of evidence … that [defendant] acted with malice or bad faith when it sold the pledged stock*, this does not excuse the fact that the sale deprived [plaintiff] of her ownership interest in the stock[.]'") (emphasis added) (quoting *Segovia* at *20). But that general rule cannot override the parties' contract. The exculpation provision here protects Patterson from any "mistake[] of fact or law" stemming from his reliance on the terms of an attorney-drafted Pledge Agreement.

[6] At each step, Patterson acted in accordance with the Pledge Agreement's terms (and corresponding U.C.C. provisions). *See* A1737; 6 *Del. C.* §§ 9-607, 9-609–9-610, 9-615.

3. Patterson Raised Exculpation as a Defense

Before, during, and after trial, Patterson timely—and repeatedly—raised the Pledge Agreement's exculpatory provision. *See, e.g.*, A457-58 (arguing that "[t]he Pledge Agreement's exculpation provision" bars liability for "any acts, omissions, errors of judgment or mistakes of fact or law," absent gross negligence or willful misconduct); Patterson Tr. A573 (Patterson testifying that, under the exculpation provision, he could not be "liable for omissions, mistakes, or anything like that"); A840-41 (Patterson exculpated because his conduct "never amounted to 'gross negligence or willful misconduct'"); A1132-34 ("Patterson's Conduct Never Amounted to 'Gross Negligence or Willful Misconduct'"); A984-86, A1008-11(same); A868.

The trial court itself recognized that Patterson invoked the provision. That was more than sufficient to preserve the argument. *See, e.g.*, *Riverbend Cmty., LLC. v. Green Stone Eng'g., LLC.*, 55 A.3d 330, 333 n.7 (Del. 2012) ("[W]e think the argument that the [contractual] Release" from "all liability" could "operate to bar all of the claims" in both tort and contract "was fairly presented to the trial judge when the parties asked her to interpret the Release."); *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) ("[T]his Court may rule on an issue fairly presented to the trial court, even if it was not addressed by the trial court.").

The trial court nevertheless deemed exculpation waived because Patterson failed to specifically argue that exculpation would apply "in the event that this court determined no security interest attached to the [w]arrant[.]" PTO 72.

That was legal error. Patterson more than "fairly presented" his exculpation arguments below, explaining how his exercise of contractual remedies following Cannon's default complied with the Pledge Agreement and the U.C.C. *See* Supr. Ct. R. 8; A457-58; Patterson Tr. A573; A840-41; A1132-34; A984-86, A1008-11(same); A868. Patterson was not required to delineate precisely how the exculpation provision would apply based on all the potential resolutions of the other issues in the case. The trial court cited no authority supporting that kind of rigid waiver rule. Such a rule would contravene this Court's recognition that, even when an issue is not preserved at all, consideration of the issue is appropriate "when the interests of justice so require." Supr. Ct. R. 8. The interests of justice clearly require evaluation of Patterson's exculpation argument: he has been held personally liable for over $40 million despite entering into a contract that relieved him of any liability on these facts.

V. THE DAMAGES AWARD CONSTITUTES AN ABUSE OF DISCRETION

A. Questions Presented

Did the trial court abuse its discretion by awarding Cannon more than $40 million in damages and interest in this dispute over her default on a $20,000 loan? Patterson raised the issue below (A409-11, A427-28, A440, A841-44), and the court considered it (PTO 83-96).

B. Scope of Review

This Court reviews damages awards for abuse of discretion. *Siga Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1130 (Del. 2015).

C. Merits of Argument

Even assuming Patterson could be held liable, the trial court's damages award should be vacated, as it rests on unproven assumptions and is contrary to Delaware law. Patterson properly exercised his contractual remedies following Cannon's default, and he cannot be held liable for misappropriating stock that he never received. The trial court's calculations also improperly disregarded the lock-up governing the warrant shares.

1. The Trial Court's Counterfactual Damages Award

On October 27, 2020, Patterson exercised the warrant that Cannon had pledged as collateral for the loan she never repaid. Patterson received 1,000,000 shares of Romeo common stock, consistent with what Romeo agreed to

grant Cannon (and how it had treated the warrant since issuance). *Supra* p.10. On December 29, the de-SPAC Merger closed, and these shares converted into 121,730 shares of common stock of Romeo Power (the post-merger entity). As a condition of the de-SPAC merger, these 121,730 shares were subject to a 180-day lock-up period. After the conclusion of the lock-up period, Patterson sold the shares on the NYSE, generating $141,023.49 in proceeds (*i.e.*, approximately $1.16 per share). Patterson subsequently remitted $108,802.24 of the proceeds to Cannon (after satisfying her outstanding debt, interest, and fees). *Supra* p.17.

2. The Trial Court Abused its Discretion on Damages

In awarding more than $40 million in damages, the trial court committed two errors.

First, accepting Cannon's undisclosed alterations to the warrant, the trial court concluded that Cannon was entitled to 1% of Romeo's equity "on exercise," which equated to nearly *eight times* as many shares as Patterson actually received. As a result, the trial court calculated damages based on 965,246 post-merger shares, not the 121,730 shares Patterson received. PTO 89.

Under Delaware law, Patterson cannot be liable for converting stock he never received. *See Macrophage Therapeutics, Inc. v. Goldberg*, 2021 WL 2582967, at *22 (Del. Ch. June 23, 2021) (rejecting as "not [] sustainable" requested damages award predicated on finding that defendant

"converted unidentified property that *he does not now, and may never have possessed*") (emphasis added); *see also* Mathieu Tr. A679; A2872 (adjusting calculations to reflect Patterson's actual share total).

Second, the trial court erred in declining to apply the 180-day lock-up to these 965,246 hypothetical post-merger shares. PTO 89. The 121,730 post-merger shares Patterson actually received were subject to a 180-day lock-up period. As a necessary condition of the de-SPAC Merger, all of Romeo's significant stockholders (without pre-negotiated arrangements) agreed to this lock-up, during which they would not "sell … or otherwise dispose of [any shares.]" *See* A2325; Webb Tr. A664-65. In contemporaneous emails, Cannon understood that the warrant shares were locked up. *See* A2734 ("there's a 180 day lockup period on the stock"); A2703; A2726; A2761; A2766.

The trial court refused to account for the lock-up period when calculating damages, reasoning that Cannon "did not have an opportunity to decide whether she would agree to a lock-up as a condition of the merger." PTO 89. But Cannon had no opportunity to negotiate over a potential lock-up because she had no shares to lock up; she defaulted on the loan to Patterson *years* before the de-SPAC Merger (and failed to redeem her collateral at any time). The unrebutted trial record likewise demonstrates that, had she not pledged away her shares, they would have been

subject to the same lock-up as Romeo's other significant stockholders. *See* Webb Tr. A665.

Properly accounting for the lock-up period would reduce the trial court's damages award dramatically. By assuming Cannon would have sold her hypothetical shares at the most advantageous time possible, the trial court calculated a per-share profit of $28.397 (*24 times* what Patterson received per share). *See* PTO 92; Mathieu Tr. A679; A2869.

CONCLUSION

Patterson respectfully submits that the Court of Chancery's judgment should be reversed.

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