



IN THE

Supreme Court of the State of Delaware

TOMALES BAY CAPITAL ANDURIL III, L.P., a Delaware limited partnership, and TOMALES BAY CAPITAL ANDURIL III GP, LLC, a Delaware limited liability company, and IQBALJIT KAHLON, Managing Member of Tomales Bay Capital Anduril III GP, LLC,

Defendants
Below/Appellants,

v.

LEO INVESTMENTS HONG KONG LIMITED, a limited liability company organized under the laws of Hong Kong,

Plaintiff Below,

and

PRO PUBLICA, INC.,

Objector Below/Appellee.

No. 163, 2026

CASE BELOW:

Court of Chancery of the
State of Delaware
C.A. No. 2022-0175-JTL

APPELLANTS' CORRECTED OPENING BRIEF

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NATURE OF PROCEEDINGS

This appeal arises from the denial of continued confidential treatment of the names, addresses, and contact information of 339 private investors—personally identifying information that the defendant investment fund manager redacted from two exhibits in the underlying proceedings. At no point during the trial between Plaintiff Leo Investments Hong Kong Limited (“Leo”) and Defendants Tomales Bay Capital Anduril III, L.P., Tomales Bay Capital Anduril III GP, LLC, and Iqbaljit Kahlon (collectively, “TBC”) did any party use those two exhibits. The only reference to the exhibits was by the trial court in its post-trial opinion, which cited them at the end of string cites for two narrow factual propositions also supported by other evidence. And even then, the redacted information was immaterial to those two propositions, which concerned only the unredacted information in the exhibits. Nevertheless, when Pro Publica, Inc. (“ProPublica”)—a non-party to this case—sought disclosure of the redacted information under Court of Chancery Rule 5.1, the trial court granted that request. Absent reversal by this Court, the identities of 339 private investors who have nothing to do with this case—and whose names and contact information are irrelevant to understanding this case—will be publicly disclosed, to the irreversible detriment of TBC and the investors alike.

The trial court’s order was reversible error. Rule 5.1 permits redaction of information if the information is maintained confidentially, it is not otherwise

publicly available, public access to the information will cause particularized harm, and the magnitude of harm from disclosure outweighs the public interest in the information. These factors are readily satisfied with respect to the information at issue here. TBC keeps its investors' identities strictly confidential. Their identities are not otherwise publicly available. Disclosure of this information would cause particularized harm to both TBC and the investors. And that harm outweighs the negligible public interest in the information, which was not used by the parties, was not relied on by the court, and is not material to understanding the nature of the underlying dispute or any of the trial court's decisions.

The trial court's contrary conclusion was the product of multiple errors. The court suggested that TBC did not consistently maintain confidentiality but overlooked un rebutted evidence disproving its premise for that belief. The court discounted the harm from disclosure based on reasoning that ignores the uncontradicted record, case law, and common sense. And it ascribed a heightened public interest to the information even though the parties never utilized and the court never relied on the investors' identities, which are immaterial to the public's understanding of this case. The trial court's order is not only deeply flawed but will have far-reaching consequences if affirmed. This Court should reverse.

SUMMARY OF ARGUMENT

1. TBC has satisfied the four requirements under Court of Chancery Rule 5.1 for continued confidential treatment of the redacted information in the two exhibits at issue. First, the redacted information—consisting of the identities of hundreds of investors in TBC’s funds—is maintained confidentially by TBC through confidentiality provisions with limited partners, nondisclosure agreements with brokers and intermediaries, and stringent cybersecurity measures, as TBC’s managing partner, Kahlon, attested in an un rebutted affidavit. ProPublica did not argue otherwise, yet the trial court *sua sponte* held that a single text exchange between Kahlon and an associate discussing Leo’s investment demonstrated TBC’s “cavalier” approach to confidentiality. The uncontradicted record, however, shows that an NDA was in place between Kahlon and that associate, maintaining confidentiality. When TBC raised this critical point in its motion for reargument, the court essentially avoided the question altogether.

Second, the information is not otherwise publicly available. ProPublica again did not dispute this point below, and the trial court did not address it.

Third, disclosure of the information would cause particularized harm to TBC and its investors. Kahlon attested that disclosing the identities of the 339 investors would harm TBC by revealing details about TBC’s investment approach, allowing competitors to poach TBC’s investors, and deterring current and future investors

from working with TBC. He also attested that disclosure would harm those investors by subjecting them to unwanted attention and even harassment and by exposing their private investment strategy to public scrutiny. Courts have consistently recognized these injuries as sufficient harm to warrant confidential treatment. The trial court's conclusion that disclosure of the investor identities would not cause any meaningful harm conflicts with that case law, the unrebutted record, and common sense.

Fourth, the magnitude of harm from disclosing the investors' identities outweighs the negligible public interest in that information. Courts overwhelmingly hold that the public interest is evaluated by whether disclosure of information is necessary to understanding the nature of the dispute or the basis for a judicial decision. The identities of TBC's investors are not necessary or even relevant to understanding this dispute; indeed, neither party has even cited the two exhibits at issue. And while the trial court cited those exhibits in its post-trial opinion, it did so only for two narrow factual propositions, the exhibits were unnecessary to support those propositions (which were supported by other evidence cited by the court), and the court only relied on unredacted information in the exhibits—not the redacted information. As other courts have held under similar circumstances, because the trial court did not rely on the redacted information, that information is immaterial to the public's understanding of the dispute, it has minimal if any public interest, and any such interest is outweighed by the harm to TBC and its investors from disclosure.

STATEMENT OF FACTS

A. The Underlying Dispute

TBC is an investment firm that forms and manages investment funds that acquire shares in late-stage technology companies, most of which are privately held. A602-03. One of those companies is Space Exploration Technologies Corp. (“SpaceX”). SpaceX is privately held, and investors cannot, as of this date, buy its shares on the open market. A393.¹ Instead, SpaceX has worked over time with trusted intermediaries who assemble groups of investors to buy shares from the company, its employees, and existing holders. *Id.* TBC is one such intermediary.

TBC formed the fund at issue in this case, Tomales Bay Capital Anduril III, L.P. (“TBC III” or the “Fund”), to purchase SpaceX shares, and Kahlon proceeded to seek investors, who would be limited partners in the Fund. A396-97. In November 2021, Leo, an affiliate of China-based Leo Group Co., Ltd., became a limited partner in the Fund with a \$50 million capital contribution. A397, A406. After Leo publicly disclosed its investment, media coverage ensued, prompting SpaceX’s CFO, Bret Johnsen—who was unhappy with media coverage regarding Leo’s investment—to tell Kahlon that the Fund could not buy SpaceX shares if Leo remained in the Fund. A408, A412-15. Kahlon removed Leo from the Fund and

¹ News outlets have reported that SpaceX has submitted a draft IPO registration to the SEC. *See* <https://www.investors.com/news/spacex-ipo-filing-elon-musk-record-offering>.

returned its capital, and Leo sued for breach of fiduciary duty and breach of contract. A419, A422-23.

Following a three-day trial in December 2024, the trial court issued its post-trial opinion on June 30, 2025, ruling almost entirely in favor of TBC. A391-92. The court held that Leo failed to prove a breach of the duties of loyalty or care, and that the Fund did not breach the LP Agreement. A424-25. The court held only that Kahlon breached his “duty of candor” with Leo, and it awarded Leo nominal damages of \$1. A455, A459-60. Based on that breach, the court subsequently awarded Leo nearly \$16 million in attorneys’ fees. A527. Leo appealed the ruling that TBC did not breach the duties of loyalty and care, and TBC cross-appealed the award of attorneys’ fees, including the underlying determination that Kahlon breached his “duty of candor.” The appeal and cross-appeal were argued on April 15, 2026 and remain pending before this Court. *See* Nos. 415, 2025/428, 2025.

B. Joint Exhibits 536 and 537

This appeal concerns two documents (of more than 500) that appeared on the parties’ Final Joint Exhibit List: JX_536 and JX_537. *See* A356. JX_536, titled “Native Excel Containing Schedule of Prior Fund Investments,” is a spreadsheet showing a list of 38 investors in a different fund managed by Kahlon—Tomales Bay Capital Anduril II, L.P. (“TBC II”)—that is not a party in this case but was also formed to purchase SpaceX shares. A540; A600. JX_536 provides an array of

information about each investor, including its (1) name; (2) street address; (3) city, state (if applicable), zip code (if applicable), and country; (4) jurisdiction of formation; (5) tax identification number (if applicable; foreign entities had the entry “Foreign”); (6) amount invested; (7) date accepted as an investor; (8) management fee; (9) carried interest amount; (10) main contact; and (11) main contact’s email address. A533; A600.

JX_537, titled “Native Excel of TBC Fund Partners,” contains information for *all* investors in *all* of Kahlon’s various funds—339 different investors. A600. In addition to TBC III (the fund in this case), JX_537 includes information as to investors in 28 other funds—none of which is at issue in this case, and many of which do not hold any SpaceX shares. A540; A603. The document contains information for each investor including (1) fund name; (2) investor name; (3) street address; (4) city, state (if applicable), zip code (if applicable), and country; (5) email address; (6) tax identification number (if applicable; foreign entities had the entry “Foreign”); (7) commitment; (8) called capital; (9) uncalled capital; and (10) outstanding balance. A540; A600.

Given its operation in a specialized investment market, TBC treats investor details like those found in JX_536 and JX_537 as strictly confidential, consistent with the expectations of its highly sophisticated investors. A601-04. To that end, among other measures to safeguard investor confidentiality, TBC includes restrictive

confidentiality provisions in its limited partnership agreements (including TBC III's), insists that brokers and intermediaries who help locate potential investors are under NDAs, and utilizes an external cybersecurity vendor that designs TBC's systems to protect investor information. A602-03. TBC maintains NDAs when communicating with any third parties regarding its investors' identities. *See* A210. TBC and its third-party brokers also share a mutual understanding to keep investors' identities confidential. *See* A209-10.

Although both JX_536 and JX_537 were on the parties' Final Joint Exhibit List, neither TBC nor Leo used either exhibit at trial. Likewise, neither party cited JX_536 or JX_537 at any time, including in its pre-trial or post-trial brief. As further explained below, the only "use" of these exhibits relating to trial was by the trial court in its post-trial opinion, which cited them as part of string cites for two narrow factual propositions also supported by other evidence.

C. ProPublica's Challenges to Confidential Treatment

During discovery in this case, TBC and Leo entered into, and the trial court approved, a standard confidentiality order. *See* A509. The confidentiality order provided that material so designated remained confidential until used in open court or in briefing, admission into evidence, or citation by the court. A478, A481, A509. Upon such use, admission, or citation, a party could seek to continue confidential treatment of the material subject to Court of Chancery Rule 5.1.

On April 9, 2025—after the trial but before the post-trial decision—ProPublica, a nonprofit news organization, filed a notice with the trial court under Court of Chancery Rule 5.1(g) challenging the confidential treatment of certain materials in this case. A345. Specifically, ProPublica requested that public versions of 13 items be filed, including two joint exhibit lists (including the Final Joint Exhibit List), several deposition video clips and transcripts (including of Kahlon and Johnsen), and five trial exhibits cited by the parties in pre-trial stipulations and post-trial briefing. *See id.* TBC did not oppose filing public versions of nine items but moved for continued confidential treatment of the remaining four (three deposition transcripts and one trial exhibit). A351, A354. TBC explained that each of those four documents had only been lodged with the trial court, and not filed or used, and therefore was not subject to challenge as a “Filed Document” under Court of Chancery Rule 5.1. A353-54; *see* Ct. Ch. R. 5.1(a)(3) (defining “Filed Documents”).

On June 2, 2025, ProPublica filed a second notice of challenge to 12 additional trial exhibits, including JX_536 and JX_537. A377. TBC did not oppose filing public versions of five exhibits but moved for continued confidential treatment of seven exhibits, including JX_536 and JX_537, again on the grounds that they had only been lodged with the trial court, and not filed or used by either party at trial or in any briefing. A385.

On June 30, 2025—before deciding the pending confidentiality motions—the trial court issued its post-trial opinion holding that Leo failed to prove breaches of the duties of loyalty or care but that Kahlon breached his “duty of candor.” A455, A460; *see* p.6, *supra*. Although neither party had used JX_536 or JX_537 at trial or in briefing, the court cited JX_536 and JX_537 for two narrow factual propositions early in its opinion. First, the court cited JX_536 for the proposition that, “[f]or the fund at issue, Kahlon charges most of the limited partners a 2% annual management fee, plus a carried interest giving him 20% of the upside.” A394. Second, the court cited JX_536 and JX_537 for the proposition that Kahlon “had never had a Chinese investor whose shares were listed publicly on an exchange.” A395, A401. For each proposition, the court’s citation of JX_536 or JX_537 followed a “see also” signal, after the court had already cited other evidence supporting the same proposition. These are the only instances in which JX_536 or JX_537 were used in relation to trial in this case.

On September 15, 2025, the trial court addressed the pending motions for continued confidential treatment. The court ordered that public versions of nearly all the items at issue be filed. A479-80. With respect to “trial exhibits that the court cited in the Opinion” but not otherwise used by the parties—which included JX_536 and JX_537—the court noted that “[t]he parties have not supplemented their submissions to address the implications of that fact,” *i.e.*, that the court had cited

those exhibits in its opinion. A523. The court stated that if the parties “believe that any of these exhibits warrant confidential treatment, then they must file a public version if no version has yet been filed and, if a public version already exists, explain why any redactions warrant continued confidential treatment.” *Id.*

D. TBC’s Redactions to JX 536 and JX 537 and ProPublica’s Challenge

On September 29, 2025, TBC filed all the public versions required by the court, including JX_536 and JX_537. Pursuant to Court of Chancery Rule 5.1, because JX_536 and JX_537 previously had only been lodged with the court and had not required public versions, TBC filed public versions of JX_536 and JX_537 with redactions of certain confidential information. A533; A540.²

Specifically, as for JX_536—comprising all investors in the TBC II fund—TBC redacted each investor’s (1) name; (2) street address; (3) tax ID number; (4) main contact; and (5) main contact’s email address. TBC left unredacted the investor’s (1) city, state (if applicable), zip code (if applicable), and country; (2) jurisdiction of formation; (3) amount invested; (4) date accepted as an investor; (5) management fee; and (6) carried interest amount. Additionally, if the investor

² The redacted versions of JX_536 and JX_537 are included in the appendix accompanying this brief. TBC also has provided unredacted versions of JX_536 and JX_537 to this Court for its *in camera* review.

had no tax identification number because it was a foreign entity, the entry “Foreign” remained unredacted. *See* A600-01; A533.

As for JX_537—comprising all investors in all funds managed by Kahlon—TBC redacted each investor’s (1) name; (2) street address; (3) tax identification number; and (4) email address. TBC left unredacted the investor’s (1) fund in which it had invested; (2) city, state (if applicable), zip code (if applicable), and country; (3) commitment; (4) called capital; (5) uncalled capital; and (6) outstanding balance. As with JX_536, if the investor had no tax identification number because it was a foreign entity, the entry “Foreign” remained unredacted. *See* A600-01; A540.

On October 16, 2025, ProPublica filed a third notice of challenge, objecting to the redactions in the public versions of JX_536 and JX_537. A577. TBC moved for continued confidential treatment of those redacted portions. A586. TBC explained that neither party had used JX_536 or JX_537 at trial; that the court had only cited them in passing for two factual propositions; that those propositions were supported by other evidence (including the unredacted portions of the exhibits); that TBC kept its investor information strictly confidential and subject to NDAs; and that disclosure of TBC’s confidential investor list would harm TBC and its investors, as attested to by Kahlon in an accompanying affidavit. *See* A589-95. On November 14, 2025, ProPublica opposed TBC’s motion, arguing that the names of all of TBC’s investors in JX_536 and JX_537 should be made public. A606.

E. The Trial Court's Rulings

1. On January 28, 2026, the trial court issued its order addressing these motions (the “January Order”), holding that TBC “failed to establish good cause for continued confidential treatment for JX 536 and JX 537.” Ex. A at 3. The court first stated that TBC’s reasons for seeking confidential treatment of investor names were “not particularized” and amounted to “the circular claim that the information needs to be kept confidential because it has been kept confidential.” *Id.* The court deemed TBC’s concerns “exaggerations” because “the Fund has been relatively cavalier about keeping the identities of its investors private.” *Id.* To support this assertion, the court cited an exchange of messages between Kahlon and Lance Liu, a longtime associate who helped Kahlon find investors for his funds. In that exchange, Kahlon asked Liu, “have any folks interested in spcex still?” A210; A373. Liu responded, “let me check around,” to which Kahlon replied, “If it helps we just got a 50m check from LEO.cn between us. So might help with folks in terms of speed.” A210; A373-74.

The court also observed that TBC had not established “any harm that outweighs the public interest.” Ex. A at 4. As for the public interest, the court noted only that it had “cited both exhibits in its post-trial decision,” specifically “for the proposition that ... the Fund never had a Chinese investor whose shares were listed

on a public exchange,” and “[t]he public is entitled to obtain access to the information that the court used in making that finding.” *Id.*

2. On February 4, 2026, TBC moved for reargument. A622. TBC explained that the trial court’s belief that TBC was “cavalier about keeping the identities of its investors private” was based solely on the exchange between Kahlon and Liu, A624-25; however, the trial court failed to account for the fact that Liu, as a broker tasked with finding additional investors, was subject to a nondisclosure agreement—as Kahlon attested to in his affidavit (regarding brokers generally), *see* A602-03, and as he testified at trial without contradiction (regarding Liu specifically):

Q: [Y]ou shared the details of Leo Group’s investment with a friend in China so he could solicit more investment funds for you from an unknown number of third parties; right?

A: Yes. But he was under a nondisclosure agreement.

...

Q: You’re sharing this information about Leo’s investment so he can use it to facilitate more investment for your fund; right?

A: Yes. It’s always helpful for people to know that other people are investing and he can use that information according to the nondisclosure agreement that we had with him.

...

Q: What harm, if any, did your November 15 disclosure of Leo Group’s \$50 million indirect investment in SpaceX cause?

...

A: My perspective is zero harm, because Lance is—he’s a straight-up guy. He would have honored the NDA that we had with him.

A209-10; *see also* A625. TBC added that the court’s misapprehension was material to its prior determination both because (1) the court discounted the harm from disclosure of TBC’s investors; and (2) the court’s analysis led it to conclude that any harm to TBC was outweighed by the public interest in disclosure. A626-32.

As an alternative to disclosure of all its investors, TBC requested that the court require it to disclose only the identities of its investors located in China. As TBC explained, such disclosure could support the trial court’s finding that “the Fund never had a Chinese investor whose shares were listed on a public exchange”—the court’s stated basis for citing JX_536 and JX_537—without disclosing the rest of the investors. A630, A632.

ProPublica opposed TBC’s motion on February 11, 2026. ProPublica did not accept TBC’s proposed compromise of disclosing only its Chinese investors. *See* A636.

3. On March 18, 2026, the trial court denied reargument. Ex. B. The court stated that “[t]he public’s interest is at its zenith when the court cites to a joint exhibit, because it means the exhibit helped the court decide the case.” Ex. B at 4. The court added that the “public interest in this case is also high because the challenge was brought by a member of the press” and because the case “involves indirect investments in SpaceX, a key defense contractor.” *Id.*

The court then held that “[b]ecause the public interest is so significant, Kahlon would have to make a particularly strong showing of particularized harm.” Ex. B at 4. But, according to the court, Kahlon only cited “a desire by limited partners to invest secretly.” Ex. B at 5. The court conceded that that interest “warrants some weight,” but held that such interest “cannot overcome the public interest in this case.” *Id.*

The court did not materially address TBC’s argument that the court’s observation that Kahlon was “cavalier” about the confidentiality of the identities of TBC’s investors (based on Kahlon’s comment to Liu about Leo’s investment) turned on a failure to appreciate the relationship between investment funds and their investors, including their use of NDAs. Instead, and without citing any contradictory testimony regarding Kahlon and Liu’s use of an NDA, the court stated that it “had a negative impression of Kahlon’s credibility,” rearticulating its credibility assessment of Kahlon from the merits trial. Ex. B at 6-7. The court concluded that “[e]ven if the court had not considered” the exchange between Kahlon and Liu, “Kahlon would have failed to make the necessary showing to overcome the public’s interest in the case.” Ex. B at 7.

Two days later, TBC moved to stay the January Order pending appeal, which ProPublica opposed. *See* A653; A669. On April 10, 2026, the trial court granted the stay on the conditions that TBC pursue an appeal within 21 days and not oppose

a motion to expedite. Ex. C. TBC timely filed its notice of appeal on April 16, 2026. Dkt. 1. ProPublica moved for expedited consideration of the appeal, *see* Dkt. 6, which TBC did not oppose. This Court granted expedition. *See* Dkt. 11.

TBC appeals only the trial court's order that it must disclose identifying information for all 339 investors in JX_536 and JX_537—*i.e.*, all of TBC's investors in a *different* fund (TBC II) and all of TBC's investors in *all* of its funds. TBC does not appeal the court's rulings requiring TBC to file unredacted public versions of any other exhibits that it originally sought to keep confidential.

ARGUMENT

I. **TBC HAS SATISFIED THE REQUIREMENTS FOR CONTINUED CONFIDENTIAL TREATMENT OF THE REDACTED INFORMATION IN JX_536 AND JX_537.**

A. **Question Presented**

Whether TBC has satisfied the requirements under Court of Chancery Rule 5.1(b) for continued confidential treatment of the personally identifying information of TBC's 339 investors contained in JX_536 and JX_537. TBC preserved this issue at A385-387, A589-A595, and A624-A625.

B. **Scope of Review**

This Court has “general supervisory authority ... over the rule-making power of the trial courts,” and “this Court’s interpretation of the applicability of rules of court ... must control.” *Jackson v. State*, 654 A.2d 829, 832 (Del. 1995); *see also* Del. Const. art. IV, § 13(1); *Winshall v. Viacom Int’l, Inc.*, 76 A.3d 808, 813 n.12 (Del. 2013) (addressing Court of Chancery rules); *Robinson v. State*, 562 A.2d 1184, 1185 (Del. 1989) (addressing Superior Court criminal rules); *cf. State v. Brooks*, 2013 WL 3341003, at *2 (Del. Super. Ct. June 11, 2013) (noting that “the Delaware Supreme Court has amended the Superior Court Criminal Rules”). In turn, “[t]he application or construction of a ... court rule ... is reviewed *de novo*.” *Martin v. State*, 306 A.3d 50, 56 (Del. 2023); *see also In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1143 n.60 (Del. 2025). Likewise, even when evaluating discretionary determinations, “legal ... questions embedded in the trial court’s decision are

reviewed *de novo*.” *Martin*, 306 A.3d at 56; *see also N. River Ins. Co. v. Mine Safety Appliances Co.*, 105 A.3d 369, 380-81 (Del. 2014) (“[W]e do not defer to the trial court on embedded legal conclusions and review them *de novo*.”).

C. **Merits of Argument**

“Under the First Amendment of the United States and as a matter of common law, the public has a presumptive right of access to judicial records.” *BitGo Hldgs., Inc. v. Galaxy Digit. Hldgs., LP*, 2026 WL 992443, at *1 (Del. Ch. Apr. 13, 2026); *see also Gannett Co. v. State*, 571 A.2d 735, 742 (Del. 1989) (addressing First Amendment right); *C. v. C.*, 320 A.2d 717, 723 (Del. 1974) (addressing common-law right). But “[e]ven when a first amendment right of access exists, it is qualified, and not absolute,” and “[t]his qualified right ‘may give way ... to other rights or interests.’” *Gannett*, 571 A.2d at 742 (quoting *Waller v. Georgia*, 467 U.S. 39, 45 (1984)). Similarly, although “the Delaware Constitution guarantees open courts,” courts “may withhold disclosure of certain information without depriving the public of its right to open courts.” *Id.* at 740; *see also Kronenberg v. Katz*, 872 A.2d 568, 608 (Del. Ch. 2004) (“Because it is necessary for the judiciary to protect the legitimate privacy and commercial interests of litigating parties, it is understood that reasonable limitations can be placed on public access to judicial records.”).

Court of Chancery Rule 5.1 “reflects the Court of Chancery’s commitment to those principles.” A495; *see also BitGo*, 2026 WL 992443, at *1. As relevant here,

Rule 5.1(a)(3) provides that “[p]apers filed with the Register in Chancery (‘Filed Documents’) must be available to the public, except as provided in this rule.” Rule 5.1(b)(1) then states that “[p]ublic access to a Filed Document may be limited only if the Filed Document contains Confidential Information.” Under Rule 5.1(b)(2), “‘Confidential Information’ means information: (A) that is maintained confidentially; (B) that is not otherwise publicly available; (C) where public access to the information will cause particularized harm; and (D) where the magnitude of the harm from public access to the information outweighs the public interest in the information.” The “person seeking to maintain confidential treatment bears the burden” of satisfying these factors. Ct. Ch. R. 5.1(g)(6)(D).

TBC has readily satisfied each of the four Rule 5.1(b)(2) factors here. The names, addresses, and contact information that TBC redacted from JX_536 and JX_537—for 339 investors—are maintained confidentially. They are not otherwise publicly available. Disclosing that personally identifying information will cause particularized harm to TBC and hundreds of non-parties to this case. And that harm outweighs the minimal public interest in the information, which was entirely immaterial to the two narrow factual propositions for which the court cited JX_536 and JX_537—propositions established by other evidence in the record. Requiring disclosure of this confidential information would set a new and misguided

benchmark regarding access to sensitive information, with far-reaching consequences for Delaware corporate law.

1. The Investor Information Is Maintained Confidentially.

a. As one would expect in a specialized investment market with highly sophisticated investors participating in funds to purchase privately held companies, TBC maintains confidentiality over the identities of its investors. Kahlon attested in his sworn affidavit that investor identities, contacts, and addresses are “treated as strictly confidential.” A601. Because “investments in funds investing in privately held companies inherently involve sensitive information, both about the companies themselves and the individuals or entities investing in them through the funds,” there is “a strong and well-established expectation of confidentiality” among such investors. A601-02. Investors in TBC’s funds are no exception: TBC creates funds “for the purpose of acquiring shares in a single privately held company,” so “the expectation when participating in TBC’s funds” is that “investor information” will “remain strictly confidential.” A602-03.

In turn, TBC “[s]afeguard[s] investor information” through a variety of measures ensuring strict confidentiality. A602-03. For example, TBC includes “restrictive provisions regarding Confidential Information in [its] Limited Partnership Agreements.” *Id.*; *see, e.g.*, A753 (LPA with Leo stating that “[e]ach Limited Partner shall keep confidential and shall not disclose ... any information or

materials regarding the Partnership Entities or the other Partners”). TBC also “insist[s] that brokers and intermediaries involved in introducing TBC to investors are under NDAs with TBC.” A602-03. In addition, TBC has “extensive cybersecurity policies and procedures in place, including having an external cybersecurity vendor that designs TBC’s systems to ensure the information contained in TBC’s files, including investor information, is protected.” *Id.*

These measures amply establish that the investor identities redacted in JX_536 and JX_537 are “maintained confidentially” by TBC. Ct. Ch. R. 5.1(b)(2)(A); *see, e.g., Cal. Safe Soil, LLC v. KDC Agribusiness, LLC*, 2025 WL 98479, at *17 (Del. Ch. Jan. 10, 2025), *aff’d*, 2025 WL 2803792 (Del. Oct. 2, 2025) (noting that use of NDAs supports a finding of reasonable efforts to maintain secrecy). In fact, the confidentiality of this information is so self-evident that ProPublica did not even dispute this point in opposing continued confidential treatment. Nor, for that matter, did ProPublica rebut Kahlon’s affidavit or offer any evidence to the contrary.

b. Nevertheless, the trial court *sua sponte* suggested that TBC did not maintain confidentiality over its investor information because “the Fund has been relatively cavalier about keeping the identities of its investors private.” Ex. A at 3. That conclusion is plainly wrong. The court’s only support for that assertion was the Kahlon-Liu text exchange in which Kahlon mentioned Leo’s investment when

asking Liu, “have any folks interested in spcex still?” See A373. But as TBC explained in its motion for reargument, Kahlon’s disclosing Leo’s identity to Liu was not a breach of confidentiality, because Liu, as a longtime associate who helped Kahlon find additional investors, was under an NDA. A624-25. As Kahlon attested in his affidavit, TBC “insist[s] that brokers and intermediaries involved in introducing TBC to investors are under NDAs.” A602-03. And as Kahlon testified at trial, Liu was “[u]nder a nondisclosure agreement” that he “would have honored,” so there was “zero harm” in disclosing to him Leo’s investment, which could be “helpful” in attracting other investors. A210. Both Kahlon’s affidavit regarding NDAs generally and his testimony regarding the NDA with Liu specifically were un rebutted and uncontradicted.

Kahlon’s mentioning Leo’s investment to Liu therefore does not demonstrate a “cavalier” approach to keeping TBC’s investor information confidential. Quite the opposite: the record demonstrates that the only instance when Kahlon revealed another investor’s identity to a third party was pursuant to a measure (an NDA) utilized precisely to *ensure* confidentiality. There is thus no basis for the trial court’s suggestion that TBC did not maintain confidentiality over its investors’ identities.

Tellingly, the court did not appear to dispute this reasoning in its order denying reargument. Indeed, the court barely addressed this argument. Instead, it pivoted to stating that it “had a negative impression of Kahlon’s credibility,”

pointing to several credibility findings from the merits trial. Ex. B at 7. But nothing that the court identified—for example, that Kahlon “misled SpaceX about the reasons for Leo Group’s disclosure and the degree of his own involvement,” *id.*—had anything to do with whether TBC maintained confidentiality over its investor information, including through NDAs with third parties like Liu. As to that issue, the evidence was undisputed. In fact, nobody—Leo or ProPublica—ever proffered any evidence to the contrary, much less anything that would suggest that Kahlon’s affidavit and trial testimony regarding NDAs with third parties (generally) and the NDA in place with Liu (specifically) was not credible. Because the record incontrovertibly demonstrated that TBC maintains confidentiality over investor information like that in JX_536 and JX_537, TBC satisfied the first factor of Rule 5.1(b)(2)’s definition of “Confidential Information.”

2. The Investor Information Is Not Otherwise Publicly Available.

The redacted investor information in JX_536 and JX_537 also is not otherwise publicly available, satisfying Rule 5.1(b)(2)’s second factor. Again, ProPublica did not dispute this point. For its part, the trial court did not even address this factor. Because the investor identities at issue have never been disclosed to the public and are not available through any publicly accessible means, this factor is readily satisfied.

3. Public Access to the Investor Identities Will Cause Particularized Harm to TBC and Its Investors.

a. TBC has also satisfied the third Rule 5.1(b)(2) factor, which requires showing that “public access to the information will cause particularized harm.” This conclusion, too, should be self-evident: TBC does not go to such lengths to maintain strict confidentiality over its investors’ identities—including through confidentiality provisions in its LPAs, nondisclosure agreements with third-party brokers and intermediaries, and cybersecurity protections—for no reason. It does so precisely because public disclosure of this information would cause actual and serious damage to itself and its investors.

Kahlon attested, without contradiction, that revealing the identities of TBC’s investors would harm TBC in numerous different ways: (1) it would offer details about TBC’s proprietary “investment strategy”; (2) it would “publicize the confidential relationships and business methods that are central to TBC’s operations and competitive advantage”; (3) competitors could “use this information to target TBC’s investors for their own funds or to replicate TBC’s investment approach”; (4) current or prospective partners or counterparties could “exploit the disclosed information to gain leverage in negotiations or other business dealings”; and (5) investors’ loss of confidentiality could “deter current and future investors from working with TBC.” A603-04. These concerns are more than plausible. Like all financial sponsors, funds compete for investors’ capital. If the identities of TBC’s

investors are publicly disclosed, those 339 investors will inevitably be targeted by other funds (or other financial sponsors) to invest in their products, rather than TBC's—on more favorable terms than TBC requires, or with more favorable offerings than TBC can provide, or simply by pitching that they (unlike TBC) can ensure confidentiality. All of this inures to TBC's detriment.

These circumstances establish particularized harm under Rule 5.1(b)(2)(C), as courts have consistently recognized. For example, in *Uvaydov v. Fenwick-Smith*, the court, citing the movant's declaration, held that “disclosure of confidential customer identities could provide competitors with opportunities to ‘undercut [defendant's] relationships’ given the nature of” the industry. 2023 WL 4614766, at *3 (Del. Ch. July 18, 2023). Likewise, in *In re Lordstown Motors Corp. Shareholders Litigation*, the court held that “[t]he identities of certain prospective customers” not “already in the public mix” should remain confidential, after the movant explained that such information “could be improperly used by [the company's] competitors.” 2022 WL 601120, at *4, *6 (Del. Ch. Feb. 28, 2022). And in *Surf's Up Legacy Partners, LLC v. Virgin Fest, LLC*, the court, applying the analogous Superior Court rule, held that disclosing “the identity of [declarants'] private investors” is “likely to cause injury to Declarants,” who had “sworn under penalties of perjury” regarding the “long-standing relationship of trust and confidence they maintain with their investors” and that they “compete with

[defendant] for the same class of investors.” 2022 WL 1925999, at *4 (Del. Super. Ct. June 6, 2022).

Here, Kahlon attested without contradiction that disclosure of TBC’s private investors—339 of them—would “publicize ... confidential relationships,” prompt “[c]ompetitors” to “target TBC’s investors,” and allow third parties to “gain leverage in negotiations,” among other adverse effects. A603-04. TBC has thus established particularized harm from disclosure of the investor identities. This case is a far cry from those in which courts have declined to find sufficient harm to support confidential treatment. *See, e.g., Twitter v. Musk, Inc.*, 2024 WL 4441869, at *4 (Del. Ch. Oct. 8, 2024) (rejecting confidential treatment of information that “lacks competitive value”); *Horres v. Chick-Fil-A, Inc.*, 2013 WL 1223605, at *2 (Del. Ch. Mar. 27, 2013) (declining to redact “embarrassing” allegations of sexual harassment against franchise operator because “that type of embarrassment will not suffice for continued Confidential Treatment”).

Kahlon also attested to the harm that will befall TBC’s investors through disclosure of the information in JX_536 and JX_537. Among other things, “[p]ublicizing their identities and investment details could subject them to unwanted attention, solicitations, or even harassment.” A604. It also risks “expos[ing] their private investment strategies to public scrutiny, criticism, or questioning.” *Id.* Again, these concerns are hardly irrational: case law is replete with the adverse

consequences that flow from a loss of anonymity brought about by forced disclosure of one's identity. *See, e.g., First Choice Women's Res. Ctrs., Inc. v. Davenport*, 608 U.S. ___, 2026 WL 1153029, at *7-8 (U.S. Apr. 29, 2026); *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 615-17 (2021). Like Kahlon's description of harms to TBC, his description of harms to investors from disclosure was unrebutted and uncontradicted, and these harms, too, support confidential treatment of the investors' identities.

b. The trial court's determination regarding harm does not withstand scrutiny. In its January Order, the court stated, "To establish harm, the Fund asserts only that disclosure will undermine the trusted relationship the Fund has developed with its investors," so "target companies may think twice" before investing with the Fund. Ex. A at 3. According to the court, "[t]hose reasons are not particularized" but instead "amount to the circular claim that the information needs to be kept confidential because it has been kept confidential." *Id.*

This reasoning is unavailing. First, "undermin[ing]" TBC's "trusted relationship[s]" with investors was not the "only" reason disclosure would cause harm. As noted above, Kahlon also attested (without contradiction) to the competitive injury from disclosure of the investors' identities—which, as other courts have correctly held, clearly constitutes particularized harm. Regardless, even if "undermin[ing] the trusted relationship[s]" between TBC and its investors was the

only harm articulated, that is a particularized harm: undercutting those trusted relationships will naturally cause those investors to reconsider future investments with TBC, or to demand more favorable terms, or to advise others to do the same when assessing their investment options.

Second, the court's observation that TBC was merely contending that "the information needs to be kept confidential because it has been kept confidential" is puzzling. In his affidavit, Kahlon articulated numerous reasons *why* it was important to keep investor information confidential, and numerous ways *how* disclosing that information would harm TBC and the investors. A601-04. There is nothing "circular" about those assertions. Kahlon provided exactly the information that prior courts have properly held sufficient to establish particularized harm.

Third, the court stated that TBC's "reasons" for particularized harm "also appear to be exaggerations." Ex. A at 3. But the court's only basis for that comment was its *sua sponte* belief that the Fund "has been relatively cavalier about keeping the identities of its investors private." *Id.* As explained, that belief is not well-founded and was essentially abandoned in the order denying reargument. Ex. B at 6-7; *see pp.22-24, supra.* It therefore cannot support the view that TBC did not establish particularized harm (quite apart from the fact that it concerns an entirely different factor of the Rule 5.1(b)(2) framework).

In its order denying reargument, the trial court offered additional rationales regarding particularized harm, but its new reasons are equally infirm. First, the court deemed “speculative and conclusory” Kahlon’s assertion that disclosure of the investors’ identities risked “jeopardizing TBC’s ability to retain its current investors and ... attract new ones.” Ex. B at 5. The court offered no further explanation for this view, which contradicts both Kahlon’s affidavit and common sense. In an industry where highly sophisticated investors value privacy and confidentiality, disclosure of their identities and other sensitive information will naturally make them reluctant to do further business with that sponsor, and it will deter potential investors from the same, all while providing competitors with an opportunity to attract those same investors.

The court’s assertion is also contrary to case law, which reasonably does not require absolute certainty when evaluating future harm and instead requires only that harm *could* result from disclosure. *See, e.g., BitGo*, 2026 WL 992443, at *2 (granting confidential treatment over ProPublica’s objection where “[d]isclosure could harm competitive standing and damage relationships”); *Uvaydov*, 2023 WL 4614766, at *3 (granting confidential treatment where risk of harm was “uncertain” but “meaningful if realized,” and movant averred that disclosure of confidential customer identities “could provide” competitors with advantages and “could cause” competitive injury); *In re Lordstown*, 2022 WL 601120, at *5-6 (granting

confidential treatment where customer identities “could be used” by competitors); *Tornetta v. Musk*, 2022 WL 130864, at *5 (Del. Ch. Jan. 14, 2022) (granting confidential treatment where defendants “have articulated particularized harms that could result from disclosing the redacted information”); *see also Surf’s Up*, 2022 WL 1925999, at *5 (“To be sure, Surf’s Up[’s] warnings of future harm involve an element of speculation. But all averments of future harm, by necessity, do.”). Kahlon’s affidavit similarly attested that disclosure of the investor identities could cause particularized harm to TBC and its investors in numerous respects, and there was no evidence to the contrary.

Second, the court considered Kahlon’s assertion not “well-founded” because “[p]arties understand” the risk that, even under confidentiality agreements, “information can be disclosed when required by law.” Ex. B at 5-6. But that is no answer to the question of whether, if such confidential information *is* disclosed, the disclosure is nevertheless harmful. The court’s reasoning also proves too much: if the possibility of legally mandated disclosure of information—which is always the case—were enough to defeat particularized harm, then no party could ever satisfy the Rule 5.1(b)(2) factors, rendering the rule a nullity.

Last, the court downplayed the competitive risks to TBC because it “enjoys a protected market niche by virtue of [Kahlon’s] ability to supply a scarce opportunity: access to indirect investment in SpaceX.” Ex. B at 6; *see also id.* (“Investors come

to Kahlon from around the world because he can facilitate an investment in SpaceX.”). As an initial matter, the premise of the court’s reasoning is wrong because many of the 29 funds in JX_537 (comprising 339 different investors) do *not* hold any SpaceX shares. Regardless, even assuming TBC *only* offers the opportunity to buy SpaceX shares (and not also shares in additional privately held companies), so do other funds and financial sponsors, and those competitors can exploit the unredacted investor identities to cause competitive harm to TBC. Furthermore, even if TBC only offered SpaceX shares, it would still be competing with parties offering other limited investment opportunities (not just SpaceX shares) to highly sophisticated investors. In short, the conclusion that “[t]he special nature of Kahlon’s business undercuts the poaching risk” is neither supported nor plausible, and certainly does not minimize, much less eliminate, the particularized harm to TBC from disclosure of its investors’ identities.

At no point, moreover, did the trial court ever grapple with the independent harm to the 339 investors whose identities would be disclosed pursuant to the January Order. As Kahlon attested, and nobody has disputed, these non-party investors—including individuals, private trusts, and various private entities—have a reasonable and legitimate expectation that their participation in private investment funds will remain confidential, and publicizing their identities creates the very real risk of subjecting them to unwanted attention, solicitations, criticism, or harassment.

A602-03, A604; *see also* pp.21, 27-28, *supra*; *McDonnell v. United States*, 4 F.3d 1227, 1255-56 (3d Cir. 1993) (rejecting disclosure of third-party “interviewees and witnesses” under Freedom of Information Act because “disclosure may result in ... harassment”).

Ultimately, the trial court conceded that “a desire by limited partners to invest secretly ... warrants some weight.” Ex. B at 5. But even that recognition significantly downplays the harm to TBC and its investors from disclosure of the investors’ identities. The evidence of that particularized harm was unrebutted and credible, and case law consistently holds that such evidence constitutes particularized harm. TBC thus plainly satisfied the third factor of Rule 5.1(b)(2).

4. The Magnitude of Harm from Public Access to the Investor Identities Outweighs the Public Interest in the Information.

a. Finally, the magnitude of particularized harm set forth above outweighs the minimal, if any, public interest in the identities of TBC’s investors. The purpose of public access to court filings is “so that the public can judge the product of the courts in a given case.” *Al Jazeera Am., LLC v. AT&T Servs., Inc.*, 2013 WL 5614284, at *3 (Del. Ch. Oct. 14, 2013); *accord Horres*, 2013 WL 1223605, at *1. In turn, case law overwhelmingly holds that the public interest requires disclosure of information “necessary to understand the nature of the dispute,” *Al Jazeera*, 2013 WL 5614284, at *7, but not of information that “is not ‘material to understanding the nature of the dispute’ at trial or the ‘basis for a judicial decision,’” *AlixPartners*,

LLP v. Thompson, 2019 WL 4014819, at *7 (Del. Ch. Aug. 19, 2019); *see also, e.g., Mu v. Zhang*, 2025 WL 3174634, at *2 (Del. Ch. Nov. 3, 2025) (rejecting disclosure where “the proposed redactions ... do not impede the public’s ability to understand this case”); *Uvaydov*, 2023 WL 4614766, at *3 (rejecting disclosure where “[a]n interested reader can readily discern the nature of this action and the purported harms at issue without” redacted information); *id.* at *4 (rejecting disclosure where redacted information was “not needed for the public to understand” case); *Lordstown*, 2022 WL 601120, at *1 (rejecting disclosure of information with only “modest importance to the public’s understanding of this dispute”); *Tornetta*, 2022 WL 130864, at *5 (rejecting disclosure where redacted information “would not help the public understand this case or the Court’s adjudication of it”); *cf. Lordstown*, 2022 WL 601120, at *4 (requiring disclosure of material that “goes to a core issue in this litigation,” because redactions would “mak[e] it difficult for the reader to understand the factual grounds for the plaintiff’s claims”).

The identities of TBC’s hundreds of investors are not remotely “necessary to understand the nature of the dispute” between TBC and Leo. *Al Jazeera*, 2013 WL 5614284, at *7. That dispute concerned whether TBC breached fiduciary or contractual duties to Leo based on TBC’s removal of Leo from the Fund and Kahlon’s communications with Leo and SpaceX. The identities of hundreds of TBC’s other investors are not “material to understanding the nature of th[at]

dispute.” *AlixPartners*, 2019 WL 4014819, at *7. Indeed, the parties did not cite JX_536 or JX_537 in their pre- or post-trial briefs, at trial, or during post-trial argument. Nor did they cite the exhibits in their appellate briefs or during oral argument before this Court—or include the exhibits in the nearly 3,500 pages of appellate appendices. The identities of hundreds of TBC’s other investors are simply of no—much less “modest”—“importance to the public’s understanding of this dispute.” *Lordstown*, 2022 WL 601120, at *1.

To be sure, the trial court did cite JX_536 and JX_537 in its decision. For several reasons, however, this does not affect the analysis. First, the court cited the exhibits only for two narrow factual propositions: (1) it cited JX_536 for the proposition that “[f]or the fund at issue, Kahlon charges most of the limited partners a 2% annual management fee, plus a carried interest giving him 20% of the upside,” A394; and (2) it cited JX_536 and JX_537 for the proposition that Kahlon “had never had a Chinese investor whose shares were listed publicly on an exchange,” A395, A401. These background facts—two sentences in an 86-page opinion—have little bearing on whether TBC breached its duties and thus little relation to the public’s understanding of the case or confidence in the judicial process.

Second, JX_536 and JX_537 were not even necessary to support those propositions. The court’s citation of each exhibit followed a “see also” signal, after the court had already cited other evidence supporting the same proposition. For

example, as to the first proposition (regarding fees and carried interest for the Fund), the court cited four other exhibits demonstrating a 2% annual fee and 20% carried interest, and only then cited JX_536 after a “see also” signal. *See* A394. For the second proposition (regarding no prior Chinese public investor), the court cited Kahlon’s trial testimony—in which Kahlon stated that he had “never before taken an investment from a Chinese public company”—and only then cited JX_536 and JX_537 after a “see also” signal. *See* A395, A401; A193. Both JX_536 and JX_537 were thus utterly superfluous to the court’s decision. Each citation could have been eliminated from the decision without any effect whatsoever, much less on the public’s understanding of the case or the decision.³

Third, and most important, even assuming JX_536 and JX_537 have some limited materiality to the court’s decision (notwithstanding the foregoing), the *redacted information* in those exhibits—*i.e.*, the information at issue here—unquestionably does not. In JX_536, TBC left unredacted each investor’s (1) city, state (if applicable), zip code (if applicable), and country; (2) jurisdiction of formation; (3) amount invested; (4) date accepted as an investor; (5) management fee; and (6) carried interest amount. *See* A600. And in JX_537, TBC left unredacted

³ The court’s citation to JX_536 for the first proposition was especially unnecessary because the court was addressing the management fee and carried interest “[f]or the fund at issue.” A394. But JX_536 concerns a *different* fund (TBC II) than “the fund at issue” (TBC III).

each investor's (1) fund in which they invested; (2) investor's city, state (if applicable), zip code (if applicable), and country; (3) commitment; (4) called capital; (5) uncalled capital; and (6) outstanding balance. *See* A600-01; A540. In both exhibits, moreover, if the investor had no tax identification number because it was a foreign entity, the entry "Foreign" remained unredacted. *See* A533; A540.

All of this unredacted information—in particular, the fees/carried interest and domicile country of each investor—readily permits a reader to draw the same two conclusions that the court did from that same material. By contrast, nothing about the two narrow factual propositions for which the court cited JX_536 and JX_537 requires knowing the investors' names, street addresses, or email addresses, *i.e.*, the redacted information. The exhibits could have used "Investor A," "Investor B," and so forth for each of the actual named investors, with dummy street addresses and email addresses, and nothing about the court's two factual propositions, its opinion, or the public's understanding of that opinion or this case would change.

In short, "[t]he public can easily understand what this case is about without knowing such granular details and figures" as the investors' names, street addresses, and email addresses. *Lordstown*, 2022 WL 601120, at *4. The "'discrete' nature of the information" that was redacted—just the names, street addresses, and email addresses—"would not hinder the public's ability to understand the nature of" the

case or the court's post-trial decision. *In re Oxbow Carbon LLC Unitholder Litig.*, 2016 WL 7323443, at *4 (Del. Ch. Dec. 15, 2016). As Chancellor McCormick held just days before this appeal was filed, in a case where ProPublica unsuccessfully sought access to redacted information:

The court did not rely on any of this redacted material when denying leave to move for summary judgment. ... Because the court did not rely on the redacted material, it is immaterial to the public's understanding of the dispute. Where material has not been used or considered by the court, the public interest in access is minimal. Limited redactions that do not affect the substance of the dispute do not impair public access. The public record here already contains the information necessary to understand the parties' claims and the court's ruling.

BitGo, 2026 WL 992443, at *1-2. This reasoning is eminently sensible and squarely applies here. Because the trial court "did not rely on the redacted material," that information "is immaterial to the public's understanding of the dispute," leading to "minimal" if any public interest in access. *Id.* at *2. And because the particularized harm to TBC and its investors "outweighs" that negligible public interest, TBC has satisfied the fourth factor of Rule 5.1(b)(2), establishing that the information is confidential and should remain redacted.

b. The trial court's reasoning to the contrary is again erroneous. In the January Order, the court gave only one rationale regarding the public interest: citing its own prior decision, the court observed, "The right of access reaches its peak for materials a judge considers when making a decision, and particularly for trial

materials.” Ex. B at 4 (citing A478); *see also* A499 (citing cases for same proposition). As noted, however, JX_536 and JX_537 were entirely superfluous to the court’s decision, undercutting the public interest in those materials as a means for understanding the decision (or the case more broadly). More important, as even the decisions the trial court cited for its “peak” proposition explain, a court needs to have *relied* upon the information in the cited materials. *See Paul v. Rockpoint Gp., LLC*, 2021 WL 3262122, at *2 (Del. Ch. July 29, 2021) (“The public interest in access to court materials is particularly acute when the court relies on them as the basis for an adjudication.”); *In re Oxbow Carbon*, 2016 WL 7323443, at *2 (“The public interest is paramount when the information provided the basis for a judicial decision.”); *see also BitGo*, 2026 WL 992443, at *1-2 (“Because the court did not rely on the redacted material, it is immaterial to the public’s understanding of the dispute.”). Here, the trial court never relied on the redacted information, rendering that information completely immaterial to the two propositions for which it cited JX_536 and JX_537. The “[l]imited redactions” did “not affect the substance of the dispute,” and thus “do not impair public access.” *BitGo*, 2026 WL 992443, at *2.

In its order denying reargument, the court briefly added two more rationales regarding the public interest. Both are unavailing. First, the court stated that “[t]he public interest in this case is also high because the challenge was brought by a member of the press who has pushed diligently for the information.” Ex. B at 4. But

it is entirely unclear why information that should otherwise remain confidential under Rule 5.1 loses that attribute because a “member of the press” demands it. The public interest is judged by whether the information is “‘material to understanding the nature of the dispute’ at trial or the ‘basis for a judicial decision.’” *AlixPartners*, 2019 WL 4014819, at *7; *see also* pp.33-35, 37-38, *supra*. The character of the party demanding the information does not bear on that inquiry. Indeed, as this Court long ago observed, “the press has no greater right to information than any other member of the public.” *C.*, 320 A.2d at 724. That truism that has even more relevance today, when anyone with a smartphone and a social media account can communicate information and be “the press.”

Second, the trial court offered the conclusory assertion that “the public interest in this case is high because it involves indirect investments in SpaceX, a key defense contractor.” Ex. B at 4. Again, however, that is not the appropriate inquiry when evaluating the public interest in otherwise confidential information. The question is whether the specific information at issue is material to the public’s understanding of the case or a judicial decision. Delaware courts routinely address litigation involving high-profile parties—including those with connections to or contracts with the federal government in sensitive areas of national policy—and high-profile subject matter. That a case generally involves parties or a matter of national interest—a malleable concept that could apply to many Delaware cases—does not, and should

not, place a thumb on the scale in favor of disclosing otherwise confidential information in such litigation. For good reason, case law wisely rejects that ill-advised proposition. *See, e.g., Tornetta*, 2022 WL 130864, at *2, *4-6 (permitting redactions in case involving compensation plan for Tesla CEO Elon Musk); *In re Oxbow Carbon*, 2016 WL 7323443, at *1, *4 (noting that “the players in the case are figures of public interest” yet still performing document-specific analyses and permitting redactions of certain information).

Indeed, requiring disclosure of personally identifying information of TBC’s 339 private investors—information not cited by the parties, unnecessary to the court’s decision, and immaterial to the public’s understanding of the dispute—would set a precedent with far-reaching impact on Delaware corporate law and litigation practice. It would discourage parties from vigorously litigating claims and defenses, out of a concern that the mere inclusion of an exhibit on a joint exhibit list could lead to *every* aspect of that exhibit becoming public, no matter how irrelevant to the case. It would channel more disputes involving Delaware law to private dispute resolution, thus shielding *entire* cases from the public view. And it would incentivize parties to avoid Delaware law altogether in favor of jurisdictions less likely to compel disclosure of otherwise confidential information. These consequences have nothing to recommend them, and this Court should not go down that path.

Respectfully, this is a straightforward case. TBC maintains the confidentiality of its investors' identities, which are not otherwise publicly available. Disclosing the identities of those 339 investors will harm both TBC and the investors. And those identities are immaterial to this litigation, the court's merits decision, and the public's understanding of the dispute between TBC and Leo, such that the magnitude of harm from disclosure outweighs any public interest in that information. The trial court's order rests on numerous errors, would have significant adverse effects if affirmed, and accordingly cannot stand.

CONCLUSION

The Court should reverse the trial court's order and grant continued confidential treatment of the redacted portions of JX_536 and JX_537.

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