



IN THE SUPREME COURT OF THE STATE OF DELAWARE

---

RICHARD SCARANTINO,  
Plaintiff Below / Appellant,  
v.  
THE TRADE DESK, INC.,  
Defendant Below / Appellee.

) No. 1, 2026  
) Appeal from the Court of Chancery  
) of the State of Delaware  
) C.A. No. 2025-0442-LM  
) **PUBLIC VERSION FILED**  
) **APRIL 17, 2026**

---

**APPELLANT RICHARD SCARANTINO'S REPLY BRIEF**

Dated: April 2, 2026

*Of Counsel:*

**FIELDS KUPKA & SHUKUROV LLP**

William J. Fields  
Christopher J. Kupka  
Samir Shukurov  
141 Tompkins Ave, Suite 404  
Pleasantville, NY 10570  
(212) 231-1500

**RMLAW, P.C.**

Richard A. Maniskas  
1055 Westlakes Drive, Suite 300  
Berwyn, PA 19312  
(484) 324-6800

**MCCARTER & ENGLISH, LLP**  
Sarah E. Delia (Bar No. 5833)  
Renaissance Centre  
405 North King Street, 8<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 984-6300  
sdelia@mccarter.com

*Attorneys for Plaintiff Below /  
Appellant Richard Scarantino*

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Table of Authorities .....	ii
Preliminary Statement.....	1
Argument.....	3
I.    The Record Demonstrated that the Unproduced Formal Board Materials Would Be Insufficient .....	3
A.    The Record Indicated that the Unproduced Formal Board Materials Would Be Deficient .....	3
B.    The Incomplete Record before the Court of Chancery Is the Product of Appellee’s Refusal to Produce Responsive Formal Board Materials.....	6
II.   The Formal Board Materials Related to the Reincorporation from April through July 2024 Reflect Almost Nothing of Substance .....	11
III.  The Formal Board Materials from August through October 2024 Contain Pretext and False Statements .....	19
CONCLUSION .....	22

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>Cases</b>	
<i>Bucks Cty. Emps. Ret.Fund v. CBS Corp.</i> , 2019 WL 6311106 (Del. Ch. Nov. 25, 2019).....	14, 15
<i>City Pension Fund for Firefighters &amp; Police Officers in City of Miami v. The Trade Desk, Inc.</i> , 2022 WL 3009959 (Del. Ch. July 29, 2022).....	3
<i>Emps. Ret. Sys. of R.I. v. Facebook, Inc.</i> , 2021 WL 529439 (Del. Ch. Feb. 10, 2021).....	13
<i>Firestone Tire &amp; Rubber Co. v. Adams</i> , 541 A.2d 567 (Del. 1988).....	14
<i>In re GGP, Inc. S'holder Litig.</i> , 2021 WL 2102326 (Del. Ch. May 25, 2021) .....	13
<i>KT4 Partners LLC v. Palantir Techs., Inc.</i> , 203 A.3d 738 (Del. 2019).....	10, 13, 17
<i>Lebanon Cty. Emps. Ret. Fund v. AmerisourceBergen Corp.</i> , 2020 WL 132752 (Del. Ch. Jan. 13, 2020) .....	6
<i>Maffei v. Palkon</i> , 339 A.3d 705 (Del. 2025).....	19
<i>Michigan Elec. Emps. Pension Fund v. Squarespace, Inc.</i> , C.A. No. 2024-1041-SEM (Del. Ch. Dec. 3, 2025) (TRANSCRIPT).....	4, 12, 15
<i>Moran v. Unation, Inc.</i> 2025 WL 3706330 (Del. Ch. Dec. 22, 2025) .....	9
<i>Morris v. Spectra Energy Partners (DE) GP, LP</i> , 2018 WL 2095241 (Del. Ch. May 7, 2018) .....	12
<i>Newman v. KKR Phorm Investors, L.P.</i> , 2023 WL 5624167 (Del. Ch. Aug. 31, 2023).....	20
<i>Operating Eng'rs Constr. Indus. &amp; Misc. Pension Fund v. Pioneer Nat. Res. Co.</i> , 2025 WL 2106580 (Del. Ch. July 28, 2025), <i>aff'd</i> , --- A.3d ----, 2026 WL 682053 (Del. Mar. 11, 2026).....	16, 17

<i>Petry v. Gilead Scis., Inc.</i> , 2020 WL 6870461 (Del. Ch. Nov. 24, 2020).....	6
<i>PharmAthene, Inc. v. SIGA Techs., Inc.</i> , 2009 WL 2031793 (Del. Ch. July 10, 2009).....	12
<i>Saito v. McKesson HBOC, Inc.</i> , 806 A.2d 113 (Del. 2002).....	11
<i>Simeone v. Walt Disney Co.</i> , 302 A.3d 956 (Del. Ch. 2023) .....	20
<i>In re The Trade Desk, Inc. Deriv. Litig.</i> , 2025 WL 503015 (Del. Ch. Feb. 14, 2025).....	4
<i>In re The Trade Desk, Inc. Deriv. Litig.</i> , No. 114, 2025 (Del. Oct. 22, 2025) (ARGUMENT) .....	3
<i>In re Zendesk, Inc. Section 220 Litig.</i> , 2023 WL 5496485 (Del. Ch. Aug. 25, 2023).....	16

## PRELIMINARY STATEMENT<sup>1</sup>

Appellee cannot deny that the Court of Chancery reached a sufficiency determination with respect to eight months' worth of Formal Board Materials concerning the Capitalization Matters that it never saw. Nor can Appellee meaningfully contest that the Formal Board Materials from April through July 2024 concerning the Reincorporation, which it did produce, provided no insight into the Board's deliberations, consistent with prior descriptions of Trade Desk's minutes by this Court and the Court of Chancery. Rather, Appellee uses its answering brief<sup>2</sup> to argue that it was reasonable for the Court of Chancery to deem those Formal Board Materials sufficient by extrapolating from demonstrably pretextual *post hoc* materials that do not pass muster upon more than a passing glance. Appellee sets forth no authority to support this argument, which fails for very good reasons.

Delaware courts have repeatedly confirmed that the mere act of keeping "minutes" does not categorically bar stockholders from accessing electronic communications. Stockholders have been awarded access to Informal Board Materials where Formal Board Materials were unavailable, heavily redacted, lacking substance, or otherwise wanting. Appellee's assertion that "the Company adhered to

---

<sup>1</sup> Defined terms used herein have the meaning ascribed in Appellant's opening brief (Trans. ID 78511304, "Opening Brief" or "OB").

<sup>2</sup> Trans. ID 78775270, "AB".

corporate formalities” is an elevation of form over substance, glossing over the deficiencies in its claimed adherence. A corporation cannot frustrate a stockholder’s proper purpose through box checking by rote.

And even if a corporation could cure deficiencies in earlier materials by including more detail in later materials, the “reasoning” in the Formal Board Materials from August through October 2024—namely, that Nevada law better enables Trade Desk to compete against other firms and provides more certainty—is facially implausible. Nevada’s constituency statute does not afford the Board any greater latitude than Delaware law and the Board identified no other way in which Nevada could enhance the Company’s competitiveness. And the notion that Nevada corporate law provides greater predictability than Delaware is farcical.

True, if minutes adequately reflect the timing, process, and substance of a board’s deliberations, Section 220 likely will not require the production of director communications. Trade Desk’s Formal Board Materials, however, are anything but adequate. Inspection of communications is therefore necessary and essential for Appellant to complete his investigation of whether the Reincorporation was linked to the Board’s extension of Green’s control.

## ARGUMENT

### **I. THE RECORD DEMONSTRATED THAT THE UNPRODUCED FORMAL BOARD MATERIALS WOULD BE INSUFFICIENT.**

In his Opening Brief, Appellant showed that the Court of Chancery abused its discretion by determining that Formal Board Materials from prior to April 2024, *which it never saw*, were sufficient for his investigation of the Capitalization Matters.<sup>3</sup> Appellee counters that it was supposedly reasonable to deem the unproduced materials sufficient based on the limited record of materials that Appellee strategically chose to produce.<sup>4</sup> Even if it were within the bounds of reason to presume that withheld materials could be sufficient, *arguendo*, the record here indicated they would not be.

#### **A. The Record Indicated that the Unproduced Formal Board Materials Would Be Deficient.**

Both this Court and the Court of Chancery have observed in prior matters that Trade Desk’s minutes lack substance.<sup>5</sup> Consistent with those observations, the short-

---

<sup>3</sup> OB at 26-32.

<sup>4</sup> AB at 20.

<sup>5</sup> *In re The Trade Desk, Inc. Deriv. Litig.*, No. 114, 2025, oral argument video at 29:09-22 (Del. Oct. 22, 2025), available at: <https://courts.delaware.gov/supreme/oralarguments> (Q: “What are we to do with the lack of substantive minutes? It really puts us at a disadvantage when they’re really just perfunctory and we can’t rely on them one way or another?”) *see also City Pension Fund for Firefighters & Police Officers in City of Miami v. The Trade Desk, Inc.*, 2022 WL 3009959, at \*6 (Del. Ch. July 29, 2022) (A595) (observing that: “The

form Formal Board Materials from April through July 2024 produced in this litigation documented only the Board’s discussions of unspecified [REDACTED]

[REDACTED]<sup>6</sup> These minutes provided even less information about the Board’s deliberations than the 2024 Proxy.<sup>7</sup>

In response, Appellee merely parrots the Court of Chancery’s characterization of these materials as “brief and preliminary” and points to materials produced beginning in August 2024, after Trade Desk had brought in Solomon and Green’s personal lawyers to prepare documents in connection with the Reincorporation.<sup>8</sup> But those later materials provide no basis to infer that the Formal Board Materials concerning the Capitalization Matters, which date from September 2023 through May 2024, would be any different from the short-form materials generated prior to

---

substantive portion of [certain] meeting minutes consist of three sentences and lack any detail”); *In re The Trade Desk, Inc. Deriv. Litig.*, 2025 WL 503015, at \*4-5 & n.48 (Del. Ch. Feb. 14, 2025) (quoting at length from superficial minutes and reflecting that certain minutes were “sparse” and “not detailed”).

<sup>6</sup> OB at 34-35.

<sup>7</sup> *Id.* at 35-36 (citing *Michigan Elec. Emps. Pension Fund v. Squarespace, Inc.*, C.A. No. 2024-1041-SEM, at 10 (A412) (Del. Ch. Dec. 3, 2025) (TRANSCRIPT), for the proposition that it is implausible that descriptions in a proxy of “decisions that were made and matters that were discussed at meetings not reflected in the minutes” could have come “from memory[,]” suggesting the company “must have relied on [other] documents that memorialize their content[.]” (quotation cleaned up in OB)).

<sup>8</sup> AB at 25.

September 2023<sup>9</sup> or the short-form materials generated in April through July 2024.<sup>10</sup> At the time the Board considered the Capitalization Matters, Green’s personal lawyers were indisputably adverse to the Company.

Indeed, the Formal Board Materials from August through October 2024, which appear on first glance to explain the Board’s actual rationale, are also deficient. As explained below in Argument III, the materials from these months include recycled rationales previously—and subsequently—given for extending Green’s control, as well as false statements about Delaware and Nevada law. Appellees advance no reason to believe that pretextual materials prepared upon the retention of professionals who have shepherded multiple Delaware-to-Nevada reincorporations would be reflective of the contents of the Formal Board Materials relating to the Capitalization Matters, particularly given Trade Desk’s historical practice of keeping minutes that lack substance.

Appellee is also silent on the fact that the last time Green had solicited Board approval of a dual-class extension, he sent emails to various directors and officers in furtherance of his cause.<sup>11</sup> The Court of Chancery downplayed this “use of email” as “inconsequential” and determined it “did not support a finding that the Board

---

<sup>9</sup> See n.5, *supra*.

<sup>10</sup> OB at 34-35.

<sup>11</sup> See *id.* at 9-10.

abandoned corporate formalities.”<sup>12</sup> Respectfully, the Court of Chancery missed the importance of this part of the record; evidence that a board “conducts formal business through informal channels” will support production of Informal Board Materials where there are “atypical circumstances[,]” including inadequate minute-keeping.<sup>13</sup> Having shown that Formal Board Materials are insufficient, Green’s past use of email provides evidence of at least one custodian who will likely have responsive Informal Board Materials.

**B. The Incomplete Record before the Court of Chancery Is the Product of Appellee’s Refusal to Produce Responsive Formal Board Materials.**

The needlessly incomplete record before the Court of Chancery was the unfortunate consequence of Appellee’s refusal to simply produce materials it should have turned over in the first place.<sup>14</sup> Appellee protests that it was reasonable to “dispute[] that [Appellant] had alleged a credible basis to inspect Board materials

---

<sup>12</sup> Op. at 11.

<sup>13</sup> *Id.* at 8-9; *see generally* Argument §II, *infra* (concerning precedent where there were not sufficient Formal Board Materials for investigative purposes).

<sup>14</sup> *See* OB at 27-28 (citing *Petry v. Gilead Scis., Inc.*, 2020 WL 6870461, at \*24 (Del. Ch. Nov. 24, 2020) and *Lebanon Cty. Emps. Ret. Fund v. AmerisourceBergen Corp.*, 2020 WL 132752, at \*24 (Del. Ch. Jan. 13, 2020), in which the Court of Chancery exhorted corporations to turn over Formal Board Materials in the ordinary course)).

related to the Company’s dual-class capitalization.”<sup>15</sup> This position makes no sense given the timing of the Board’s deliberations:

Sep. 2023 – May 2024: The Board considers an extension of Green’s control in Delaware, where *MFW* was still the law.<sup>16</sup>

Apr. 2024 – Oct. 2024: The Board considers the Reincorporation.<sup>17</sup>

Nov. 2024: Green casts his Class B shares to force through the Reincorporation, which a majority of Class A shares voted against.<sup>18</sup>

Jan. 2025 – July 2025: After a break for the holidays, the Board approves an extension of Green’s control in Nevada.<sup>19</sup>

July 14, 2025: Trade Desk files the 2025 Proxy seeking stockholder approval of extending Green’s control.<sup>20</sup>

These events enabled Green to cast his ~48.4% voting power to extend his control in a vote that would have failed under *MFW*.<sup>21</sup>

It bears underscoring that the Company only revealed that it was seeking to extend Green’s control—both before and after the Reincorporation—when it issued

---

<sup>15</sup> AB at 19.

<sup>16</sup> A1119.

<sup>17</sup> A839.

<sup>18</sup> A1000.

<sup>19</sup> A1121-24.

<sup>20</sup> A1103 *et seq.*

<sup>21</sup> A1130, 1132.

the 2025 Proxy just two days before trial in this litigation.<sup>22</sup> The Board’s reasons for hiding the ball are its own, but this timeline alone gives rise to a credible basis to suspect that the Reincorporation was undertaken for the purpose of perpetuating Green’s control. When considered with the other elements of the constellation of well-pleaded facts, whether Appellant stated a proper purpose to investigate the Capitalization Matters was not a close call.<sup>23</sup>

Appellee tries to support its refusal to produce materials concerning the Capitalization Matters by claiming that “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[.]”<sup>24</sup> The Vice Chancellor’s mistaken *obiter dicta* arose not from the Court’s view of the facts supporting Appellant’s proper purpose, but from its crediting of Appellee’s claim that Appellant did not demand inspection of materials relating to the Capitalization

---

<sup>22</sup> Op. at 5; *see also* A1119-24.

<sup>23</sup> *See* OB at 27-28 & n.80, 86; *see also id.* at 14 & n.33 (regarding retention of Green’s personal lawyers, who had previously negotiated opposite Appellee regarding Green’s control, to advise on the Reincorporation) and 14-15 (regarding selection of advisor on Reincorporation who had previously written on avoidance of *MFW* to sunset extensions).

<sup>24</sup> *See* AB at 19 & n.69. Appellee’s pointless aside about the rejection of fee-shifting supporting reasonableness, buried in a footnote, is misleading. *See id.* Appellant dropped his request for fee-shifting once Appellee abandoned its unevicenced defense that Appellant was conspiring with other stockholder-litigants. *See* Appellant’s Pre-Trial Reply Brief (Trans. ID 76616306) at 25 n.94 (AR85).

Matters.<sup>25</sup> As Appellant pointed out in briefing below, however, Appellant expressly sought documents concerning (i) conflicts facing Green and (ii) any sunset of the dual-class capitalization.<sup>26</sup> Far from showing the “reasonableness” of Trade Desk’s position, the Court of Chancery’s repetition of Appellee’s false claim that Appellant had never sought those documents is, in fact, further evidence of the *unreasonableness* of the Court of Chancery’s Opinion.

Appellee takes further umbrage with Appellant analogizing this case to *Moran v. Unation, Inc.*, in which the Court of Chancery “warned against the risk of creating ‘an adverse incentive for corporations not to participate’” so that they could avoid ever having to produce more than Formal Board Materials.<sup>27</sup> Appellee protests that it produced certain Formal Board Materials and did not default.<sup>28</sup> The teaching of *Moran*, however, is that a corporation that needlessly increases the difficulty of the Court’s task should not reap a benefit from its behavior. Appellee had a chance to argue the merits of the (in)sufficiency of Formal Board Materials concerning the Capitalization Matters based on the actual content of those documents. It is

---

<sup>25</sup> Op. at 11 n.49.

<sup>26</sup> A398 (citing A991). Inexplicably, Appellee to this day denies that these categories cover Green’s control. *See* AB at 11 & nn.40-41 (ignoring the plain language of the Demand).

<sup>27</sup> OB at 29 (citing 2025 WL 3706330, at \*13 (Del. Ch. Dec. 22, 2025)).

<sup>28</sup> AB at 19-20.

inequitable to force the parties and the Court to expend further resources down the line on a settle-order process only after another round of argument over the unproduced materials, and Appellee “has no one to blame but itself for” this situation of its own creation.<sup>29</sup>

Lastly, Appellee seems to imply that Appellant waived the right to argue for “post-trial proceedings about the sufficiency of Formal Board Materials” concerning the Capitalization Matters.<sup>30</sup> This contention runs headlong into the very nature of Appellant’s exception, which was premised on the argument that the sufficiency determination was wrong because the contents of the unproduced Formal Board Materials concerning the Capitalization Matters were unknown.<sup>31</sup> Appellee’s refusal to produce those Formal Board Materials, notwithstanding that it did not take exception to the Final Report, frustrated the entire Section 220 process.

---

<sup>29</sup> See *KT4 Partners LLC v. Palantir Techs., Inc.*, 203 A.3d 738, 757-58 (Del. 2019).

<sup>30</sup> AB at 21-22.

<sup>31</sup> A229 n.79.

**II. THE FORMAL BOARD MATERIALS RELATED TO THE REINCORPORATION FROM APRIL THROUGH JULY 2024 REFLECT ALMOST NOTHING OF SUBSTANCE.**

Appellant showed why the Court of Chancery’s deference to Appellee’s claim that the Formal Board Materials from April through July 2024 were “preliminary” was unreasonable.<sup>32</sup> Appellee’s counterargument that there was “nothing more to say than what is contained in the minutes” is unavailing.<sup>33</sup>

It is not credible that in three months of deliberations, which included the formation of a special committee, the Board considered only [REDACTED] [REDACTED] This is particularly true given that the Reincorporation deliberations overlapped with the Board’s discussion of the Capitalization Matters in April – May 2024.<sup>34</sup> The Court of Chancery recognized this Court’s guidance that a stockholder investigating potential wrongdoing “should be given enough information to effectively address the problem” through derivative litigation or contact with directors and/or other stockholders.<sup>35</sup> The Formal Board Materials regarding the Reincorporation from

---

<sup>32</sup> OB at 34-38.

<sup>33</sup> AB at 25.

<sup>34</sup> A617, A1119.

<sup>35</sup> Op. at 10 & n.43 (quoting Rep. at 19 (quoting *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 115 (Del. 2002))).

April through July 2024 do not provide “enough information” to achieve anything, and cannot be rendered sufficient through retroactive effect of subsequent materials any more than the Formal Board Materials concerning the Capitalization Matters.<sup>36</sup>

In his Opening Brief, Appellant pointed out that the 2024 Proxy contained more detail than the corresponding Formal Board Materials and explained that, consistent with the Court of Chancery’s recent decision in *Squarespace*, this indicated that the Board is in possession of additional materials that are necessary and essential for his proper purpose.<sup>37</sup> Appellee has two responses. *First*, that the information for these disclosures was gleaned from subsequently generated materials and privileged materials.<sup>38</sup> If the former, it begs the question of where the information came from when it came time to generate those materials. If the latter, it means that the Company wrongly withheld documents that contained facts and not purely legal advice.<sup>39</sup> *Second*, Appellee claims that just because there are additional

---

<sup>36</sup> See Argument §I, *supra*.

<sup>37</sup> See OB at 35-36 & n.103 (citing *Squarespace*, Tr. at 10 (A412)).

<sup>38</sup> See AB at 30 & n.119.

<sup>39</sup> See Appellant’s Opening Pre-Trial Brief (Trans. ID 76489614) at 40 n.131 (AR47) (Appellant citing *Morris v. Spectra Energy Partners (DE) GP, LP*, 2018 WL 2095241, at \*2 (Del. Ch. May 7, 2018) and *PharmAthene, Inc. v. SIGA Techs., Inc.*, 2009 WL 2031793, at \*2 (Del. Ch. July 10, 2009) to explain that “to the extent that the Privileged Documents contain ‘business advice’ or ‘underlying facts’ that are not privileged, such information must be produced”).

facts available in the 2024 Proxy, it does not mean that the underlying Formal Board Materials are deficient.<sup>40</sup> But as already shown, it is not enough to wave off three months' deliberations with [REDACTED]

Appellee points to *In re GGP, Inc. Stockholder Litigation*<sup>41</sup> to argue that proxies must contain more detail than Formal Board Materials because it is through proxies that corporations solicit informed stockholder votes.<sup>42</sup> *GGP* is inapposite. In *GGP*, the plaintiffs alleged actionable omissions of conflicts arising from facts disclosed in a proxy that were not documented in minutes.<sup>43</sup> Such claims are orthogonal to the relevant inquiry in a Section 220 action, namely: has a stockholder been provided with documents sufficient to achieve his proper purpose? The April – July 2024 Formal Board Materials are plainly insufficient, and Appellant is therefore entitled to necessary and essential Informal Board Materials.<sup>44</sup>

Appellee also fails to distinguish analogous cases where Delaware courts ordered production of Informal Board Materials. Appellee claims that *Employees Retirement System of Rhode Island v. Facebook, Inc.* is inapplicable because Trade

---

<sup>40</sup> AB at 31.

<sup>41</sup> *Id.* (citing 2021 WL 2102326 (Del. Ch. May 25, 2021)).

<sup>42</sup> *Id.* at 30-31.

<sup>43</sup> *GGP*, 2021 WL 2102326 at \*27.

<sup>44</sup> *Palantir*, 203 A.3d at 752-53 (confirming the principle that “if non-email books and records are insufficient, then the court should order emails to be produced”).

Desk did not produce redacted materials.<sup>45</sup> The point of the comparison, however, is that the Formal Board Materials from April through July 2024 are so sparse that their difference from almost-entirely redacted materials is one of form and not substance. To the extent the Court of Chancery determined that the April through July 2024 “minutes apprise [Appellant] of the ‘Board’s decision-making, explaining what the Board discussed, what it decided[,]”<sup>46</sup> such a determination “exceed[s] the bounds of reason in view of the circumstances.”<sup>47</sup>

Likewise, Appellee claims that *Bucks County Employees Retirement Fund v. CBS Corp.* is distinguishable because it involved “suspicious and highly unusual circumstances[,]” including a conflicted director attending the meeting and a resignation, and “[n]o such unusual circumstances are alleged here.”<sup>48</sup> In this case, [REDACTED] and there were other “suspicious and highly unusual” circumstances.<sup>49</sup> For example, the April 23

---

<sup>45</sup> AB at 29 (discussing 2021 WL 529439 (Del. Ch. Feb. 10, 2021)).

<sup>46</sup> Op. at 10.

<sup>47</sup> *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988) (describing one way a court can abuse its discretion).

<sup>48</sup> AB at 30 (citing 2019 WL 6311106 (Del. Ch. Nov. 25, 2019)).

<sup>49</sup> A617 (April 23 Minutes); A639 (July 22 Minutes); A650 (July 22 Committee Minutes).

meeting took place while the Board was still considering a dual-class extension.<sup>50</sup>

[REDACTED]

[REDACTED]<sup>51</sup> The materials [REDACTED]

[REDACTED]

[REDACTED] In *CBS*,

unusual circumstances led to an order to produce communications where the relevant

portion of the minutes only reflected discussion of “strategic possibilities[.]”<sup>52</sup> The

same result should issue here, where only [REDACTED]

[REDACTED]<sup>53</sup>

Appellees also fail to distinguish *Squarespace*, identifying three alleged differences but failing to explain why any of them are outcome-determinative.<sup>54</sup>

Appellee points to the fact that communications had already been collected in *Squarespace*, but the significant majority of Delaware cases in which production of communications was ordered did not involve an existing collection. In *Squarespace* there was an unminuted meeting, but query whether the difference between a

---

<sup>50</sup> A1119.

<sup>51</sup> A650.

<sup>52</sup> 2019 WL 6311106, at \*7.

<sup>53</sup> A617.

<sup>54</sup> See AB at 28.

meeting with minutes and a meeting with useless minutes is not purely academic.<sup>55</sup> And finally, Appellee argues that the minutes in *Squarespace* did not “capture the content” of certain discussions.<sup>56</sup> Again, what substance is there in documenting [REDACTED] [REDACTED]?

By contrast, none of Appellee’s authorities requires a different result. In *In re Zendesk, Inc. Section 220 Litigation*, the Court declined to order production of emails after reviewing specific details from the extensive board materials and concluding that they provided “sufficient detail to orient Plaintiff[] as to what was discussed” even though “Plaintiffs still ha[d] questions[.]”<sup>57</sup> Here, by contrast, the Formal Board Materials from April through July 2024 did not provide answers to any questions other than [REDACTED]

[REDACTED] The *Zendesk* Court agreed that “if non-email books and records are insufficient, then the court should order emails to be produced.”<sup>58</sup> The Formal Board Materials from April through July 2024 are insufficient.

Similarly, the Court in *Operating Engineers Construction Industry & Miscellaneous Pension Fund v. Pioneer Natural Resources Company* declined to

---

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> 2023 WL 5496485, at \*11-12 (Del. Ch. Aug. 25, 2023).

<sup>58</sup> *Id.* at \*10.

order production of electronic communications where Plaintiff alleged that an officer had withheld information from the board, yet there was only a “mere possibility that some additional details might exist in informal communications” and “the produced Board materials [were] extensive.”<sup>59</sup> Appellee suggests that the same result should issue here, claiming “[t]here is no support for the notion that Green withheld information from the Board here.”<sup>60</sup> But in *Pioneer* there was no showing that the minutes were wanting, and the relevant text message showed that the fiduciary had used texts to coordinate oil output reductions — not to pursue strategic transactions through which he would receive a nonratable benefit, like the one that was the subject of the investigation.<sup>61</sup> Here, the short-form minutes reveal nothing, and Green had a proven history of using emails to coordinate the extension of his control — *i.e.*, the very subject of Appellant’s investigation.

\* \* \*

Appellant and Appellee can both point to similarities and differences in all these cases. Ultimately, the inquiry before the Court is whether, under the standards reaffirmed in *Palantir*, the Court of Chancery abused its discretion in determining

---

<sup>59</sup> 2025 WL 2106580, at \*4 (Del. Ch. July 28, 2025), *aff’d*, --- A.3d ----, 2026 WL 682053 (Del. Mar. 11, 2026).

<sup>60</sup> AB at 28.

<sup>61</sup> *Pioneer*, 2025 WL 2106580, at \*2, \*4.

that the Formal Board Materials from April through July 2024 provide sufficient detail to satisfy Appellant's investigative purpose. Because the answer is an unqualified yes, Informal Board Materials from this time period are necessary and essential.

### **III. THE FORMAL BOARD MATERIALS FROM AUGUST THROUGH OCTOBER 2024 CONTAIN PRETEXT AND FALSE STATEMENTS.**

Appellant showed at length that the only reason in the Formal Board Materials from August through October 2024 that was not predicated on falsehoods or pretext was the Board’s desire to insulate itself from liability to stockholders.<sup>62</sup> Appellant is investigating whether the Board undertook the Reincorporation so that it could subsequently extend Green’s control for illusory consideration without exposing its members to claims that they had breached their fiduciary duty of loyalty. A (former) Delaware corporation cannot stymie investigation of loyalty claims against its directors by simply declaring that is what it is doing.<sup>63</sup>

In response to Appellants’ exhaustive showing that the other reasons set forth in the Formal Board Materials from August through October 2024 were provably false, Appellee counters with two arguments: (i) “Plaintiff cites no authority for the proposition that a stockholder’s assertion that board materials are ‘pretextual’ is a basis to expand the scope of inspection under Section 220. Such an inference would be extraordinary”;<sup>64</sup> and (ii) “Plaintiff did not prove either of his contentions that the

---

<sup>62</sup> OB at 38-47.

<sup>63</sup> See *Maffei v. Palkon*, 339 A.3d 705, 741 n.249 (Del. 2025) (explaining that a claim may lie where a reincorporation is part of a multi-step fiduciary breach).

<sup>64</sup> AB at 31-32.

Board’s stated rationales for the Reincorporation were, in fact, pretexts.”<sup>65</sup> Appellee is wrong on both counts.

As to the first point, Appellant is aware of no other circumstance in which a corporation advanced demonstrably false reasons and complete *non sequiturs* in support of a corporate action. The stockholders in Appellee’s cases did not come close to showing what Appellant has demonstrated here. In *Newman v. KKR Phorm Investors, L.P.*, the plaintiff alleged that the “minutes and the Written Consent must [have been] ‘false’ because the Section 220 documents he obtained [did] not include a record of a meeting during which the Audit Committee reviewed the Policy[,]” notwithstanding that the “documents confirm that the Audit Committee Directors attended the November Meeting, reviewed the Policy, and approved KKR Phorm’s participation under the Policy.”<sup>66</sup> In *Simeone v. Walt Disney Co.*, the stockholder was denied access to books and records because his theory of wrongdoing was that the company should not have opposed a bill that limited instruction on sexual orientation or gender identity in Florida classrooms.<sup>67</sup>

Here, by contrast and to Appellee’s second point, Appellant showed that the Nevada’s constituency statute could not possibly confer a competitive advantage on

---

<sup>65</sup> AB at 32.

<sup>66</sup> 2023 WL 5624167, at \*9 (Del. Ch. Aug. 31, 2023).

<sup>67</sup> 302 A.3d 956, 969 (Del. Ch. 2023).

Trade Desk because it doesn't give the Board any wider latitude to make decisions than already afforded under Delaware law outside the narrow *Revlon* context.<sup>68</sup> Appellee does not explain how disregarding short-term price valuation in an outright auction could confer a competitive advantage, particular where Green has committed to staying on as Trade Desk's controller for an additional decade.

Likewise, Appellee does not even try to show that Nevada law is more predictable than Delaware law, instead belittling Appellant's argument as a "tour" of the competing regimes. No comparison of Nevada law to Delaware law could possibly end in the conclusion that the former offers more predictability than the latter and this Court need not shy away from objective truth in the interests of comity. There may be reasons for a board of directors acting on a clear day to prefer Nevada, including its shield from fiduciary liability,<sup>69</sup> but reincorporating to Nevada because a "code" offers "certainty" makes as much sense as moving to Wyoming for its superior oceanfront beach properties for in-person Board meetings. The Court is not obligated to credit false statements just because a board commits them to paper and Appellant is entitled to documents sufficient to investigate the Board's deliberations when the reasons in the productions to date have been objectively wrong.

---

<sup>68</sup> OB at 41-42.

<sup>69</sup> As mentioned above, this investigation is trained on whether the Reincorporation was undertaken on a "clear day".

## CONCLUSION

For the reasons set forth in the Opening Brief and above, the Court should reverse the Letter Opinion and award production of director communications necessary and essential to Appellant's proper purpose.

Dated: April 2, 2026

**MCCARTER & ENGLISH, LLP**

*Of Counsel:*

/s/ Sarah E. Delia

**FIELDS KUPKA & SHUKUROV LLP**

Sarah E. Delia (Bar No. 5833)

William J. Fields

Renaissance Centre

Christopher J. Kupka

405 North King Street, 8th Floor

Samir Shukurov

Wilmington, Delaware 19801

141 Tompkins Ave, Suite 404

(302) 984-6300

Pleasantville, NY 10570

*Attorneys for Plaintiff Below / Appellant*

(212) 231-1500

*Richard Scarantino*

**RM LAW, P.C.**

Richard A. Maniskas

1055 Westlakes Drive, Suite 300

Berwyn, PA 19312

(484) 324-6800

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April, 2026, true and correct copies of the foregoing **Public Verison of Appellant Richard Scarantino's Reply Brief** were served on the following individuals via File & Serve*Express*:

Brad D. Sorrels (Bar No. 5233)  
Andrew D. Cordo (Bar No. 4534)  
Nora M. Crawford (Bar No. 6399)  
Joshua A. Manning (Bar No. 6859)  
Amanda L. Day (Bar No. 7038)  
Jacqueline G. Conner (Bar No. 7181)  
**WILSON SONSINI GOODRICH & ROSATI P.C.**  
222 Delaware Avenue, Suite 800  
Wilmington, Delaware 19801  
(302) 304-7600

*Counsel for Defendant Below / Appellee*  
*The Trade Desk, Inc.*

*/s/ Sarah E. Delia*  
\_\_\_\_\_  
Sarah E. Delia (Bar No. 5833)