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**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| RICHARD SCARANTINO,<br><br>Plaintiff-Below/Appellant,<br><br>v.<br><br>THE TRADE DESK, INC.,<br><br>Defendant-Below/Appellee. | No. 1, 2026<br><br>Court Below:<br><br>Court of Chancery of the State of Delaware<br>C.A. No. 2025-0442-LM<br><br>**PUBLIC VERSION FILED APRIL 2, 2026** |

# APPELLEE'S ANSWERING BRIEF

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Dated: March 18, 2026

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## NATURE OF PROCEEDINGS

This appeal is Plaintiff's third attempt to persuade a court that this is the rare Section 220 case where inspection of Informal Board Materials, such as emails, is warranted.[1] Plaintiff targets the Court of Chancery's fact findings—reached by both a Magistrate in Chancery and later a Vice Chancellor applying *de novo* review—that Plaintiff had not proven that Formal Board Materials would be insufficient to satisfy his purpose, rendering the production of Informal Board Materials unnecessary. Plaintiff's arguments that the Formal Board Materials are, for one reason or another, insufficient to support his investigation easily fold under the weight of the record evidence and the deferential standard of review governing this appeal; the Court of Chancery did not abuse its discretion, and so the judgment should be affirmed.

The Demand seeks to investigate the Company's 2024 reincorporation from Delaware to Nevada, a process that was documented in six months' worth of Board minutes and materials. Before trial, Plaintiff received over 500 pages of responsive materials in response to his Demand. He went to trial anyway, seeking additional categories of documents related to (i) Company founder Jeff Green's ownership of

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[1] Like Plaintiff's Opening Brief (or "OB") and the Court of Chancery's decisions, this brief adopts the *AmerisourceBergen* taxonomy to describe categories of books and records as Formal and Informal Board Materials. *See Lebanon Cnty. Emps.' Ret. Fund v. AmerisourceBergen Corp.*, 2020 WL 132752, at *24-25 (Del. Ch. Jan. 13, 2020) [hereinafter *AmerisourceBergen I*], *aff'd*, 243 A.3d 417, 426 (Del. 2020) [hereinafter *AmerisourceBergen II*].

Class B stock and the sunset of the Company's dual-class structure, (ii) director-level communications, and (iii) privileged documents.

After trial, the Magistrate found Plaintiff had met the low threshold to prove a "credible basis" and was entitled to Formal Board Materials related to Green's ownership of Class B stock and the dual-class sunset, in addition to the materials the Company had already produced relating to the Reincorporation. But the Magistrate denied inspection of informal and privileged Board materials, finding the Company adhered to corporate formalities, and the Formal Board Materials already produced were sufficient to apprise Plaintiff of the Board's deliberations and the basis for its decision. Plaintiff took exception to that ruling, advancing the same arguments about the sufficiency of the Formal Board Materials he raises here. The Vice Chancellor rejected them all, largely adopting the Magistrate's reasoning.

This appeal does nothing but regurgitate those arguments that have failed twice already. The only difference is that Plaintiff's position is weaker at this stage, given the deferential abuse of discretion standard of review, which Plaintiff admits governs. Plaintiff presents no basis to disturb the Court of Chancery's discretion. Plaintiff's plenary-style books and records requests will have to await the proper forum: plenary litigation, should he choose to pursue it.

The Court of Chancery's judgment should be affirmed.

## SUMMARY OF ARGUMENT

1. Denied. Plaintiff argues that the Court of Chancery abused its discretion by assessing whether Formal Board Materials were sufficient to carry out Plaintiff's proper purpose before the Company had produced them. However, consistent with precedent, the Court of Chancery found that Formal Board Materials would be sufficient based on the evidence presented at trial. That finding is supported by the record and, therefore, is not an abuse of discretion.

2. Denied. Formal Board Materials are usually the beginning and the end of an inspection under Section 220, unless there are atypical circumstances—such as the absence of Formal Board Materials—that necessitate the production of Informal Board Materials. The Court of Chancery correctly found that Plaintiff did not prove either of his two theories of atypical circumstances, namely that (i) the Company's board minutes are "short form" and (ii) the reasons the Company gave publicly for choosing to reincorporate to Nevada were pretextual. The Court's fact findings are supported by the record and, therefore, are not an abuse of discretion.

## STATEMENT OF FACTS

### A. The Trade Desk Is a Highly Successful AdTech Company with a Dual-Class Capital Structure.

Defendant-Below/Appellee The Trade Desk, Inc. ("The Trade Desk" or the "Company") is the leading independent digital media buying platform, providing a self-service, cloud-based platform that enables clients to plan, manage, optimize, and measure data-driven digital advertising campaigns.[2] It was a Delaware corporation until reincorporating in Nevada in November 2024 (the "Reincorporation").[3]

Since it went public in 2016, the Company has had two classes of stock: publicly traded Class A shares entitled to one vote per share, and non-publicly traded Class B shares entitled to ten votes per share.[4] Most of the Class B shares are held by the Company's founder, Chief Executive Officer, and Chairman, Jeff Green.[5]

Under the Company's 2016 charter, if the number of outstanding Class B shares fell below 10% of the total outstanding Class A and Class B shares, each

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[2] A473; A77 ¶ 1; Op. at 2. Consistent with Plaintiff's practice, the Company cites the Vice Chancellor's December 5, 2025 Letter Decision (Exhibit A to the Opening Brief) as "Op." and cites the Magistrate's July 31, 2025 Final Report (Exhibit B to the Opening Brief) as "Report," using the exhibits' internal pagination.

[3] A77 ¶ 1; Op. at 4.

[4] Op. at 2 (citing A78 ¶ 4).

[5] A591 at *1; Op. at 2.

Class B share would automatically convert into one Class A share.[6] The Company's Board of Directors (the "Board") has periodically considered whether to amend the Company's charter and extend the dual-class structure. In 2020, the Board approved a charter amendment that, among other things, eliminated the conversion trigger based on the ratio of Class B to Class A shares; instead, Class B shares would convert into Class A shares on December 22, 2025.[7] That amendment was approved by an independent special committee and a majority of the Company's unaffiliated stockholders.[8] The Court of Chancery dismissed a stockholder challenge to the process,[9] holding it satisfied *MFW*.[10]

### B. The Board Considers a Potential Reincorporation and Documents Its Process.

The Board began exploring a potential reincorporation in 2024.[11] The Board first discussed the Reincorporation in its regularly scheduled quarterly meeting on April 23, 2024.[12] The Company's outside counsel "[redacted]

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[6] Op. at 3 (citing A78 ¶ 8).

[7] A596 at *7; Op. at 3 (citing A79 ¶¶ 10-12). The amended charter specified other triggers, which are not at issue here.

[8] A593-94 at *4-5; A79 ¶ 12.

[9] A598-608 at *10-23; Report at 4-5.

[10] *Kahn v. M & F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).

[11] Op. at 3; A835, A838.

[12] A617; Report at 5-6.

[redacted].”[13] A brief discussion ensued, in which the Board considered several potential jurisdictions for incorporation, before deciding to focus its considerations on Delaware and Nevada.[14]

At the Board’s Nominating and Corporate Governance Committee’s next meeting, outside counsel gave a presentation regarding converting from a Delaware corporation to a Nevada corporation “[redacted]”[15] Later that day, outside counsel also presented to the full Board regarding “[redacted].”[16]

Following those preliminary discussions, the Board held a special meeting on August 13, 2024 to discuss the possible Reincorporation.[17] The Board discussed “[redacted]

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[13] A617.

[14] A839; *see also* A617 (reflecting discussion of “[redacted]”).

[15] Report at 6 (citing A651).

[16] A642; Report at 5-6.

[17] A666; *see* Report at 6.

[redacted]."[18] The Board also resolved to engage corporate governance expert Professor Steven Davidoff Solomon to assist with evaluating the Reincorporation.[19]

On August 27, 2024, the Board again held a special meeting to discuss the Reincorporation.[20] The Board evaluated considerations including the "[redacted]."[21] The Board also considered the Company's "[redacted]."[22] The Board did not discuss the Company's dual-class capitalization or Green's control of the Company.

Professor Solomon presented to the Board on "[redacted]"[23] including summarizing a 44-page memorandum he previously shared with the Board, which detailed the reasons for and against the

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[18] A666-67.

[19] A667.

[20] A669; *see* Report at 6.

[21] A669.

[22] A670.

[23] *Id.*

Reincorporation.[24] It did not suggest or imply that the Reincorporation could be used to extend the dual-class capitalization structure.

On September 17, 2024, the Board again held a special meeting to continue discussing the Reincorporation.[25] The Board and management discussed [redacted].”[26] The Board also considered “[redacted].”[27]

On September 20, 2024, the Board met and adopted resolutions approving the Reincorporation to Nevada.[28] The Board’s reasons for the Reincorporation were: (i) [redacted]; (ii) [redacted]

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[24] B038; B082. The Company produced both documents in response to the Demand.

[25] A671; *see* Report at 6.

[26] A671-72.

[27] A672.

[28] Report at 6 (citing A673).

[redacted][;] and

(iii) [redacted]"[29]

On October 3, 2024, the Company filed a proxy statement, setting a special stockholder meeting for November 14, 2024 to vote on the Reincorporation (the "2024 Proxy").[30] The 2024 Proxy detailed the reasons for the Board's judgment that the Reincorporation was in the best interests of the Company and its stockholders, noting that in recent years, management had spent extensive time and the Company had incurred significant costs successfully defending litigation in Delaware courts.[31]

The 2024 Proxy disclosed in a section titled "What *Doesn't Change* After Nevada Reincorporation?" that "[t]he Nevada Charter includes the same Dual Class Sunset Date" as the Company's Delaware charter.[32] The 2024 Proxy explained that the Board may consider an extension of the dual-class structure, regardless of whether the Reincorporation was completed:

> From time to time, our board of directors has considered, without making a decision, if the timing of the Dual Class Sunset Date is still in the best interest of stockholders. Whether or not the Nevada

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[29] A673.

[30] A827; Op. at 4.

[31] A839-41.

[32] A857-58 (emphasis added).

> Reincorporation is approved, the Board may still further evaluate the merits and timing of the Dual Class Sunset Date.[33]

The Company thus made clear that the sunset date was not a consideration in the Reincorporation decision.

On November 14, 2024, the Company's stockholders approved the Reincorporation, and the Company became a Nevada corporation the next day.[34]

### C. Plaintiff Serves a Section 220 Demand, and the Company Produces Board Records in Response.

On October 21, 2024, before the stockholder vote on the Reincorporation, Plaintiff served a demand to inspect books and records pursuant to DGCL Section 220 (the "Demand").[35] Among the Demand's four stated purposes was to investigate mismanagement by Company fiduciaries related to the Reincorporation.[36] In particular, the Demand alleged that, contrary to the 2024 Proxy, the Reincorporation was meant "to limit the stockholders' litigation rights for the benefit of Green and the Board."[37]

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[33] A858.

[34] A1000; Op. at 4 (citing A81 ¶ 23).

[35] Op. at 4; A986.

[36] A986.

[37] A989.

Notwithstanding its objections, the Company voluntarily produced over 500 pages of Formal Board Materials in response to the Demand.[38] The production consisted of all non-privileged Board and committee minutes and materials where the potential Reincorporation was discussed, plus the Company's most recent director independence questionnaires and Professor Solomon's engagement letter.[39] Nothing in the produced materials indicated that Green's stock ownership or the dual-class sunset were discussed in connection with, or at the same meeting as, consideration of the Reincorporation.

On March 17, 2025, Plaintiff requested—for the first time—"all Board-level materials and communications from the relevant period concerning Mr. Green's control."[40] The Company's April 1, 2025 response noted Plaintiff's new request was not contained in the Demand and, in any event, that Plaintiff failed to state a proper purpose to inspect that category of books and records.[41]

Plaintiff filed this action on April 24, 2025, seeking to compel the Company to produce additional documents, namely: (i) Formal Board Materials regarding

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[38] Op. at 5; A82 ¶ 31.
[39] Op. at 5; Report at 7.
[40] B104; Report at 8.
[41] B106; Report at 8.

Green's Class B ownership and the 2025 dual-class sunset, (ii) Informal Board Materials, and (iii) attorney-client privileged documents.[42]

### D. The Company Extends Its Dual-Class Structure.

While the Demand was being negotiated and litigated, the Board decided to revisit whether to extend the dual-class structure, which was set to expire on December 22, 2025.[43] On July 14, 2025, the Company announced that, after a several months-long process, a special committee had recommended, and the Board had approved, amendments to the articles of incorporation that included an adjusted sunset trigger date of December 22, 2035.[44] In its definitive proxy statement filed days later (the "2025 Proxy"), the Company disclosed that "[g]iven . . . continued success, [the Board] has from time to time evaluated a potential further amendment or extension of our dual class structure," and detailed a months-long process, including a special committee and independent legal and financial advisors, which culminated in approving the adjusted sunset trigger date.[45] The 2025 Proxy disclosed the Board's reasons for approving the extension, including Green's long-term strategic vision and the Company's ability to navigate competition empowered

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[42] Op. at 5.
[43] A1119.
[44] A1116; Op. at 5; Report at 9.
[45] A1119-24.

by the dual-class structure.[46] On September 16, 2025, stockholders voted to approve the adjusted sunset trigger.

### E. Plaintiff Loses at Trial.

Two days after the dual-class extension was announced, the parties held a trial in connection with the Section 220 Demand. After pre-trial briefing and a half-day trial on July 16, 2025, the Magistrate ordered production of Formal Board Materials relating to the dual-class capitalization structure, the sunset provision, and Green's Class B shares.[47] But the Magistrate rejected Plaintiff's other requests, determining that director communications and other Informal Board Materials were not necessary and essential to Plaintiff's stated purpose.[48]

The Company did not take exception to the Final Report.[49] Plaintiff, however, challenged the Magistrate's findings regarding Informal Board Materials.[50] The Court of Chancery affirmed that the Magistrate correctly found that Plaintiff had not shown that the Formal Board Materials were insufficient to assess the Board's

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[46] A1125-27.

[47] Report at 27-28.

[48] *Id.* at 28.

[49] Op. at 7; *see generally* B001-37. Although The Trade Desk did not challenge the Magistrate's finding that Plaintiff stated a proper purpose for inspection of the additional Formal Board Materials related to the dual-class sunset, the Court of Chancery questioned, in *dicta*, whether he was actually entitled to those documents. *See* Op. at 11 n.49.

[50] A202, A208.

deliberations.[51] The Court rejected Plaintiff's argument that the Board's stated reasons were pretextual as mere disagreement with the Board's rationale; it also rejected Plaintiff's contention that minutes from the Board's meetings early in the process were "short-form" and "vague," noting that they "reflect[ed] a process that deepened over time."[52]

On December 23, 2025, the Company produced Formal Board Materials relating to the dual-class capitalization structure, the sunset provision, and Green's Class B shares, as required by the Report.[53]

On January 2, 2026, Plaintiff noticed this appeal.

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[51] Op. at 1.

[52] *Id*. at 9-10.

[53] *See* Report at 27-28; Op. at 6.

## ARGUMENT

## I. THE COURT OF CHANCERY DID NOT ABUSE ITS DISCRETION WHEN IT FOUND FORMAL BOARD MATERIALS WERE SUFFICIENT TO SATISFY PLAINTIFF'S STATED PURPOSE.

### A. Question Presented

Whether the Court of Chancery abused its discretion when it found Plaintiff failed to carry his burden to prove Formal Board Materials would not provide everything necessary and essential to carry out Plaintiff's stated purpose.[54] Plaintiff frames this question incorrectly; as discussed below, the Court of Chancery did not deny inspection of Informal Board Materials based on the sufficiency of as-yet-to-be produced Formal Board Materials. Rather, the Court of Chancery correctly denied inspection of Informal Board Materials because the trial record demonstrated that Formal Board Materials would be sufficient.[55]

### B. Scope of Review

The Company agrees with Plaintiff that the standard of review governing his appeal is abuse of discretion.[56] "[W]hether any Informal Board Materials or Officer-Level Materials or emails are necessary and essential [depends on] the Court of

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[54] This question was preserved below. A83 (pre-trial stipulation and order); A225 (Appellant's Opening Brief in Support of his Exception).

[55] Op. at 8.

[56] OB at 25, 33.

Chancery's fact specific determination, which is committed to the court's sound discretion."[57] Plaintiff's admission that this appeal presents only questions of the Court of Chancery's discretion tacitly admits that the Court of Chancery applied the correct legal standards, and there are no issues of unsettled law. The only issue for review, therefore, is whether the trial court's findings of fact—including its finding that Formal Board Materials are sufficient to satisfy Plaintiff's purpose—was reasonable and supported by the record.[58]

### C. Merits of Argument

Section 220 provides stockholders with only a qualified right to inspect a corporation's books and records related to a proper purpose.[59] Though Plaintiff spills substantial ink extolling the strength of his investigatory purpose, his purpose is not in dispute; the only disputed issue on appeal is over the scope of production.

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[57] *NVIDIA Corp. v. City of Westland Police & Fire Ret. Sys.*, 282 A.3d 1, 27 (Del. 2022) (citations modified) (quoting *AmerisourceBergen II*, 243 A.3d at 439).

[58] *McKeehan v. Del. Neurosurgical Grp.*, 2026 WL 265939, at *3 (Del. Feb. 2, 2026) (TABLE) ("An abuse of discretion occurs when the trial judge exceeds the bounds of reason in view of the circumstances and has so ignored recognized rules of law or practice so as to produce injustice." (alterations, internal quotation marks, and citation omitted)); *see also AmerisourceBergen II*, 243 A.3d at 440 (applying this standard in a Section 220 appeal).

When the stockholder has proven he has a proper purpose, he is entitled to receive the records necessary to carry out that purpose, stopping at what is sufficient.[60]

Plaintiff bore the burden to prove "by a preponderance of the evidence that 'each category of books and records [he sought] is essential to accomplishment of [his] articulated purpose for the inspection.'"[61] To be "necessary and essential" documents must address the "crux of the s[tock]holder's purpose" *and* be "unavailable from another source."[62] Whether documents are necessary and essential "is fact specific and will necessarily depend on the context in which the s[tock]holder's inspection demand arises."[63]

Typically, "[t]he starting point (and often the ending point) for an adequate inspection will be board-level documents," or Formal Board Materials.[64] Inspection

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[59] *Floreani v. FloSports, Inc.*, --- A.3d ----, 2025 WL 3275207, at *7 (Del. Nov. 24, 2025); *Okla. Firefighters Pension & Ret. Sys. v. Amazon.com, Inc.*, 2022 WL 1760618, at *5 (Del. Ch. June 1, 2022).

[60] Report at 25 ("Because Section 220 inspections must give the stockholder what is essential, but stop as what is sufficient, and Plaintiff will receive further non-privileged documents responsive to its Demand, I am satisfied Plaintiff has not carrie[d] [his] heavy burden to justify a court order compelling the production of documents protected by the attorney-client privilege." (citing *Emps.' Ret. Sys. of R.I. v. Facebook*, *Inc.*, 2021 WL 529439, at *10 (Del. Ch. Feb. 10, 2021))).

[61] *Amazon*, 2022 WL 1760618, at *5 (quoting *AmerisourceBergen I*, 2020 WL 132752, at *6).

[62] *Espinoza v. Hewlett-Packard Co.*, 32 A.3d 365, 371-72 (Del. 2011).

[63] *Id*. at 372.

[64] *AmerisourceBergen I*, 2020 WL 132752, at *24.

of Informal Board Materials, such as emails, is warranted only where "atypical circumstances" exist to justify broader inspection.[65] In other words, "[u]nlike the production of other books and records, email communications are generally 'the exception rather than the rule.'"[66] The Court of Chancery found that this case falls within the general rule, not the exception, because Plaintiff had not proven either of his theories of "atypical circumstances," addressed in Argument II, below.

In Argument I, Plaintiff argues the Court of Chancery erred fundamentally when it found that, in addition to the materials the Company had already produced, Formal Board Materials concerning the additional topic of the dual-class capitalization were sufficient to satisfy Plaintiff's Demand, although the trial court had not reviewed those materials.[67] That argument starts from the flawed premise that the Company engaged in "gamesmanship" and improperly "withheld" Formal

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[65] *Amazon*, 2022 WL 1760618, at *5; *Operating Eng'rs Constr. Indus. & Misc. Pension Fund v. Pioneer Nat. Res. Co*., 2025 WL 2106580, at *3 (Del. Ch. July 28, 2025), *aff'd*, --- A.3d ----, 2026 WL 682053 (Del. Mar. 11, 2026).

[66] *In re UnitedHealth Grp., Inc. Section 220 Litig.*, 2018 WL 1110849, at *9 (Del. Ch. Feb. 28, 2018), *aff'd sub nom. UnitedHealth Grp. Inc. v. Amalgamated Bank*, 196 A.3d 885 (Del. 2018). Plaintiff sent the Demand on October 21, 2024, before the 2025 amendments to Section 220. *See* A986. Although the amended statute is inapplicable here, it codifies Delaware's existing public policy: stockholders are not entitled to Informal Board Materials absent an extraordinary showing. Under the amended statute, Plaintiff would need to clear a higher evidentiary bar to establish entitlement to informal records.

[67] OB at 26-28.

Board Materials before trial.[68] Not so. The Company produced all its Formal Board Materials related to the Reincorporation—the transaction at the heart of Plaintiff's Demand—but disputed that Plaintiff had alleged a credible basis to inspect Board materials related to the Company's dual-class capitalization. Although the Magistrate found for Plaintiff on the issue, the Vice Chancellor noted she would have ruled in the Company's favor if it had taken exception to the Magistrate's ruling on the subject of producing documents about the dual-class structure, demonstrating the Company's position was reasonable.[69]

This case is nothing like *Moran v. Unation, Inc.*,[70] which Plaintiff cites in the Opening Brief.[71] *Moran* arose in a starkly different context: the entry of a default judgment against a corporation that ignored a Section 220 demand entirely and refused to participate in the resulting litigation.[72] The Court of Chancery was concerned with the "adverse incentive[s]" that could result from paring back the scope of a Section 220 demand despite the corporation's default.[73] To state the

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[68] *Id*. at 28.

[69] *See* Op. at 11 n.49; *see also* Report at 27 (denying Plaintiff's request for fee-shifting premised on the Company's alleged bad faith).

[70] 2025 WL 3706330 (Del. Ch. Dec. 22, 2025).

[71] OB at 29.

[72] *Moran*, 2025 WL 3706330, at *13.

[73] *Id*.

obvious, those concerns are not implicated here. The Company responded to Plaintiff's Demand; negotiated the scope of document production; produced 500 pages of documents; filed a timely answer to Plaintiff's complaint, participated in pre-trial briefing and discovery; and litigated a trial before the Magistrate and exceptions before the Vice Chancellor.[74]

False premise aside, Plaintiff's appeal hinges on inaccurately characterizing the Court of Chancery as having "presumed" the sufficiency of Formal Board Materials that the Company allegedly withheld.[75] In fact, the Magistrate based her ruling on the Formal Board Materials that "*have been provided* to the Plaintiff[.]"[76] Similarly, the Vice Chancellor relied on "the record" to refute Plaintiff's argument that Formal Board Materials were insufficient.[77] Plaintiff's argument that the Court of Chancery presumed anything about the contents of documents not in the record is simply not true.

Instead, the Court of Chancery correctly applied the burden of proof to the evidence offered at trial. Plaintiff bore the burden of establishing unusual

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[74] Report at 7-9 (describing the Demand, the Company's productions, and the procedural history).

[75] OB at 25.

[76] Report at 19 (emphasis added).

[77] Op. at 9.

circumstances or another justification for producing Informal Board Materials.[78] The Magistrate and Vice Chancellor both found that the Company adhered to corporate formalities and produced "[f]ormal board level documents sufficient 'to effectively address the problem'" Plaintiff seeks to investigate.[79] Citing *Palantir*, which held "the Court of Chancery should not order emails to be produced when other materials . . . would accomplish the petitioner's proper purpose[,]"[80] the Court of Chancery here found the "Board, by contrast [to the *Palantir* board], maintained regular minutes about the reincorporation process," which "apprise the [P]laintiff of the Board's decision-making, explaining what the Board discussed, what it decided, and why."[81] Ultimately, because "no evidence was presented by the Plaintiff that support[s] the necessity for a broader inspection," the Court of Chancery acted within its discretion when it concluded "no further production is necessary at this books and records stage[.]"[82]

To the extent Plaintiff is arguing the Court of Chancery abused its discretion by not ordering additional post-trial proceedings about the sufficiency of Formal

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[78] *Id*. at 8-9 (noting that "broader inspection is warranted only in extreme and 'atypical circumstances'"); *KT4 P'rs LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 754 (Del. 2019).

[79] Report at 19; *accord* Op. at 8.

[80] *Palantir*, 203 A.3d at 752-53.

[81] Op. at 10.

Board Materials,[83] that argument cannot be reviewed because it was not raised below.[84] In any case, it is unsupported by the record. The Court of Chancery made a factual finding that Formal Board Materials were sufficient based on the board-level materials that had already been produced; there was no reason for the court to order post-trial proceedings.[85]

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[82] Report at 19.

[83] OB at 31.

[84] Supr. Ct. R. 8. Plaintiff's citation to a generalized request—made in his reply brief in support of his exceptions—for the Court of Chancery to exercise its "discretion to determine the universe of communication to be produced" did not preserve this argument. *See* A398.

[85] Report at 19; Op. at 11.

## II. THE COURT OF CHANCERY DID NOT ABUSE ITS DISCRETION WHEN IT REJECTED PLAINTIFF'S ARGUMENT THAT THE COMPANY'S FORMAL BOARD MATERIALS WERE INSUFFICIENT.

### A. Question Presented

Whether the Court of Chancery abused its discretion when it held Plaintiff had not proven that inspection of Informal Board Materials was necessary and essential because the Formal Board Materials were insufficient.[86]

### B. Scope of Review

The Company agrees with Plaintiff that the standard of review is abuse of discretion.[87]

### C. Merits of Argument

The Court of Chancery correctly found that Plaintiff is not entitled to Informal Board Materials on the grounds of Formal Board Materials being inadequate. Formal Board Materials are usually all that must be produced, unless there are "atypical circumstances."[88] The Court of Chancery's rejection of both of Plaintiff's arguments about why this case presents atypical circumstances—that the Company's

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[86] The question was preserved below. A83 (pre-trial stipulation and order); A225 (Appellant's Opening Brief in Support of his Exception).

[87] *See supra* Argument Section I.B.

[88] Op. at 8-9 (quoting *Amazon*, 2022 WL 1760618, at *5).

minutes were "short form" and that its reasons for the Reincorporation were pretextual—is amply supported by the record.

### 1. The Court of Chancery Did Not Abuse Its Discretion When It Found the Company's Formal Board Materials Are Not "Short-Form" or Otherwise Inadequate.

Plaintiff argued to both the Magistrate and the Vice Chancellor that email communications were necessary and essential because the Formal Board Materials provide insufficient detail, and lost both times.[89] The Court of Chancery found that this argument was "refuted by the record," which shows that the minutes and materials "apprise the [P]laintiff of the Board's decision-making, explaining what the Board discussed, what it decided, and why."[90] Plaintiff repeats the same argument on appeal, suggesting that because he cannot glean more detailed insight into all the details of the Board's discussions, he is unable to "accomplish his proper purpose" of investigating the Reincorporation without Informal Board Materials.[91]

But as the Court of Chancery found, the documents themselves tell a different story. The Company maintained minutes that document what the Board considered and reflect the depth of the discussion.[92] Plaintiff's fixation on minutes and

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[89] Op. at 9; Report at 17-18.

[90] Op. at 9-10.

[91] OB at 37.

[92] *See* A617, A639, A650, A666, A669, A671, A673.

materials from early in the process misconstrues the record and, regardless, is unavailing.[93] As the Court of Chancery explained, minutes of the Board's quarterly meetings from April to July contain brief descriptions of the Reincorporation discussions because the Board's discussions at that point were brief and preliminary—there was nothing more to say than what is contained in the minutes.[94] The Board's minutes naturally became longer and more detailed as the Board began to hold special meetings to discuss the Reincorporation, and its process "deepened over time."[95]

The Court of Chancery's findings are supported by the minutes themselves:

- The August 13 minutes contain [redacted] including the [redacted] and [redacted].[96]
- The August 27 minutes similarly reflect [redacted].[97]

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[93] *See* OB at 34-35 (summarizing Board deliberations contained in minutes from four meetings in April through July 2024 and ignoring deliberations reflected in minutes from four meetings in August through September 2024).

[94] Op. at 9.

[95] *Compare* OB at 36, *with* Op. at 9.

[96] A666-67.

[97] A669-70; *see also* B082-95 (14-page presentation from Professor Solomon).

- The September 17 minutes contain six paragraphs reflecting the Board's discussion with Company management regarding management's "[redacted]," the benefits of reincorporating to Nevada and "the increasingly litigious environment" in Delaware, and additional discussion with the Board's legal advisors and Professor Solomon.[98]

- The September 20 minutes show that three key factors influenced the Board's decision to reincorporate: (i) [redacted]"; (ii) "[redacted]"; and (iii) "[redacted]."[99]

These detailed discussions are not "short form" minutes. Plaintiff's Opening Brief does not engage with the Court of Chancery's fact findings about the degree of detail actually present in the minutes.

Plaintiff's real complaint is not that the minutes lack substance; he is disappointed that the Formal Board Materials do not support his legal theories. That is not grounds to order the production of communications. As the Court of Chancery observed, "[P]laintiff's wish for minutes that approximate a transcript—or advance his litigation narrative—is not a valid ground to order the production of informal

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[98] A671-72.

[99] A673; *see also* A840-42; B099 (minutes of October 22, 2024 regular meeting reflecting [redacted]).

communications."[100] All that is required is that minutes "provide[] sufficient detail to orient Plaintiffs as to what was discussed" at the meetings.[101] The Court of Chancery correctly—and dispositively—found that the Company's minutes do so.[102]

Moreover, the Court of Chancery's conclusion is consistent with precedent denying stockholders' requests for email communications despite contentions that the board materials were "nondescript[,]" contained "material gaps[,]" failed to "illuminate the substance of the Board's discussions[,]" and were "inconsisten[t]" with the company's public filings.[103] This is because stockholders are not entitled to informal communications simply because they "still have questions[.]"[104] Nor is Plaintiff entitled to emails simply because he has not found what he hoped for in the Company's Formal Board Materials: "[t]he mere possibility that some additional details might exist in informal communications does not render those documents 'necessary and essential' to understanding the Board's decision-making."[105]

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[100] Op. at 10 (noting "minutes are not transcripts—they do not need to be" (citing *In re Zendesk, Inc. Section 220 Litig.*, 2023 WL 5496485, at *12 (Del. Ch. Aug. 25, 2023))).

[101] *Zendesk*, 2023 WL 5496485, at *12.

[102] Op. at 11.

[103] *Zendesk*, 2023 WL 5496485, at *12.

[104] *Id*. at *11; *see also In re lululemon athletica inc. 220 Litig.*, 2015 WL 1957196, at *7 (Del. Ch. Apr. 30, 2015) (simply because communications "might be interesting" or "may be helpful" to a stockholder does not mean they are necessary and essential).

[105] *Pioneer*, 2025 WL 2106580, at *4.

Plaintiff's citations to the rare cases where Informal Board Materials were deemed necessary support the Court of Chancery's conclusion, rather than undermine it. *Squarespace*[106] was animated by three factors that are absent here. First, the trial court found that the produced minutes did not "capture the content" of the Founder/CEO's early discussions with the allegedly favored bidder and that the CEO potentially withheld that information from the board.[107] There is no support for the notion that Green withheld information from the Board here.[108] Second, *Squarespace* ordered production of Informal Board Materials concerning a meeting among the CEO and the special committee's advisors for which there are no minutes.[109] Again, there are no allegations here of any un-minuted meetings. Finally, *Squarespace* was animated by the fact that the relevant communications had already been collected and produced in a parallel appraisal action.[110] No such mitigating factors justify disturbing the trial court's discretion here.

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[106] *Mich. Elec. Emps.' Pension Fund v. Squarespace, Inc.*, C.A. No. 2024-1041-SEM, at 10, 15 (Del. Ch. Dec. 3, 2025) (TRANSCRIPT) (Tab 3, A403) [hereinafter "*Squarespace Tr.*"].

[107] *Id.* at 15-16 (A417-18).

[108] *Cf. Pioneer*, 2025 WL 2106580, at *4 (denying inspection of Informal Board Materials where "Plaintiff contend[ed] that [the CEO] 'withheld key information from the Board,' but Plaintiff [did] not specify what that key information might be").

[109] *Squarespace Tr.* at 19 (A421).

[110] *Id*. at 5, 12 (A407, A414) (noting the appraisal discovery "factor[ed] into" the court's decision and that the typical concerns about burdening the company were "tempered" by those productions).

Next, Plaintiff relies on *Facebook*[111] to draw a comparison between overly redacted board minutes, produced in *Facebook*, and purportedly "short-form" minutes here.[112] *Facebook* ordered email production because the board minutes had been so heavily redacted that they were functionally "bereft of any information concerning the substance of [the company's] non-privileged discussions" regarding the subject of the investigation.[113] Plaintiff did not allege the Company's minutes were over-redacted at all, let alone that such redactions left them "bereft" of all substance concerning the Board's consideration of the Reincorporation, nor could he.[114] More fundamentally, this argument flies in the face of the Magistrate's and Vice Chancellor's fact-findings that the minutes apprise Plaintiff of the "Board's decision-making, explaining what the Board discussed, what it decided, and why."[115]

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[111] *Facebook*, 2021 WL 529439.

[112] OB at 37-38 (citing *Facebook*, 2021 WL 529439, at *8).

[113] *Facebook,* 2021 WL 529439, at *5, *7.

[114] *See, e.g.*, A666 (counsel providing committee with [redacted]"); A670 (committee receiving presentation from expert concerning "[redacted]").

[115] Op. at 10; *see also* Report at 19 (denying inspection of informal materials "because formal board level documents satisfy those necessary and essential to the Plaintiff's stated purpose and no evidence was presented by the Plaintiff that support the necessity for a broader inspection.").

*CBS*[116] is similarly unavailing. There, the court ordered only a "narrow set" of informal communications from the 28-day period surrounding a particular committee meeting that the stockholder had shown involved suspicious and highly unusual circumstances where a conflicted director attended the meeting and the general counsel resigned immediately after the meeting.[117] No such unusual circumstances are alleged here.

Finally, Plaintiff's argument that the 2024 Proxy contained more details than the minutes, and therefore this Court should assume additional materials are necessary and essential, fares no better.[118] As a factual matter, he ignores that the details contained in the Board materials produced with the Board minutes (and those withheld as privileged) also helped form the basis of the Company's public disclosures.[119] But more fundamentally, this argument misapprehends the different purposes of stockholder disclosures and board minutes. Public disclosures necessarily must be more detailed than Formal Board Materials because "the purpose of shareholder disclosures is to provide stockholders additional

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[116] *Bucks Cnty. Emps.' Ret. Fund v. CBS Corp.*, 2019 WL 6311106 (Del. Ch. Nov. 25, 2019).

[117] *Id.* at *9.

[118] *See* OB at 35-36.

[119] *See, e.g.*, A653 (July 22, 2025 Board Materials); B038 (August 25, 2025 Memo from Professor Solomon).

information" so they can evaluate a major transaction.[120] The fact that additional details about the Reincorporation are available to Plaintiff in the 2024 Proxy does not bear on the adequacy of the Formal Board Materials.

### 2. The Court of Chancery Did Not Abuse Its Discretion When It Rejected Plaintiff's "Pretext" Argument.

Plaintiff's other argument is that he is entitled to the Informal Board Materials because he speculates that the Board's rationale for the Reincorporation stated in its public disclosures and Formal Board Minutes is "pretextual."[121] He contends that what the minutes and public disclosures say were the Board's reasons for approving the Reincorporation cannot be true, and that renders the Formal Board Materials inadequate for his purposes.[122] The Court of Chancery correctly rejected this argument for two overarching reasons.

First, Plaintiff's "pretext" theory is not grounds to obtain Informal Board Materials at all. Plaintiff cites no authority for the proposition that a stockholder's

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[120] *In re GGP, Inc. S'holder Litig.*, 2021 WL 2102326, at *27 (Del. Ch. May 25, 2021) ("[I]f meeting minutes were sufficient to disclose all material facts, then companies would have no need to undertake the significant expense . . . to organize and include such details in their disclosures. They would simply attach meeting minutes (redacted as appropriate) to their public filings and call it a day. In the real world, meeting minutes need not contain the level of detail contained in a proxy issued to inform stockholders of all material issues related to a transformative transaction. To include such granular detail in meeting minutes, in most cases, would entail a titanic waste of resources by a company owned and run for the benefit of stockholders"), *rev'd on other grounds*, 282 A.3d 37 (Del. 2022).

assertion that board materials are "pretextual" is a basis to expand the scope of inspection under Section 220. Such an inference would be extraordinary.[123] Indeed, as the Court of Chancery observed, if a stockholder could convert a books and records inspection into plenary discovery simply by stating a belief that board materials are false, it would turn Delaware law on its head.[124] "A stockholder cannot obtain books and records simply because the stockholder disagrees with a board decision."[125]

Second, the Court of Chancery correctly found that Plaintiff did not prove either of his contentions that the Board's stated rationales for the Reincorporation were, in fact, pretexts.[126] The first allegedly pretextual set of rationales was the

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[121] OB at 39-41.

[122] *Id*. at 38-40.

[123] *See Newman v. KKR Phorm Invs., L.P.*, 2023 WL 5624167, at *9 (Del. Ch. Aug. 31, 2023) (declining "to infer . . . that minutes and records memorializing the meetings and decisions of a public company's board of directors 'were contrived as part of what amounts to a grand conspiracy'" (citation omitted)).

[124] *See* Op. at 12 ("If a stockholder could access informal communications simply by calling a decision 'pretextual,' books and records inspections would devolve into plenary discovery.").

[125] *AmerisourceBergen I*, 2020 WL 132752, at *9.

[126] Op. at 12-14. Plaintiff contends the Court of Chancery "ignored" that the Board was advised by Wilson Sonsini Goodrich & Rosati, who had advised Green

Board's description of Green's ability to "see around corners" and the need to give him time to execute on his "long-term strategic vision."[127] Plaintiff argues that because the Board cited those same concepts as reasons for both the 2020 dual-class extension and the proposed 2025 dual-class extension, that is evidence that the Reincorporation was intended to entrench Green's control, not to advance corporate governance objectives.[128] But the Court of Chancery found Plaintiff did not prove this theory, finding instead that the Company's "consistent use of language to describe its strategy . . . suggests a consistent corporate philosophy rather than a cover-up."[129] If anything, a departure from the Company's prior strategic vision to approve the Reincorporation would suggest that the decision was a pretext, not the reverse. That the Board maintained a similar focus on its long-term strategy in 2025 as it did in 2020 (and 2024) does not provide grounds to hold that its reasoning was pretextual *and* would necessitate inspection of Informal Board Materials.

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on the 2020 Dual-Class extension and Professor Solomon, who has authored articles about dual-class extension. OB at 39-40. The Court did not ignore this argument, rather the Court held that Plaintiff's disagreement with the Board's reasoning for the Reincorporation was "legally untenable." Op. at 12. That is, regardless of how the Board arrived at its decision to approve the Reincorporation or whether it retained advisors that allegedly tipped the scales is immaterial for purposes of determining whether Plaintiff is entitled to inspect Informal Board Materials.

[127] OB 40-42 (citing A473, A497, A1120).

[128] *See id*.

[129] Op. at 13.

The second supposedly pretextual assertion is the Company's stated preference for Nevada's statute-based regime, which the Company stated "can offer more predictability and certainty" than Delaware law in certain respects.[130] Plaintiff argues that no one could possibly have believed that, and from that assertion invites this Court to hold that the Board's rationales regarding reincorporating must have been false, and so he should get Informal Board Materials.[131] In support of his position, Plaintiff dedicates pages of his Opening Brief taking the Court on a tour of the different protections and predictability afforded to stockholders under Delaware's and Nevada's regimes.[132]

The Court of Chancery correctly declined to engage in such comparisons.[133] Plaintiff's disagreement with the Board's assessment of the merits of the Reincorporation is a dispute about legal theory. Indeed, the Company acknowledged that its interpretation of the benefits available under Delaware and Nevada law could

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[130] OB at 41- 46; A839-41.

[131] OB at 41-46; *see also id.* at 43 (arguing that the contention that the Nevada corporate code offers greater predictability than the Delaware corporate code is "demonstrably false").

[132] *See id*. at 42-46.

[133] Op. at 14 ("[W]e should be cautious about second-guessing the judgments of the directors as to how best evaluate and weigh the various competing considerations [of one state's corporate governance regime over another's] as such factors might apply to a specific corporation." (citing *Maffei v. Palkon*, 339 A.3d 705, 743 (Del. 2025))).

be incorrect.[134] There is nothing pretextual here, much less anything that would entitle Plaintiff to inspect Informal Board Materials.[135]

Plaintiff's ability to draft pages' worth of arguments concerning the merits of the Board's decision-making only reinforces the Court of Chancery's fact findings. That he has insight into the merits of those discussions supports the conclusion that Formal Board Materials give Plaintiff everything necessary and essential to satisfy his Demand.[136] He cannot use Section 220 to take plenary-style discovery to try and fish for support that is lacking for his potential claims.[137]

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[134] A841.

[135] Op. at 12 ("Section 220 action is not the proper posture to litigate the merits of a board action."); *Simeone v. Walt Disney Co.*, 302 A.3d 956, 969 (Del. Ch. 2023) ("A stockholder cannot obtain books and records simply because the stockholder disagrees with a board decision[.]" (quoting *AmerisourceBergen I*, 2020 WL 132752, at *9)).

[136] Op. at 11; Report at 19; *see Kaufman v. CA, Inc.*, 905 A.2d 749, 753 (Del. Ch. 2006) ("[T]he books and records that satisfy the action are those that are required to prepare a well-pleaded complaint."); *Cent. Laborers Pension Fund v. News Corp.*, 2011 WL 6224538, at *1 (Del. Ch. Nov. 30, 2011) (explaining Section 220 is meant "to enable potential derivative plaintiffs to obtain the necessary information in advance of filing their derivative action"); *Pioneer*, 2025 WL 2106580, at *3 ("[T]he stockholder should be given enough information to effectively address the problem, either through derivative litigation or through direct contact with the corporation's directors and/or stockholders.").

[137] Op. at 12-14 ("If a stockholder could access informal communications simply by calling a decision 'pretextual,' books and records inspections would devolve into plenary discovery. Such a rule would invite fishing expeditions based on a stockholder's subjective views."); *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 565 (Del. 1997) (noting Section 220 "is not an invitation to an indiscriminate fishing expedition").

## CONCLUSION

For the foregoing reasons, the judgment of the Court of Chancery should be affirmed.

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## CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2026, a copy of the foregoing **Appellee's Answering Brief** was served via File & Serve*Xpress* on the following counsel of record:

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