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Case Number 70,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHP III, L.P.,	
Plaintiff Below, Appellant,	No: 70, 2026
v.	Case Below: Court of Chancery of the State of Delaware
BENJAMIN F. CRAVATT, THOMAS WOIWODE, CHRISTOPHER G. PARKER, BELHARRA THERAPEUTICS, INC., VERSANT VENTURE MANAGEMENT, LLC, INCEPTION THERAPEUTICS, INC.,	C.A. No. 2024-0867-KSJM **Original Version Filed: April 2, 2026**
Defendants Below, Appellees.	**Public Version Filed: April 17, 2026**

APPELLANT'S OPENING BRIEF

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Dated: April 2, 2026

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NATURE OF PROCEEDINGS

This is a lawsuit for fraud and breach of fiduciary duty against two directors of Vividion Therapeutics, Dr. Ben Cravatt and Dr. Tom Woiwode, and those who aided and abetted them. Plaintiff-appellant CHP III, L.P. ("Cardinal") alleged that Cravatt and Woiwode used Bayer AG's acquisition of Vividion to extract certain intellectual property ("IP")—the "'444 Application"—for the benefit of Belharra Therapeutics, a secret, competitive venture they had founded. Cardinal's Amended Complaint described how Cravatt misled Vividion and Bayer during merger negotiations about that IP's value, portraying it as "immaterial and worthless"; how Cravatt and Woiwode concealed Belharra, their involvement with it, and its plans to commercialize the IP; and how they approved representations in Vividion's merger agreement they knew were false. The fraud worked. Misled by Cravatt and Woiwode throughout merger negotiations, Vividion and Bayer agreed to release all rights to the '444 Application—for no benefit to Vividion stockholders—pursuant to a proposal [redacted] That positioned Belharra, with further assistance from Cravatt and other Defendants, to relicense the same IP and use it to raise hundreds of millions of dollars.

After uncovering the fraud, Cardinal sued to recover the merger consideration Cravatt and Woiwode diverted from Cardinal through their lies. The Court of Chancery (McCormick, C.) dismissed Cardinal's claims as derivative under *Parnes* *v. Bally Entertainment*—but the court's description of those claims bore little resemblance to the allegations in the Amended Complaint. Whereas the Amended Complaint describes lies and omissions throughout the Bayer-Vividion merger negotiations, A71-81 (¶¶61-81), the court cast the "crux of Plaintiff's claim" as misstatements made "***after*** the parties signed the Merger Agreement." Ex. A ("Op.") at 13, 15 (emphasis added). Whereas the Amended Complaint alleges that both Bayer and Vividion's other directors relied on Cravatt's lies during merger negotiations, A71, 81, 92-93 (¶¶61, 80-81, 111), the court said Cardinal never claimed Cravatt "obscured Bayer's diligence into Vividion's IP portfolio" or "manipulated the other members of the Board." Op.13, 15. And the court drew inferences *against* Cardinal: Whereas the Amended Complaint alleges that Cravatt and Woiwode's fraud "***culminated***" in license negotiations that concluded after the merger agreement was signed, A81 (¶81), it never ***limited*** the wrongdoing to post-merger negotiations. The court's opinion cannot be reconciled with the Amended Complaint's actual allegations.

Properly credited, the Amended Complaint states direct claims under *Parnes*. Cravatt and Woiwode diverted merger consideration by inducing Vividion to release material IP rather than using it to obtain greater merger consideration. That diversion was wrongful, as it resulted from Cravatt's and Woiwode's lies to their fellow directors on behalf of a secret competitor. And the fraudulent diversion of IP with billion-dollar potential was plainly material, both to the fairness of the merger process and to the consideration stockholders received. This Court should reverse.

SUMMARY OF ARGUMENT

I. The Court of Chancery's decision defied the allegations in Cardinal's Amended Complaint. The decision below rested on the premise that Cardinal alleged only misconduct that "occurred ***after*** the parties signed the Merger Agreement." Op.15 (emphasis added). But that premise is wrong: Cardinal clearly and repeatedly alleged at least three different categories of lies ***during the Bayer-Vividion merger negotiations***. That pattern of deception in the lead-up to the merger agreement resulted in the release of valuable IP with no return for stockholders.

It is "well settled" that, on a motion to dismiss, the court must "accept[] as true" "all well-pleaded factual allegations" and draw inferences "in favor of the non-moving party." *Erste Asset Mgmt. GmbH v. Hees*, 341 A.3d 1008, 1025 (Del. 2025) (internal quotation marks omitted). The Court of Chancery did neither. Rather than accepting as true Cardinal's allegations of fraud and disloyalty during merger negotiations, the court ignored those allegations. The court said Cardinal had not made certain allegations, such as that defendants "obscured Bayer's diligence into Vividion's IP" or "manipulated the other members of the Board." Op.13, 15. But Cardinal pled ***exactly*** that, sometimes in those very terms. Compounding the error, the court also drew inferences against Cardinal, misinterpreting a single paragraph in the Amended Complaint to improperly narrow Cardinal's claims and create an otherwise nonexistent basis for dismissal. The court's failure to credit Cardinal's allegations or draw inferences in its favor each independently require reversal.

II. Cardinal's Amended Complaint pleads a direct claim under *Parnes v. Bally Entertainment*. When a stockholder alleges a wrongful diversion of merger consideration that materially affects the merger's process ***or*** price, it may sue to vindicate that injury even after the merger closes. *See Blue v. Fireman*, 2022 WL 593899, at *11 (Del. Ch. Feb. 28, 2022). Cardinal's allegations state a direct claim under each of *Parnes*'s separate process and price prongs.

By convincing Bayer and Vividion that the '444 Application was "immaterial and worthless," A82(¶83), Cravatt and Woiwode diverted that IP, ultimately to Belharra as intended, by inducing the merger parties to abandon it with no return for Vividion stockholders. That diversion was accomplished through fraudulent statements and material omissions during merger negotiations, all for the benefit of a secret competitor and in breach of Cravatt's and Woiwode's fiduciary duties to Vividion. The result was a corrupted merger process in which Vividion's Board was "deprived . . . of its ability to obtain a better result on behalf of the stockholders." *In re Dole Food Co. S'holder Litig.*, 2015 WL 5052214, at *38 (Del. Ch. Aug. 27, 2015). The fraud also materially reduced the merger price. It is ***at least*** reasonably conceivable that Bayer would have paid materially more for Vividion absent Cravatt's and Woiwode's disloyal misconduct, given Bayer's demonstrated eagerness to secure ***all*** of Vividion's material IP, its wish to avoid competing with Cravatt, and Belharra's subsequent success raising hundreds of millions of dollars from Bayer's peers using that misappropriated IP.

This Court should reverse the Court of Chancery's decision.

STATEMENT OF FACTS

I. FACTUAL BACKGROUND

A. Vividion and Its Intellectual Property

In 2014, Ben Cravatt, two of his colleagues at the Scripps Research Institute ("Scripps"), and Cardinal's managing member founded Vividion Therapeutics to commercialize Cravatt's scientific research in "chemoproteomics," the chemistry of human proteins. A56-58 (¶¶24-26, 29). Proteins are ubiquitous in human cells and cause (or treat) many different diseases. A56 (¶26). As a result, the study of proteins—and specifically, how they bind with small molecules called "ligands"—has long been fruitful area of pharmaceutical research.

Cravatt and his colleagues developed precise, scalable techniques for studying protein-ligand interactions. A56 (¶25). Among other advantages, Cravatt's techniques could test proteins in their "native state," rather than in a modified laboratory environment. A57 (¶27). Cravatt's methods also could be applied to any kind of protein, working "across the proteome." A56 (¶26). Vividion deployed Cravatt's screening techniques at scale, generating [redacted] of data points per day and building a library of thousands of potentially useful ligands, or "probes." A57 (¶28). Together, Cravatt's methods, Vividion's molecule library, and its data about protein interactions formed a proprietary drug-discovery platform. A56-58 (¶¶26-29).

Vividion took pains to protect the IP rights underlying this platform. A58-60(¶¶30-38). In exchange for funding Cravatt's research, Vividion received an option from Scripps to exclusively license his discoveries, which it exercised in 2016. A58(¶¶30-31). [redacted] A58-59(¶¶31-34); A581-582, 608. Vividion separately executed a consulting agreement with Cravatt that forbade him from using Vividion's confidential information for non-Vividion purposes. A59-60(¶¶35-38). And Vividion periodically added new IP relating to Cravatt's discoveries to its exclusive license from Scripps. A59(¶34); A611-615.

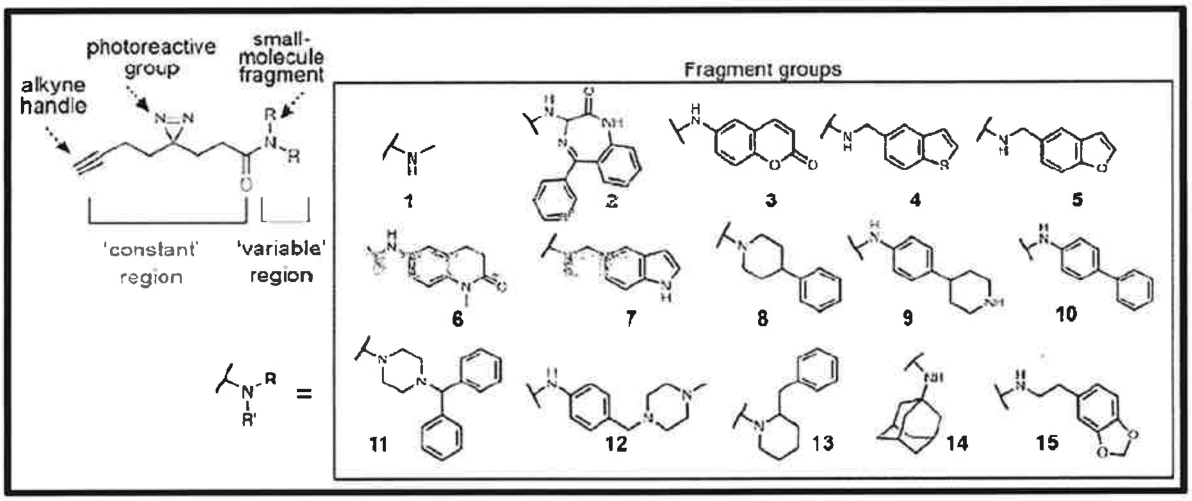
B. <u>The '444 Application</u>

Using Vividion's funding, Cravatt and Christopher Parker, a research fellow in Cravatt's lab, A52(¶14), developed a "photoreactive" or "photoaffinity" method for identifying useful ligands. That method deploys probes with "tags" that react to UV light, enabling observation of non-covalent protein-ligand interactions that were difficult to track using prior techniques. A60(¶39); A1253-1254.

Cravatt and Parker published an article describing aspects of their photo-affinity method in *Cell* in January 2017, A1252-1296, and filed Patent Application

No. 16/478,444, entitled "Photoreactive Ligands and Uses Thereof" (the "'444 Application"), A626-892.[1] The *Cell* article and '444 Application closely mirror one another, describing the same method and including the same diagrams with the same photoreactive probes:

2017 *Cell* article:



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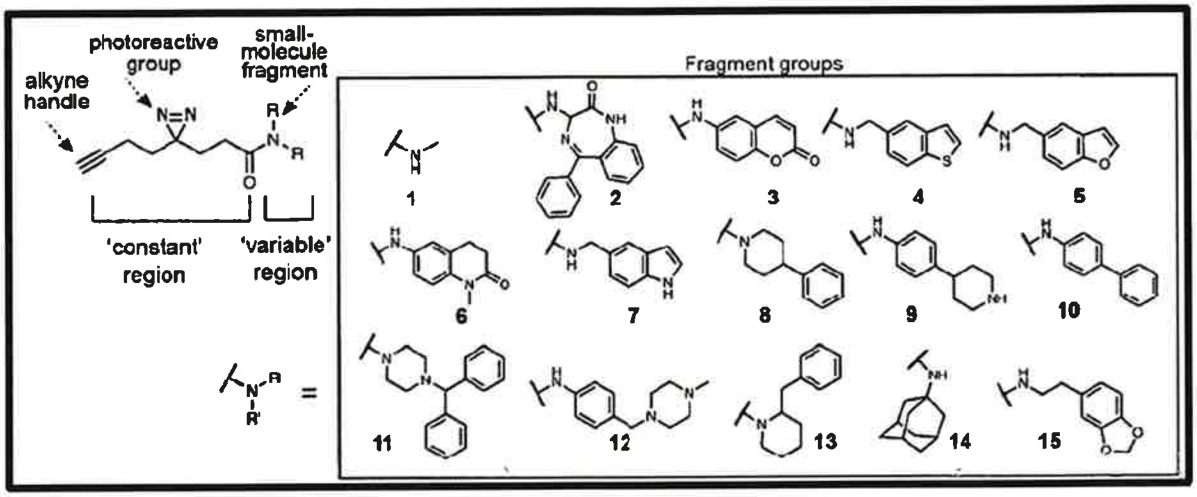
[1] The '444 Application eventually resulted in issuance of U.S. Patent No. 11,535,597. A894-1250.

’444 Application:



A62(¶41); A1255; A629, 899. In 2018, Vividion added the ’444 Application and the related “Technical Information” in Cravatt’s possession to its exclusive license from Scripps. A63(¶42); A614-615.

C. Vividion’s and Cravatt’s Competing “NewCos”

Vividion’s platform proved successful in identifying drug candidates. As it prepared for a possible IPO in 2021, Vividion chose to focus on [redacted] promising proteins connected to certain cancers and immunological conditions. A64(¶¶44-45). But Vividion had substantial additional data and IP—like the ’444 Application—that it did not anticipate commercializing in the short term. A64(¶45). Vividion management thus [redacted]—to investigate “other uses of its intellectual property that could generate long-term value for stockholders.” A64(¶46). Cravatt was a no-brainer for the project team, because he had invented most of the IP at issue.

But Cravatt had a different "NewCo" in mind, one he would not have to share with Vividion's other stockholders. A65(¶48). Together with Parker and Tom Woiwode, the Vividion director designated by stockholder Versant Ventures, A52(¶13), Cravatt conceived a new company that would build a drug-discovery platform around the '444 Application's photoaffinity method. On March 18, 2021—the same day Vividion's Board was briefed on [redacted]—the trio founded Belharra Therapeutics. A65(¶48).

The '444 Application was central to Belharra's platform. Once Belharra emerged from "stealth mode" in 2023, its website described the 2017 *Cell* article—which mirrors the '444 Application—as Belharra's scientific "bedrock." A67(¶52). Indeed, the '444 Application's photoaffinity method was how Belharra distinguished itself from predecessors (like Vividion), touting a "novel photoaffinity-based chemoproteomics platform capable of identifying non-covalent, small molecule drug candidates." A67(¶51).[2]

But Belharra's dependence on the '444 Application created a big problem: Vividion still had an exclusive license to that IP when Belharra started up. That license would keep Belharra from using the photoaffinity method it would later

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2 *See* Belharra Therapeutics, *Belharra Therapeutics Debuts With $130 Million in Funding*, https://belharratx.com/press-releases/belharra-therapeutics-debuts-with-130-million-in-funding (Jan. 4, 2023) (cited at A66-67).

trumpet as its competitive advantage. A68 (¶53). Belharra's long-term success thus required Vividion to relinquish its exclusive rights.

D. Cravatt & Woiwode Lie Throughout Merger Negotiations with Bayer To Secure the '444 Application and Technical Information

In June 2021, Bayer made an unsolicited offer to buy Vividion. A68, 72 (¶¶54, 62). Spotting an opportunity, Cravatt and Woiwode used their roles in the resulting merger negotiations to induce Vividion to relinquish its rights to the '444 Application and related IP. The Amended Complaint identifies three discrete types of misconduct Cravatt and Woiwode committed during the negotiations with Bayer:

1. Cravatt misled both Bayer and Vividion's Board regarding the value of the '444 Application and related IP, portraying them as "immaterial and worthless." A82 (¶83).
2. Cravatt and Woiwode concealed Belharra—and their involvement with it—from Vividion and Bayer.
3. Cravatt and Woiwode approved representations in the merger agreement about Vividion's IP they knew were false.

The result was that Vividion and Bayer agreed to a proposal [redacted] that would relinquish Vividion's license to the '444 Application and related Technical Information for no benefit to stockholders.

1. Cravatt Lies About the Value of the '444 Application

Intellectual property was Vividion's principal source of value and thus a "critical aspect of the merger negotiations." A71 (¶61). Both Bayer and Vividion "consult[ed] with Cravatt," the inventor of Vividion's IP, about its uses and value "throughout the merger negotiations." A71 (¶61); *see* A78, 81 (¶¶75, 81). They had to. Vividion's IP portfolio included "Technical Information" that was, by definition, [redacted] A59 (¶33).

Vividion's Board was particularly reliant on Cravatt. Vividion's financial advisor, Centerview Partners, recommended that the Board [redacted] A75 (¶68). So [redacted] the Board "reasonably relied on Cravatt's input," trusting that his "fiduciary obligation to maximize value for Vividion and its stockholders" would prevent him from "undersell[ing] the value" of its IP. A74-75, 72 (¶¶67, 61).

That trust was "misplaced." A71 (¶61). The Amended Complaint alleges that Cravatt "shape[d] both sides' thinking about the value and utility" of Vividion's IP for his own benefit. A71 (¶61). Cravatt told Bayer and Vividion that the '444 Application and related Technical Information were "immaterial," "useless," and "not worth the upkeep costs," A78, 82 (¶¶75, 83)—even as he himself sought to commercialize that IP at Belharra. Those "lies . . . about the materiality of the '444 Application and related intellectual property occurred ***during negotiations*** over Vividion's representations" in the merger agreement, which occurred "from June 23, 2021, until July 9, 2021." A81 (¶81) (emphasis added).

2. <u>Cravatt & Woiwode Conceal Belharra</u>

The Amended Complaint further alleges that Cravatt and Woiwode "deliberately concealed Belharra and their . . . role in it from both Bayer and Vividion" throughout the merger negotiations. A82(¶83); *accord* A48-49, 75-77, 81, 90-91(¶¶6, 70-72, 81, 107). It identifies contemporaneous documents that confirm Vividion's directors and stockholders knew nothing of Cravatt and Woiwode's work with Belharra when they approved the merger.

First, Vividion did not mention Belharra in the Form S-1 it filed with the SEC in June 2021. The S-1 detailed risks to Vividion's business, including the risk that "our competitors may render our technologies or future product candidates . . . obsolete, less competitive or not economical." A76(¶71); A309. Vividion then identified competitors by name, including two companies "developing chemoproteomic approaches to drug discovery." A77(¶72); A308-309. Belharra posed a greater "risk" than the companies Vividion named, as it was not just developing "chemoproteomic approaches to drug discovery" but doing so with the aid of Vividion's own scientific founder, using technology that belonged to Vividion. But Vividion's S-1 did not mention Belharra, because Vividion did not know it existed. A76-77(¶¶71-72).

Second, late in merger negotiations, Bayer asked Cravatt to [redacted]

[redacted] A77-78(¶73). Vividion "committed to requesting" that Cravatt [redacted] A77(¶73). Evidently, neither Bayer nor Vividion understood that, on July 5, 2021, Cravatt was ***already*** "connected with" a business—Belharra—using technology that was not just "similar" to Vividion's, but was exclusively licensed to Vividion.

Vividion's Board and stockholders were kept in the dark. They did not know a competitor was commercializing Vividion's IP under the leadership of Vividion's founding scientist. And they did not know that Cravatt and Woiwode deemed the '444 Application and related IP sufficiently valuable to support an entirely new company. *E.g.*, A83, 92-93(¶¶86, 111-112).

3. Cravatt and Woiwode Knowingly Approve False Representations in the Merger Agreement

The merger agreement between Vividion and Bayer included several representations concerning Vividion's IP. A149-151. The Amended Complaint alleges that Cravatt and Woiwode approved these representations despite knowing they were false. A69-71(¶¶56-60). The agreement represented that "[redacted] A70(¶59) (quoting A150(§3.14(d))). But Cravatt and Woiwode knew that ***they*** were "[redacted]the '444 Application and related

IP at Belharra. A79(¶77). The merger agreement further represented that "[redacted]" A70(¶59) (quoting A150-151(§3.14(h))). But Cravatt [redacted] A80(¶78). The Amended Complaint alleges Cravatt and Woiwode "approved" these representations anyway. A71(¶60); A103. That approval occurred during negotiations, *i.e.*, "between June 23, 2021, and July 9, 2021," and "was complete on July 9, 2021" when the parties executed the merger agreement. A69-70, 81(¶¶56, 81).

E. The Fraud Succeeds

Cravatt's and Woiwode's lies and omissions throughout the merger negotiations had their intended effect. Although the merger agreement [redacted] A72(¶63) (quoting A161(§5.1(j))), Bayer and Vividion agreed to relinquish all rights to the '444 Application and related IP for no benefit to stockholders. They did so because Cravatt and Woiwode convinced them the rights were valueless.

During merger negotiations, Vividion and Bayer discussed amending Vividion's license agreement with Scripps. The merger agreement [redacted]

[redacted] A72-73(¶63); A173(§5.20). [redacted]

[redacted] (the very "upkeep costs" Cravatt had urged Vividion and Bayer to avoid, A78(¶75)). A187. The subsequent license amendment, executed just two business days after the merger agreement, [redacted] A74(¶66); A621, 624. [redacted] the amendment completely ***terminated*** Vividion's rights to the '444 Application and related IP. *Id.* That is, after weeks of being told that the IP was "immaterial," "useless," and "not worth the upkeep costs" by the '444 Application's inventor—and ***not*** being told that the same inventor was commercializing the same IP with a new venture—Vividion and Bayer agreed to relinquish all rights to that IP. They accomplished that release through an amendment to the Scripps license [redacted]

Had Cravatt and Woiwode told the truth during merger negotiations, Vividion's Board could have leveraged the value of the '444 Application and related IP to obtain additional merger consideration for stockholders. Most obviously, Vividion could have sold its exclusive license to the technology—the "bedrock" of a new chemoproteomic drug-discovery platform—to Bayer. *See* A83-84(¶86). The Amended Complaint alleges why Bayer would have wanted to acquire the technology. *See* A75-76, 78-79(¶¶70, 75). Bayer sought to buy "all Vividion's material technology" and explicitly wanted to avoid competing with Cravatt. A75-78(¶¶70, 73). It moved fast, paying a "significant premium" to secure Vividion's technology before Vividion went public. A76(¶70). And other large pharmaceutical companies have since paid hundreds of millions of dollars for non-exclusive access to the photoaffinity platform covered by the '444 Application and related IP. A81-82(¶82). But even if Bayer had not wanted to purchase the technology, Vividion's Board could have transferred the '444 Application and related IP to a new company held for the benefit of Vividion's stockholders, as envisioned by [redacted] A64-65(¶¶46-47). Whatever the structure, a properly-informed Board could have used the facts Cravatt and Woiwode concealed to obtain a materially better result for stockholders. A92(¶110).

F. Belharra Raises Hundreds of Millions of Dollars Using the '444 Application

After Vividion released the '444 Application and related IP, Cravatt ensured that Belharra licensed it. That license was a foregone conclusion. "Cravatt's unique position[]" at Scripps and his expertise with the IP "effectively ensured" that outcome. A84(¶87).

The Amended Complaint alleges that Belharra's gain from the IP provides a proxy for the loss to Vividion's stockholders. A81-82(¶82). Versant Ventures, Woiwode's venture-capital fund, provided Belharra $50 million in Series A funding, and Inception Therapeutics, a Versant affiliate, provided Belharra with non-monetary resources necessary to industrialize its platform. A65-66(¶49). In January 2023, Belharra emerged from "stealth mode" and announced that it had received $80 million in upfront capital from a large pharmaceutical company, with potential milestone payments of $2 billion. A81-82(¶82). In 2024, Belharra announced another investment agreement with a large pharmaceutical company for $40 million upfront and $700 million in potential milestone payments. *Id.* These agreements collectively provide $170 million upfront and up to ***$2.7 billion*** in milestone payments, reflecting the market's judgment of the photoaffinity platform's potential value. *Id.*

II. PROCEDURAL HISTORY

A. Cardinal Sues Cravatt, Woiwode, and Their Accomplices

On August 19, 2024, Cardinal sued Cravatt and Woiwode for breach of fiduciary duty, fraud, and unjust enrichment. Cardinal also sued Versant, Inception, Belharra, and Parker for aiding and abetting the breaches of fiduciary duty. A87-89(¶¶97-102). Cardinal amended its complaint on December 19, 2024.

Defendants moved to dismiss the Amended Complaint, principally arguing that Cardinal had not alleged a direct claim under *Parnes v. Bally Entertainment*, which permits stockholders to sue directly for breaches that divert material amounts of merger consideration. Defendants pointed to the July 13 release of the '444 Application and claimed that the relevant wrongdoing "happened after the Merger Agreement was signed and the terms and price were established." A238-239, 1390-1391. Cardinal explained why that was "just wrong": The Amended Complaint alleged misstatements and omissions " '***throughout*** the merger negotiations' " that resulted in Vividion relinquishing the '444 Application. A1329 (quoting A71 (¶61) (emphasis original)).

At oral argument, Cardinal reiterated that, "***while the transaction [wa]s being negotiated***, Dr. Cravatt misrepresent[ed] the value of the intellectual property." A1459 (emphasis added). Those misstatements were later "written into the merger agreement" in the provision regarding the license amendment, A1461, by parties that "ha[d] no idea that Dr. Cravatt [wa]s commercializing the '444 application at a rival company," A1460. Defendants responded that those "allegations are not gospel." A1479.

B. The Court of Chancery Dismisses the Amended Complaint

The Court of Chancery dismissed Cardinal's fiduciary-duty and fraud claims as derivative under *Parnes*. The Court of Chancery initially acknowledged Cardinal's allegation "that Cravatt and Woiwode breached their fiduciary duties by affirmatively misrepresenting the value of the '444 Application IP ***when negotiating the Merger Agreement***." *See* Ex. A ("Op.") at 10 (emphasis added). But then it characterized the "crux of Plaintiff's claim" as misrepresentations "during negotiations with Scripps concerning material and immaterial IP," which "occurred ***after*** the parties signed the Merger Agreement." Op.13, 15 (emphasis added).

The Court of Chancery did not address the Amended Complaint's allegations that Vividion and Bayer consulted with Cravatt "throughout the merger negotiations," allowing him to "shape both sides' thinking about the value and utility of the intellectual property he, Woiwode, and Parker were hoping to misappropriate." A71 (¶61). Nor did it address the allegation that "Cravatt's lies to Vividion's Board and Bayer about the materiality of the '444 application occurred during negotiations over Vividion's representations" in the merger agreement, *i.e.*, between June 23 and July 9, 2021. A81 (¶81). It did not reconcile its view that the "crux of Plaintiff's claim" was misstatements made after merger negotiations closed, Op.13, with Cardinal's repeated allegations of lies "throughout" and "during" merger negotiations, *e.g.*, A71, 81 (¶¶61, 81). And it asserted that "Plaintiff does not claim that [Cravatt] obscured Bayer's diligence into Vividion's IP portfolio," Op.13, without addressing Cardinal's allegations concerning Bayer's necessary reliance on Cravatt during diligence or Cravatt's lies to Bayer, A71-72, 78 (¶¶61, 75).

Nor did the Court of Chancery address Cravatt's and Woiwode's concealment of Belharra. The court did not mention Cardinal's allegation that Cravatt and Woiwode concealed Belharra and its commercialization of the '444 Application "throughout the parties' negotiations from June 23, 2021, until July 9, 2021." A81 (¶81); *see* A75-79 (¶¶70-75). Its opinion discussed neither the S-1 [redacted] showing that Vividion's other directors and Bayer lacked knowledge of Belharra during the merger process.

Finally, the Court of Chancery did not consider that Cravatt and Woiwode knowingly approved false representations in the merger agreement. Its opinion listed two representations in the merger agreement as "relevant to this litigation," Op.7, but only one matched the representations Cardinal alleged were false. *Compare id.*, *with* A79-80 (¶¶77-78). The Court never mentioned Vividion's representation that no one was [redacted] A79 (¶77). And it never considered Cardinal's allegation that Vividion's representation regarding [redacted] was false, as Cravatt and Woiwode knew when they approved it. *See* A80(¶78).

Having cabined Cardinal's allegations to license amendment negotiations that "occurred after the parties signed the Merger Agreement," the Court of Chancery dismissed those allegations as unable to "affect[] the merger consideration in any way." Op.13-15. Because it believed the alleged misconduct had no bearing on stockholders' merger consideration, the Court concluded that Cardinal could not sue directly under *Parnes*.

The Court of Chancery then identified two additional bases for its decision. First, it asserted that "Plaintiff did not allege that [Cravatt and Woiwode] somehow manipulated the other members of the Board during the Merger negotiations or otherwise infect the Merger Process." Op.15. The opinion did not mention Cardinal's allegations that Vividion's Board "reasonably relied on Cravatt" in valuing Vividion's IP throughout merger negotiations, A71-72, 74-75(¶¶61, 67), that Cravatt falsely told Vividion's other directors the '444 Application and related IP were "useless and not worth the upkeep costs," A78(¶75), or that Cravatt and Woiwode had concealed Belharra and their conflicts of interest during merger negotiations, A75-77, 81(¶¶70-72, 80-81). Nor did it consider the Amended Complaint's allegation that Cardinal's designee on the Board "would not have voted in favor of the Merger" had he known the truth. A92-93(¶111).

Second, the Court of Chancery stated that the '444 Application did not pass directly to Cravatt and Woiwode, but was released back to Scripps, which *then* licensed it to Belharra. *See* Op.15. The court did not address Cardinal's allegation that Cravatt's unique position "effectively ensured that Scripps would license the '444 application and associated intellectual property to Belharra." A84(¶87). Nor did it explain why the recipient of the relinquished rights mattered in light of Cardinal's argument that it had "suffered harm regardless," "because the termination of those rights for nothing reduced the merger consideration." A1332 n.2.

CHP timely filed its notice of appeal on February 13, 2026.

ARGUMENT

I. THE DECISION BELOW DEFIED THE AMENDED COMPLAINT'S ALLEGATIONS AND DREW INFERENCES AGAINST CARDINAL

A. Question Presented

Whether the Court of Chancery erred in dismissing Cardinal's Amended Complaint on grounds that contradicted the Amended Complaint's allegations and drew inferences in Defendants' favor.

Cardinal preserved this issue at A45-96 and A1297-1372.

B. Scope of Review

"The dismissal of a claim under Rule 12(b)(6) for failure to state a claim . . . is subject to *de novo* review." *Erste Asset Mgmt. GmbH v. Hees*, 341 A.3d 1008, 1018-19 (Del. 2025). The standards are "well settled":

> (i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are "well-pleaded" if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and (iv) dismissal is inappropriate unless the "plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."

Id. at 1025 (quoting *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002)). The Supreme Court, "like the trial court, must determine whether it appears with reasonable certainty that, under any set of facts that could be proven to support the claims asserted, the plaintiffs would not be entitled to relief." *Thompson St. Cap. Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151, 1165 (Del. 2025) (cleaned up) (quoting *McMullin v. Beran*, 765 A.2d 910, 916 (Del. 2000)).

C. Merits of Argument

The Court of Chancery dismissed the Amended Complaint by failing to credit its factual allegations and by drawing inferences against Cardinal. The court's decision rested on its view that Cardinal had alleged only misrepresentations occurring ***after*** the merger agreement had been signed. In reality, the Amended Complaint repeatedly alleged lies and material omissions ***throughout*** merger negotiations that deceived Bayer and Vividion's Board into releasing the '444 Application and related IP [redacted] for no stockholder benefit. The "crux" of Cardinal's claims was misstatements and omissions ***during*** merger negotiations, not afterwards. To reach its contrary conclusion, the court's opinion ignored the vast majority of the Amended Complaint's allegations, relied on mistaken statements about what Cardinal had pled, and drew inferences in favor of the Defendants. The Court of Chancery's decision should be reversed.

1. The Court Dismissed Cardinal's Breach of Fiduciary Duty Claims Based on a Misreading of the Amended Complaint

In considering Cardinal's breach of fiduciary duty claim, the Court of Chancery neither accepted "all well-pleaded factual allegations . . . as true" nor drew "all reasonable inferences" in Cardinal's favor. *Erste*, 341 A.3d at 1025. Instead, it failed to consider (let alone credit) the Amended Complaint's numerous allegations of misconduct ***during*** merger negotiations, repeatedly misdescribed what Cardinal had and had not pled, and drew inferences against Cardinal. That was error.

a. The Court Ignored Allegations of Wrongdoing During Merger Negotiations

The Court of Chancery's decision rested on the faulty premise that the "crux of Plaintiff's claim" was misrepresentations "during negotiations with Scripps." Op.13. The court then dismissed those misrepresentations as not "material in the context of the merger" since "the parties signed the Merger Agreement before [Cravatt and Woiwode] renegotiated the Scripps License Agreement." Op.13-14; *see* Op.15. The court even commented that Cardinal purportedly did not "claim that [Cravatt and Woiwode] . . . manipulated the Merger process." Op.13. In other words, the Court of Chancery dismissed Cardinal's complaint on the understanding that it alleged only misrepresentations ***after*** the merger was signed, not ***during*** merger negotiations.

That understanding is demonstrably incorrect. In fact, the "crux" of the Amended Complaint was that Cravatt and Woiwode "manipulat[ed] Vividion's ***negotiations*** with Bayer," shaped the Vividion Board's and Bayer's thinking about IP "***throughout*** the merger negotiations," and lied "***during*** negotiations over Vividion's [merger] representations." *See, e.g.*, A48, 71, 81 (¶¶5, 61, 81) (emphasis added). Time and again, the Amended Complaint made clear that misrepresentations and omissions occurred ***during*** merger negotiations. The Court of Chancery failed to credit—or even acknowledge—those allegations at the heart of both Cardinal's case and its argument under *Parnes*.

The Amended Complaint alleges three types of fraudulent conduct ***during*** merger negotiations. First, Cardinal alleged that Cravatt "knowingly misrepresented the value and utility of Vividion's intellectual property to Vividion's other directors," claiming it was "immaterial and worthless." A90, 82(¶¶107, 83); *see* A48, 78(¶¶6, 75); *supra*, pp. 12-13. Those lies occurred ***before*** "the parties signed the Merger Agreement" or any price was "fixed." Op.13. The Amended Complaint alleges that Vividion and Bayer "consult[ed] with Cravatt about Vividion's intellectual property .... ***throughout the merger negotiations***" and that Cravatt used those consultations to "shape both sides' thinking about the value and utility" of IP. A71(¶61) (emphasis added); *see also* A78(¶75). Cardinal then specifically explained that Cravatt's "lies ... about the materiality of the '444 application and related intellectual property" occurred "***during*** negotiations over Vividion's representations," "from June 23, 2021, until July 9, 2021." A81(¶81) (emphasis added); *see also* A92-93(¶111) (Cravatt's lies "tainted the ... decisionmaking process" over whether to "approve the Bayer transaction"). Cardinal thus unambiguously alleged lies to Vividion's Board ***before*** the merger agreement was signed. The Court had no basis—***none***—to believe otherwise.

Second, Cardinal alleged that Cravatt and Woiwode concealed the existence of Belharra, its plans to commercialize the '444 Application and related IP, and their central roles at Belharra. *See* A48, 75-76, 90-91 (¶¶6, 70, 107). Those omissions were doubly material. They concealed Cravatt's and Woiwode's conflicts of interest with respect to negotiations around Vividion's IP. *Cf. HMG/Courtland Props., Inc. v. Gray*, 749 A.2d 94, 119 (Del. Ch. 1999) (enforcing director's duty to disclose conflicts of interest). They also kept Vividion's Board from understanding the true value of the '444 Application or leveraging that information in negotiations with Bayer. *See* A78-79, 82-83, 92-93 (¶¶75, 83-84, 111-113).

Again, the Amended Complaint clearly alleged that the "concealment of Belharra" continued "throughout the parties' negotiations from June 23, 2021, until July 9, 2021." A81 (¶81); *see also* A77 (¶72) ("Cravatt and Woiwode did not disclose Belharra to Vividion's directors before the Bayer transaction closed (or otherwise)"); A91-93 (¶109-111). Cardinal even alleged specific evidence that neither Vividion nor Bayer knew about Belharra during this period, in the form of Vividion's June 25th S-1 (which failed to mention Belharra) and Bayer's July 5th request for a [redacted]

[redacted] A76-78(¶¶71-74); *see supra*, pp. 14-15. The court simply ignored those allegations of material concealment ***during*** the merger negotiations.

Finally, the Amended Complaint alleges that Cravatt and Woiwode approved two representations in the Merger Agreement itself that they knew were false: (1) that no [redacted] and (2) that [redacted] A79-80(¶¶76-78). Cravatt's and Woiwode's "false approval of Vividion's representations in the Merger Agreement occurred during the [merger] negotiations and was complete on July 9, 2021, when Cravatt and Woiwode ... approved the Merger Agreement." A82(¶83). Approval of false representations ***in the Merger Agreement*** cannot have "occurred after the parties signed the Merger Agreement." Op.15.

"It is difficult to imagine how [Cardinal] could plead more clearly that" Cravatt and Woiwode engaged in misconduct during merger negotiations with Bayer. *RBC Cap. Markets, LLC v. Educ. Loan Tr. IV*, 87 A.3d 632, 640 (Del. 2014). The Court of Chancery "erred" by failing to credit those specific, repeated factual allegations. *Id.* Its statement that the "crux" of Cardinal's claims was misstatements "after the parties signed the Merger Agreement," Op. 13, 15, improperly "confined [Cardinal's] ... argument" and imposed a "limit" on its claims contrary to the Amended Complaint's actual allegations, *Travelers Cas. & Sur. Co. of Am. v.*

Blackbaud, Inc., No. 193, 2025, 2026 WL 410048, at *7 (Del. Feb. 13, 2026). This Court should reverse, as it did in *RBC Capital Markets* and *Travelers*.

b. The Court of Chancery Repeatedly Misdescribed the Amended Complaint's Allegations

In addition to ignoring Cardinal's allegations of wrongdoing ***during*** merger negotiations, the Court of Chancery's opinion also relied on several incorrect descriptions of Cardinal's Amended Complaint. That independently warrants reversal.

1. The Court of Chancery asserted that Cardinal did not "claim that [Cravatt and Woiwode] obscured Bayer's diligence into Vividion's IP portfolio before entering into the Merger Agreement." Op.13. But Cardinal alleged precisely that. The Amended Complaint alleges that Cravatt "play[ed] an important role in the diligence process," A71(¶61), that "Bayer consult[ed] with Cravatt about Vividion's intellectual property . . . throughout the merger negotiations," *id.*, and that "Bayer . . . relied on Cravatt to assess Vividion's intellectual property," A78(¶75). The Amended Complaint also explained ***why*** Bayer had to rely on Cravatt during diligence: Bayer had to value Technical Information that, by definition, was

[redacted]

A58-59(¶¶31-34); *see supra*, pp. 8, 10.[3]

But rather than provide faithful assistance, Cravatt lied and concealed material information. The Amended Complaint alleges that Cravatt misrepresented "the value and utility of Vividion's exclusive license to breakthrough technology" to Bayer, "characterizing it as immaterial." A48-49(¶6); *accord* A82(¶83). It further alleges Cravatt's concealment of Belharra, which "would have been material to Bayer ***in the transaction negotiations***." A77(¶73) (emphasis added). The Court never explained why these allegations did not render it reasonably conceivable that Cravatt "obscured Bayer's diligence." Op.13. It did not address them at all.

2. The Court of Chancery also misstated Cardinal's allegations when it asserted that Cardinal had not alleged a "typical 'side deal'" because "[t]here is no allegation that [Scripps] was complicit" in the scheme. Op.15. But the Amended Complaint explained Cravatt's "substantial influence over how Scripps licensed" the rights Vividion released. A84(¶87). Cravatt held prominent and influential roles at Scripps. A51, 73, 84(¶¶12, 64, 87). Scripps had a "policy of collaborating with

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3 The court cited representations in the merger agreement as the only example of Bayer's diligence. Op.13 (citing A69(¶56)). But the Amended Complaint described additional diligence that Cravatt obscured, and it also alleged that the representations in the agreement were false as a result of Cravatt's fraud. A79-80(¶¶76-79).

named inventors on licenses to their inventions." A63(¶42). And Cravatt's possession of Technical Information related to the '444 Application allowed him to essentially dictate the licensee: No one "would want to license technology Cravatt invented without his approval," since Cravatt's information was "necessary to effectively use any license." A84(¶87). These factors "effectively ensured that Scripps would license the '444 application and associated intellectual property to Belharra." *Id.* The Court of Chancery ignored those allegations entirely.[4]

3. Finally, the Court of Chancery asserted that Cardinal "did not allege that [Cravatt and Woiwode] somehow manipulated the other members of the Board during the Merger negotiations or otherwise infect the Merger process." Op.15. The Amended Complaint refutes that statement. As described repeatedly above, Cardinal alleged a pattern of lies and material omissions directed at Vividion's Board, including direct misrepresentations about the value of the '444 Application and related IP, concealment of Belharra's intent to commercialize that IP, and omission of Cravatt's and Woiwode's conflicts of interest related to Belharra. *See supra*, pp. 12-15; A48-49, 75-77, 81-83, 85-86, 88-89(¶¶6, 70-71, 80-84, 91, 100). Cardinal repeatedly called those lies and omissions "manipulation," A91-93 (¶¶109-

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[4] The Court of Chancery's apparent view that consideration must be diverted ***directly*** to the tortfeasor is incorrect, as is its suggestion that any intermediary must be "complicit" in the scheme. *See infra*, pp. 46-47.

112), explained that they "tainted the remaining directors' decisionmaking process" and "left [the Board] to make decisions about the Bayer merger . . . based on a false and misleading record," A92-93 (¶111), and specifically alleged that its own Board representative "would not have voted in favor of the Merger as it was structured" had he known the truth, *id.* The Court of Chancery nowhere explained how Cardinal failed to allege manipulation of the Board when a Board member provided a verified statement alleging he was manipulated. Count III of the Amended Complaint is even captioned "fraud on Vividion, its stockholders, ***and its Board***." A90.

The court's characterization is particularly puzzling given that, just five pages earlier, the court correctly summarized Cardinal's claim "that Cravatt and Woiwode defrauded the Vividion Board of Directors by misrepresenting the value of the '444 Application IP." Op.10. The court nowhere explained why such fraud did not "manipulate[] the other members of the Board" or "infect the Merger process." Op.15.

c. <u>The Court Drew Inferences Against Cardinal</u>

The Court of Chancery's decision appears to have relied exclusively on paragraph 65 of the Amended Complaint, which alleges that Cravatt made misrepresentations "during negotiations with Scripps." Op.13; *see* A73-74 (¶65). But interpreting paragraph 65 as Cardinal exclusively alleging post-merger misconduct requires drawing unreasonable inferences ***against*** Cardinal.

For one, paragraph 65 does not ***limit*** Cardinal's allegations of Cravatt's and Woiwode's deception to negotiations with Scripps. A73-74(¶65). Rather, the Amended Complaint alleges that the license amendment was the "culminat[ion]" of a pattern of previous misstatements "during negotiations over Vividion's [merger] representations." A81(¶81). The rest of the Amended Complaint described the pattern that "culminated" in the Scripps negotiations: repeated lies and omissions to Vividion's directors, its stockholders, and Bayer during merger negotiations. *See supra*, pp. 12-16, 27-30. Reading paragraph 65 to somehow allege Cravatt's and Woiwode's ***only*** "bad acts," Op.13, requires drawing (implausible) inferences ***against*** Cardinal.

Moreover, the Amended Complaint supports the inference that license negotiations with Scripps began ***during*** the merger negotiations, not after them. Section 5.1(j) of the Disclosure Schedules makes clear that [redacted] ***before*** the Merger Agreement was signed. A184, 187(§5.1(j)). Vividion executed the license amendment with Scripps on Tuesday, July 13, 2021, just two business days after signing the Merger Agreement on Friday, July 9. A69, 74(¶¶55, 66). And the two had to proceed in parallel, since any renegotiation of Vividion's license would affect "critical aspects of the parties' merger negotiations": the "scope and value of Vividion's intellectual property." A69-70(¶56). The Court of Chancery's assumption that any fraud committed "[d]uring negotiations between Vividion and Scripps," A73-74(¶65), ***must*** have "occurred after the parties signed the Merger Agreement" in the four days between July 9 and July 13, Op.15, fails to draw reasonable inferences in Cardinal's favor.

2. **<u>Dismissal of Cardinal's Other Claims Was Error</u>**

The Court of Chancery dismissed Cardinal's fraud claim in a single sentence: "Count III, for fraud, is based on the same alleged misrepresentations at issue in Count I" for breach of fiduciary duty, "and fails for that reason." Op.15. And it dismissed Cardinal's aiding-and-abetting and unjust-enrichment claims for "lack of a valid predicate." *Id.* Each of those dismissals thus relied on the court's erroneous failure to credit Cardinal's allegations and draw inferences in its favor, *see supra*, pp. 26-36, requiring reversal as to those claims as well.

* * *

The Court of Chancery's opinion dismissed a claim that Cardinal didn't plead. Cardinal alleged a pattern of lies and material omissions during merger negotiations that led both parties to agree to release valuable IP [redacted] The court dismissed an unpled claim based solely on misrepresentations to Scripps after the merger agreement was signed. That decision defied this Court's instruction to accept "well-pleaded factual allegations . . . as true," "draw all reasonable inferences" in Cardinal's favor, and refuse dismissal unless Cardinal "would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof." *Erste*, 341 A.3d at 1025. Reversal is required.

II. THE AMENDED COMPLAINT STATES DIRECT CLAIMS UNDER *PARNES*

A. Question Presented

Whether allegations that directors breached their fiduciary duties and committed fraud on the board during a corporate merger, for the purpose of diverting valuable intellectual property to a separate company they controlled, state a direct claim under *Parnes v. Bally Entertainment Corp.*, 722 A.2d 1243 (Del. 1999).

Cardinal preserved this issue at A1324-1336.

B. Scope of Review

Review of this issue is de novo. *See Morris v. Spectra Energy Partners (DE) GP, LP*, 246 A.3d 121, 128 (Del. 2021).

C. Merits of Argument

Cardinal's allegations, properly credited, plead a direct claim under this Court's decision in *Parnes v. Bally Entertainment*. *Parnes* held that a "stockholder who directly attacks the fairness or validity of a merger alleges an injury to the stockholders, not the corporation, and may pursue such a claim even after the merger at issue has been consummated." 722 A.2d at 1245. Cardinal attacked the fairness of the Bayer merger on two grounds: (1) that Cravatt's and Woiwode's misconduct corrupted the merger process; and (2) that it materially reduced the merger price by depriving stockholders, including Cardinal, of any consideration for the valuable IP that Cravatt and Woiwode diverted to Belharra. The primary difference from

Parnes—that Cravatt and Woiwode used fraud, rather than direct corporate control, to divert corporate assets—does not diminish the directness of Cardinal's injury.

To state a claim under *Parnes*, there must be (1) a "diversion" of merger consideration that (2) is the "product of misconduct by the defendants" and (3) "materially affect[s] the merger's process or price." *E.g.*, *Blue v. Fireman*, 2022 WL 593899, at *11 (Del. Ch. Feb. 28, 2022). Cardinal's Amended Complaint satisfies all three prongs. Cravatt and Woiwode diverted valuable intellectual property away from Vividion as part of the merger with Bayer. That diversion resulted from Cravatt's and Woiwode's deceptive and disloyal efforts to downplay the value of the '444 Application and induce the parties to release that IP. And those actions both corrupted the approval process and materially reduced the merger consideration by depriving stockholders of any consideration for the '444 Application and related IP, calling the merger's fairness into question. This Court should reverse and allow Cardinal's claims to proceed.

1. ***Parnes* and Its Progeny**

This Court held in *Parnes* that stockholders challenging the fairness of a merger's process or price state direct claims for injuries they personally suffered. There, a stockholder alleged that a corporation's CEO informed "potential acquirors" that he would not consent to a merger unless the acquiror paid him "substantial sums of money" and transferred "valuable" corporate assets to him. 722

A.2d at 1245. These demands "discouraged" potential acquirors who "might have paid a higher price" but "were unwilling to participate in illegal transactions." *Id.* at 1246. This Court held those allegations entitled the stockholder to sue, because they "directly challenge[d] the fairness of the process and the price in the . . . merger." *Id.* at 1245-46. *Parnes* distinguished this Court's earlier decision in *Kramer v. Western Pacific Industries*, 546 A.2d 348 (Del. 1988). *See* 722 A.2d at 1245. The stockholder in *Kramer* had also alleged "divert[ed]" payments during a merger, but it had not "question[ed] the fairness of the price offered in the merger or the manner in which the merger agreement was negotiated." *Id.* The "context of a merger" did not change the "fundamental nature" of the stockholder's "derivative claim for mismanagement"—unless there were allegations of "unfair dealing and/or unfair price." *Id.*

While *Parnes* concerned allegations that a controller breached fiduciary duties, this Court applied the same logic to fraud allegations over a decade earlier. *See Cede & Co. v. Technicolor, Inc.*, 542 A.2d 1182, 1188 (Del. 1988). In *Cede*, a stockholder had filed an appraisal action but learned during discovery that the corporation had made false representations during the underlying merger. *Id.* The stockholder filed a fraud action challenging the merger's validity, and the defendants moved to dismiss, arguing that the stockholder lacked standing because his appraisal action had "divested" the "rights appertaining to his shares." *Id.* (quoting *S. Prod.*

Co. v. Sabath, 87 A.2d 128, 134 (Del. 1952)). This Court disagreed. It considered stockholders who file appraisal actions no different from stockholders who accept merger consideration in reliance on fraudulent misrepresentations. *Id.* "No one would assert," it reasoned, "that a former owner suing for loss of property through deception or fraud has lost standing to right the wrong that arguably caused the owner to relinquish ownership or possession of the property." *Id.*; *see Blue*, 2022 WL 593899, at *6.

This Court's precedents thus recognize that shareholders suffer a direct injury when a "fiduciary extract[s] for himself 'valuable corporate assets'" during "a sale process," because the acquiror otherwise "'might have paid a higher price' for the corporation." *Brokerage Jamie Goldenberg Komen Rev Tru U/A 06/10/08 Jamie L Komen Tr. for Komen v. Breyer*, 2020 WL 3484956, at *7-8 (Del. Ch. June 26, 2020) (brackets removed) (quoting *Parnes*, 722 A.2d at 1245-46). Such an injury reduces the money stockholders receive and is no less direct because the reduction equals their "*pro rata*" share of the "higher price." *Id.* Nor does the directness of the injury turn on the type of misconduct at issue. Whether a fiduciary engages in fraud or abuses her control over merger approval, she directly injures stockholders by corrupting the decision-making process and extracting "valuable corporate assets."

2. The Amended Complaint Satisfies the Three Requirements for a *Parnes* Claim

The parties agreed below that direct claims under *Parnes* require three elements: (1) a "diversion" of merger consideration that (2) is the "product of misconduct by the defendants" and (3) "materially affect[s] the merger's process or price, calling the merger's fairness or validity into question." A236, 1326; *see Blue*, 2022 WL 593899, at *11.

The Court of Chancery applied a different test, asking whether Cardinal had "'pled an underlying derivative claim'" that was "'material in the context of the merger'" and unlikely to be asserted by the acquiror. Op.12-13 & n.47 (quoting *Goldstein v. Denner*, 2022 WL 1797224, at *10 (Del. Ch. June 2, 2022)). That test does not fit this case: *Goldstein*'s test applies where directors allegedly fail to "obtain value for an underlying derivative claim that existed prior to and independent of the merger." 2022 WL 1797224, at *10; *accord Morris*, 246 A.3d at 127. Cardinal neither identified a claim that existed "independent of the merger" nor alleged that Cravatt and Woiwode failed to "obtain value" for that claim. Instead, this action is about Cravatt and Woiwode defrauding fellow board members, stockholders, and Bayer to divert valuable IP ***during*** the merger. *See supra*, pp. 12-16.

The lens through which this Court should analyze Cardinal's allegations is the three-pronged test governing improper diversion of merger consideration that the parties applied below. Cardinal satisfies each element of that test.

a. **Cravatt and Woiwode Diverted Merger Consideration**

Cardinal's Amended Complaint alleges that Cravatt and Woiwode "'improperly diverted proceeds that would have, if the defendant directors had acted properly, ended up in the consideration paid to the target stockholders.'" *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, 2018 WL 3120804, at *11 (Del. Ch. June 25, 2018), *aff'd sub nom. IDT Corp. v. JDS1, LLC*, 206 A.3d 260 (Del. 2019) (quoting *Golaine v. Edwards*, 1999 WL 1271882, at *9 (Del. Ch. 1999)). Before the merger, Vividion held valuable, exclusive rights to [redacted] A63, 70, 81-82(¶¶42, 57, 82). Had Cravatt told the truth about those rights' value, Vividion could have sold them to Bayer during the merger. A75-76(¶70). Or if, following full disclosure, Bayer decided not to acquire the rights, Vividion's Board could have transferred them to a "NewCo," sold them to another company, or taken any number of other steps to realize those rights' value for stockholders. Instead, misled by Cravatt's and Woiwode's lies and omissions, Bayer and Vividion's directors agreed that Vividion would release those rights without receiving anything for stockholders. A74-75(¶¶66-67). Absent Cravatt's improper conduct, additional consideration would have been "paid to the target stockholders." *Straight Path*, 2018 WL 3120804, at *11; *see Parnes*, 722 A.2d at 1245-46 (fiduciary diverted "valuable [corporate] assets" by demanding "transfer" with "no legal authority").

Before the Court of Chancery, Defendants argued that Bayer "ascribed no value" to the IP rights at issue and thus would "pay no more to acquire" them. Mot.21. But the Amended Complaint alleges facts supporting the opposite inference. Bayer required Vividion to covenant that [redacted] A72-73(¶63); A161(§5.1(j)). It moved quickly and paid a premium to acquire those rights. A76(¶70). Other large pharmaceutical companies have subsequently paid hundreds of millions of dollars for ***non-exclusive*** access to the additional IP rights Bayer could have acquired ***exclusively***. A81-82(¶82). And Bayer's [redacted] A77-78(¶73). On a motion to dismiss, it is at least reasonably conceivable that a party eager to acquire all of Vividion's material IP rights and avoid competition with Vividion's lead scientist "might have paid a higher price" to acquire other valuable IP developed by that same scientist—and for which comparable companies have since paid handsomely. *Parnes*, 722 A.2d at 1246.

That Bayer and Vividion agreed that [redacted] is irrelevant. The damage was done by the time the parties executed the merger agreement. Cravatt's fraud had "shape[d] both sides' thinking about the value and utility of" the '444 Application and related IP. A71 (¶61); *see supra*, pp. 12-17. Bayer's actions based on that fraud cannot establish what would have happened if it had known the truth. A party "cannot invoke provisions of a contract it knew to be an instrument of fraud as a means to avoid a claim grounded in that very same contractual fraud." *Online HealthNow, Inc. v. CIP OCL Invs., LLC*, 2021 WL 3557857, at *2 (Del. Ch. Aug. 12, 2021).

Regardless, stockholders could have received consideration for the '444 Application and related IP even absent a payment from Bayer. But for Cravatt's fraud, "a fully-informed Board would have had numerous opportunities to achieve a superior result." *In re Rural Metro Corp.*, 88 A.3d 54, 101 (Del. Ch. 2014). If Bayer, after receiving full information, decided not to acquire the '444 Application and related IP, then the Board could have caused Vividion to transfer that IP to a separate entity held for stockholders' benefit, as envisioned by [redacted] A64-65 (¶¶46-47). Such action would have provided "consideration" to Vividion's stockholders and prevented the IP's diversion to Belharra. *Straight Path*, 2018 WL 3120804, at *12-13; *see Parnes*, 722 A.2d at 1245-46.

Finally, Defendants contended—and the Court of Chancery suggested in dicta, Op.15—that no diversion occurred because the IP was "returned to Scripps" rather than transferred directly to Cravatt and Woiwode. A240. But the Amended Complaint alleged that Scripps was simply a conduit to get the IP to Belharra. Delaware courts recognize that fiduciaries can receive personal benefits indirectly, such that conduit transfers and indirect ownership cannot defeat fiduciary duty claims. *See* A1332 & n.2, 1353-54 (collecting cases). Cardinal further alleged that Cravatt, by virtue of his positions at Scripps and role in inventing the technology, could "effectively ensure[] that Scripps would license the '444 application and associated intellectual property to Belharra after Vividion terminated its exclusive license." A84(¶87). Courts have permitted *Parnes* claims with far more attenuated relationships between the fiduciary wrongdoer and the ***ultimate*** recipient of diverted consideration than Cardinal alleged between Cravatt and the ***intermediate*** recipient of Cravatt and Woiwode's diversion. *See, e.g.*, *Straight Path*, 2018 WL 3120804, at *6, 12-13 (upholding *Parnes* claim where misconduct benefitted company in which Defendant's "children held a 10% equity interest").

More fundamentally, focusing on Scripps misunderstands the question. The key inquiry is whether consideration was diverted ***from stockholders***, not the identity of everyone who might temporarily receive the consideration in their stead. *Straight Path*, 2018 WL 3120804, at *12-13. Stockholders suffer no less injury when fraud causes assets to go to third parties, rather than directly to the disloyal fiduciary. Had the CEO in *Parnes* demanded the same payments and asset transfers but to a preferred charity, the harm to stockholders would have been the same. That is why, contrary to the court's uncited assertion, there is no requirement that any intermediary know of or be "complicit in" the wrongful diversion. Op.15. Stockholders are harmed whether or not the conduit that initially receives diverted assets knew of the underlying breaches.

b. <u>Cravatt and Woiwode's Diversion of Merger Consideration Was Fraudulent</u>

The Amended Complaint further alleges that the diversion of merger consideration resulted from "misconduct by the defendants," namely, fraud and breach of fiduciary duty. *Blue*, 2022 WL 593899, at *11. Cravatt's and Woiwode's concealment of Belharra violated their duties of loyalty and disclosure. Cravatt and Woiwode had an "'unremitting obligation' to deal candidly with their fellow directors." *HMG/Courtland*, 749 A.2d at 119. Instead, they misrepresented the value of IP and "[d]eliberately concealed" their "personal interest" in that same IP, intending "for the [Vividion] Board to rely on [that] concealment in approving" a merger contemplating the IP's release. *Id.* Vividion's stockholders were also "entitled to know" that Cravatt and Woiwode had a "self-interest that was arguably in conflict with their own" when they voted to approve a merger providing them no consideration for the '444 Application and related IP. *Eisenberg*, 537 A.2d at 1061. Cravatt's mischaracterization of the '444 Application and related IP as "worthless"—while he was commercializing that same IP at a competing company—was also fraudulent. A82(¶83); *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983).

Defendants argued before the Court of Chancery that the misconduct lacks a "causal link" to the merger. A236-237. But the Amended Complaint alleges a direct causal link. Cravatt and Woiwode induced Vividion's Board and Bayer to take the '444 Application and related IP "off the table" by agreeing that Vividion could terminate its exclusive license to that technology for nothing. A82-83(¶84). They did so by concealing Belharra and falsely characterizing the IP as "immaterial and worthless," A82(¶83), "shap[ing] both sides' thinking about [its] value and utility," A71(¶61). The resulting license amendment Vividion executed [redacted] underscores the impact of Cravatt's misrepresentations by [redacted] A74(¶66). [redacted] *Id.* Cravatt and Woiwode's fraud thus caused Vividion to relinquish valuable rights and "deprived the [Board] of its ability to obtain a better result" for stockholders. *In re Dole Food Co. S'holder Litig.*, 2015 WL 5052214, at *38 (Del. Ch. Aug. 27, 2015); *Blue*, 2022 WL 593899, at *6.

c. **The Diversion of the '444 Application Materially Affected the Merger's Process and Price**

Finally, Cravatt and Woiwode's misconduct materially affected the merger's process and price. *Parnes* held that a direct claim must challenge the "fairness of the price offered in the merger ***or*** the manner in which the merger agreement was negotiated." 722 A.2d at 1245 (emphasis added). The test is "disjunctive": allegations of unfair process *or* price equally support a direct claim. *In re Ply Gem Indus., Inc. S'holders Litig.*, 2001 WL 755133, at *5 (Del. Ch. June 26, 2001); *see Blue*, 2022 WL 593899, at *11. Cardinal's Amended Complaint alleges both.

1. Cravatt's and Woiwode's misconduct corrupted the merger process. Delaware courts have consistently recognized that allegations of fraud support a direct claim of unfair process. As this Court explained in *Cede*, a "former owner suing for loss of property through deception or fraud" necessarily has "standing to right the wrong that arguably caused the owner to relinquish ownership or possession of the property." 542 A.2d at 1188; *Blue*, 2022 WL 593899, at *6. Cravatt and Woiwode's improper concealment of Belharra's commercialization of Vividion IP tainted the decision-making of Vividion's Board. A91-93(¶¶109-112); *see Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1170 n.25 (Del. 1995); *Mills Acquisition Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1279 (Del. 1989). So did Cravatt's affirmative misstatements about the '444 Application. *Cinerama*, 663

A.2d at 1170 n.25. Those misstatements warped the Vividion Board's (and Bayer's) understanding of the IP and "deprived the [Board] of its ability to obtain a better result on behalf of the stockholders." *Dole*, 2015 WL 5052214, at *38; *Rural Metro*, 88 A.3d at 101; A82-83 (¶¶ 83-84).

2. Defendants' diversion of valuable IP also materially altered the price of the merger because it cost stockholders like Cardinal "hundreds of millions of dollars." A48, 92 (¶¶ 5, 110). To date, Belharra has raised $170 million in upfront capital based on the technology Vividion released, with potential for $2.7 billion more in milestone payments. A81-82 (¶ 82). Such fundraising shows the diverted rights were worth at least 8.5% of the $2 billion merger price, and could exceed the merger price altogether. Given how Bayer's peers have valued the platform Belharra built around the '444 Application when given full information, it is "reasonably conceivable" that Bayer would have paid a similar price in the form of additional merger consideration. Delaware courts have never held such a significant diversion immaterial.[5] *Blue*, 2022 WL 593899, at *12; *Straight Path*, 2018 WL 3120804, at *12. Diversions have been deemed immaterial only when they represent "less than one percent of the overall merger consideration." *Blue*, 2022 WL 593899, at *12.

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[5] Had Bayer paid $170 million for the '444 Application and related IP, Cardinal would have received another $21.25 million in merger consideration. A50 (¶ 10).

Before the Court of Chancery, Defendants argued that the Amended Complaint could not treat Belharra's start-up capital as a proxy for the value of the '444 Application and related IP. A242-243. But at the pleading stage, Cardinal need only allege facts that render it "reasonably conceivable" that the value of the IP was material to the merger. *Savor*, 812 A.2d at 897. That other large pharmaceutical companies paid over $100 million upfront, with the possibility for $2.7 billion in milestones, for non-exclusive access to the misappropriated technology is probative of what Bayer would have paid for ***exclusive*** access. *See DFC Global Corp. v. Muirfield Value Partners, L.P.*, 172 A.3d 346, 370 (Del. 2017) ("real world transaction prices can be the most probative evidence of fair value").

The fact that Cravatt and Woiwode wanted to build Belharra on the "bedrock" of the '444 Application and related IP—and were willing to breach their fiduciary duties to do so—further demonstrates the technology's material value. Venture capitalists like Woiwode and Versant "seek very high rates of return, usually a ten-fold return of capital over a five year period." *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 50 (Del. Ch. 2013). A "ten-fold return" on Versant's $50 million investment would yield $500 million, a plainly material amount in the context of a $2 billion merger.

CONCLUSION

This Court should reverse the Court of Chancery's decision dismissing Cardinal's Complaint.

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