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Case Number 70,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHP III, L.P.,	)	
	)	
Plaintiff Below, Appellant,	)	
	)	
v.	)	No. 70, 2026
	)	
BENJAMIN F. CRAVATT, THOMAS WOIWODE, CHRISTOPHER G. PARKER, BELHARRA THERAPEUTICS, INC., VERSANT VENTURE MANAGEMENT, LLC, INCEPTION THERAPEUTICS, INC., JOHN DOES 1-10, and XYZ CORPORATIONS 1-10,	)	Case Below: Court of Chancery of the State of Delaware C.A. No. 2024-0867-KSJM **PUBLIC VERSION**
	)	
Defendants Below, Appellees.	)	

<u>APPELLEES' ANSWERING BRIEF</u>

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May 4, 2026

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Rules and Statutes

NATURE OF PROCEEDINGS

This appeal arises from plaintiff-below/appellant CHP III, L.P.'s post-closing challenge to Bayer Corporation's acquisition of Vividion Therapeutics, Inc., (the "Company") for $2 billion. CHP, a former Vividion stockholder, received $250 million in Merger consideration, and its designee on Vividion's nine-member, majority independent Board of Directors (the "Board") voted, like all directors, in favor of the merger.

More than three years later, CHP sued, asserting claims for breach of fiduciary duty, aiding and abetting, unjust enrichment, and fraud in connection with the Merger. The Court of Chancery dismissed CHP's amended complaint (the "Complaint") with prejudice because CHP asserted derivative claims on behalf of pre-merger Vividion that were extinguished by the Merger, and because CHP failed to plead facts bringing its claims within the narrow exception recognized in *Parnes v. Bally Entertainment Corporation*, 722 A.2d 1243 (Del. 1999). That decision should be affirmed.

As alleged in the Complaint and the documents incorporated by reference therein, Bayer approached Vividion in 2021 with an unsolicited $2-billion offer (half payable up front and half contingent upon achieving milestones) while Vividion was preparing for an IPO. Bayer conducted full and unrestricted due diligence into Vividion and its intellectual property ("IP") portfolio, which included an exclusive license from The Scripps Research Institute ("Scripps") for various patents and patent applications, one of which was U.S. Patent Application No. 16/478,444 (the "'444 application"). Following due diligence, Bayer agreed to improve its offer by shifting $500 million from contingent milestone payments to the up-front payment, resulting in $1.5 billion payable at closing and only $500 million contingent on milestones.

Bayer also negotiated for a specific contractual right: the Merger Agreement required Vividion to use commercially reasonable efforts to renegotiate its license agreement with Scripps and return certain rights to Scripps, including the '444 application, before closing. The Merger Agreement made clear that Bayer sought that term to limit future payment and development obligations tied to IP that Bayer did not want to retain, while preserving the Scripps licenses that were essential to Vividion's business. Just as importantly, the Merger Agreement made clear that Bayer would pay the same total consideration ($2 billion) whether or not Vividion ultimately succeeded in returning those rights to Scripps before closing.

Vividion's independent financial advisor, Centerview Partners, recommended that the Board accept Bayer's offer and approve the Merger Agreement without conducting a market check or separate valuation of the

Company's IP. The Board, including CHP's own designee, unanimously approved the Merger Agreement.

Vividion then did exactly what the Merger Agreement required. After signing, Vividion renegotiated its Scripps licenses and released certain rights, including the right to the '444 application, back to Scripps. The Merger closed in August 2021, resulting in Vividion's stockholders receiving a substantial premium on their shares.

The theory of CHP's Complaint is that two Vividion directors (defendants-below/appellees Dr. Benjamin Cravatt and Dr. Tom Woiwode) misrepresented and concealed the value of the '444 application during Merger negotiations so that, long after the Merger closed, another company, Belharra Therapeutics, Inc., could license the application from Scripps. CHP contends this alleged conduct depressed the Merger price. That is a classic derivative claim.

CHP tries to recast the facts to assert a direct *Parnes* claim. But its own theory confirms why the Complaint was properly dismissed: the transaction CHP challenges as allegedly diverting consideration from stockholders—the release of the Scripps license—was not a transfer of value from Vividion to any defendant. The license was returned at Bayer's direction to *Scripps*, an independent third party. Moreover, the Merger consideration was fixed at $2 billion regardless of whether the ’444 application remained with Vividion or was returned to Scripps. CHP thus seeks to treat a separate and independent transaction between Scripps and Belharra more than a year later as though it were an insider side deal in connection with the Merger itself. It was not.

In substance, CHP asks this Court to conclude that two non-controlling directors were duty-bound to derail or reprice a $2-billion arm’s-length transaction—despite Bayer’s unrestricted diligence; despite Bayer’s express contractual demand that Vividion use commercially reasonable efforts to return the ’444 application to Scripps; despite the fixed $2-billion price that would not change regardless of whether the ’444 application was returned to Scripps or retained by Bayer; despite Vividion’s independent financial advisor’s recommendation to approve the Merger without a market check; and despite the independent Board’s unanimous approval. According to CHP, the two directors could have and should have forced Bayer to pay “hundreds of millions (if not billions)” more for a single undeveloped, Scripps-owned patent application that Bayer had already evaluated and did not want to acquire. Delaware law does not support that theory as a direct challenge to a merger’s fairness under *Parnes*.

For good reason. If a former stockholder could invoke *Parnes* merely by alleging that additional information “might” have supported a higher price, virtually every post-merger claim could be repackaged as a direct claim. The narrow *Parnes* exception would swallow the settled rule that derivative claims are extinguished by a merger. CHP's related aiding-and-abetting claims depend on the same failed premise. The Court of Chancery correctly rejected CHP's theory and dismissed the complaint. Its judgment should be affirmed.

SUMMARY OF ARGUMENT

I. DENIED. The Court of Chancery properly credited CHP's well-pleaded allegations in the Complaint, but nevertheless concluded that CHP had failed to state a claim.

The Court of Chancery acknowledged CHP's allegations of misconduct, including the alleged misrepresentations during Merger negotiations, and concluded they did not support CHP's legal argument that the alleged misconduct could have materially affected the Merger price. Given that Bayer initially offered $2 billion to acquire Vividion, conducted unrestricted due diligence into its IP, including into the '444 application, determined it did not want the application, and then signed a Merger Agreement requiring Vividion to try to release the IP prior to closing and providing for a fixed $2-billion price regardless of whether Vividion released the IP, the Court rightly concluded CHP alleged nothing permitting the inference that Cravatt's and Woiwode's alleged misconduct could have negatively impacted the Merger price. CHP's disagreement with the Court of Chancery's conclusion that the well-pleaded allegations did not support a claim for relief does not establish that the Court failed to credit any well-pleaded facts.

II. DENIED. The Court of Chancery correctly concluded that the *Parnes* exception does not apply and thus that CHP's claims were derivative and extinguished by the Merger. Specifically, CHP failed to allege that the $2-billion merger between Bayer and Vividion was fundamentally unfair. It pleaded no facts supporting its theory that Vividion could have extracted “hundreds of millions (if not billions)” more from Bayer for a license to a single, undeveloped patent application that Bayer had evaluated and elected to return to Scripps. To the contrary, Bayer’s offer was so lucrative that Vividion’s independent financial advisor recommended accepting it without conducting a market check.

Against that backdrop, the Court of Chancery properly rejected CHP’s attempt to revive its extinguished derivative claims under *Parnes*.

First, there was no “side transaction.” Vividion released its license to the ’444 application to *Scripps*—not to Cravatt, Woiwode, or even Belharra—and *Scripps* independently chose to later license the application to Belharra. CHP does not allege that Scripps acted as a conspiring intermediary; it participated in a post-closing, arm’s-length transaction.

Second, CHP’s theory of causation fails. Vividion released the license to the IP after Vividion and Bayer fixed the Merger consideration and signed the Merger Agreement. CHP failed to allege facts supporting that Cravatt or Woiwode controlled or defrauded Vividion’s majority disinterested Board. The Board’s unanimous approval of a $2-billion transaction on its independent financial advisor’s recommendation was not "essentially inexplicable"—it was commercially straightforward.

Third, the alleged side transaction was immaterial to the $2-billion merger, as CHP pleads no facts showing the undeveloped '444 application had meaningful value—indeed, Bayer valued it at zero after due diligence. CHP's attempt to rely on speculative, post-merger venture funding to establish materiality is unavailing.

Finally, CHP does not allege that any defendant improperly conditioned or linked release of the patent application to their approval of the Merger. At most, CHP faults Cravatt and Woiwode for failing to resist Bayer's request to return IP to Scripps or extract additional consideration. Such attenuated theories do not support a *Parnes* claim. *Parnes* applies to egregious insider misconduct that fundamentally taints a merger—such as, in that case, a chairman demanding an illegal bribe as the price of his consent—not to speculative allegations that non-controlling directors could have driven a harder bargain.

The Court should affirm the judgment of the Court of Chancery.

STATEMENT OF FACTS

I. FACTUAL BACKGROUND

The following factual allegations are taken from the Complaint and materials that were incorporated by reference into it.[1]

A. Vividion developed drug screening technologies that are unrelated to the ’444 application that it released.

Vividion was founded in 2014 by Dr. Benjamin Cravatt (an esteemed biochemistry professor at Scripps), two other scientists at Scripps, and CHP’s managing member John Clarke (who served on the Vividion Board as CHP’s designee). A50-51, A56 ¶¶ 11, 24–25; A460. Vividion sought to develop new drug therapies using “chemoproteomics” research into the disease-causing proteins that elude targeting by existing drug therapies due to the lack of a known, useable binding site. A56-58 ¶¶ 25-29; A286.

Initially, Vividion agreed to fund Cravatt’s research at Scripps in exchange for an option to exclusively license his discoveries. A58 ¶ 30. In January 2016, pursuant to its option under that research funding agreement, Vividion signed an exclusive license agreement with Scripps to develop certain technologies discovered by Cravatt. A47, A58 ¶¶ 3, 31; A576 (the “License Agreement”). The

[1] Citations to “OB” refer to Appellant’s Opening Brief.

License Agreement required Vividion to "use commercially reasonable efforts" to develop the licensed technologies and meet certain milestones. *Id.*, A589-90.

Vividion had great success. By 2021, Vividion had identified 250 disease-causing proteins that could be covalently (*i.e.*, permanently) targeted to generate novel drug therapies. A56-58, A64 ¶¶ 26–29, 44–45; A286-87. The core technology Vividion had developed, a "chemoproteomic screening technology," allowed it to identify these proteins employing high-resolution mass spectrometry. *Id.* A56-58 ¶¶ 26–29. Over the years, Vividion licensed the rights to several more of Cravatt's patents and applications from Scripps. A615.

Among the IP that Vividion licensed from Scripps was U.S. Patent Application 16/478,444, entitled "Photoreactive Ligands and Uses Thereof" (the "'444 application"). A61, A63 ¶¶ 40, 42–43; A615; A626. The '444 application was filed with the U.S. Patent and Trademark Office and its underlying discoveries were publicly described in a 2017 article in the journal *Cell*. A60 ¶ 39. This technology used a "novel photoaffinity-based" method that differed from Vividion's covalent technology. A67 ¶ 51. The '444 application, filed as provisional application No. 62/447,882, involved a subset of the discoveries publicly described in the 2017 *Cell* article. A61 ¶¶ 40–41. Scripps licensed the '444 application to

Vividion through an August 2018 amendment to the License Agreement. A63 ¶¶ 42–43; A615; A192-3.

CHP admits that Vividion did not develop—or even intend to develop—the technology described in the ’444 application. Rather, CHP recognizes that, in 2021, Vividion was focused on ways “to leverage existing capabilities,” to wit, its developed protein covalent screening technology. A64 ¶ 46; A287-92 (describing use of Vividion’s existing screening platform to target cancer and other disease areas). Further, at the time of the Merger, the ’444 application had not been approved by the U.S. Patent and Trademark Office. A61 ¶ 40.

In short, the ’444 application was one of many discoveries that Vividion had licensed from Scripps but chosen not to develop. At the time of the Merger, it was an unapproved patent application for technology unrelated to Vividion’s core business.

B. In June 2021, Bayer made an unsolicited offer to acquire Vividion for $2 billion, conducted due diligence, and negotiated terms requiring Vividion to attempt to release its license to the ’444 application.

Given its success, in April 2021, Vividion was preparing for an initial public offering. A283. As part of that process, Vividion prepared a Form S-1 describing its business and technology. *Id.* Though rife with discussion of the chemoproteomics technology Vividion was actively developing, the S-1 did not mention the ’444 application or its photoreactive technology in any capacity. *Id.* The S-1’s silence was consistent with Vividion’s focus on its developed chemoproteomic screening platform, not the undeveloped photoreactive technology described in the ’444 application.

Vividion never launched the IPO. On June 1, 2021, Bayer made an unsolicited offer to acquire Vividion for a total of $2 billion in cash, with half paid at closing and half in milestone payments. A47, A68 ¶¶ 2, 54.

Over several weeks, Vividion and Bayer “heavily negotiated the terms of [the] offer.” A69 ¶ 55. Vividion “was able to secure substantial concessions from Bayer,” including shifting $500 million of the proposed milestone payments into the guaranteed upfront payment. *Id.* As a result, Vividion stockholders would receive $1.5 billion from Bayer at closing, and only $500 million was contingent on milestones.

While Bayer and Vividion negotiated the Merger, Bayer conducted full and unrestricted due diligence into Vividion and all its IP rights, including the Scripps licenses. *See* A51, A68 ¶¶ 12, 54. CHP does not allege Bayer ever sought to retain the license to the ’444 application.

Rather, Bayer insisted on a term (Section 5.20) in the Merger Agreement that required Vividion to "use commercially reasonable efforts" to release its exclusive license to the '444 application, along with several other of its licenses to Scripps patents and patent applications, between signing and closing. A173, A187-202. As the Merger Agreement states, Bayer wished to limit future payment and development obligations to Scripps for those licenses, while retaining Vividion's core IP. A173. The Merger Agreement provided that completing the amendment was not a condition to closing and would not impact the $2-billion price. *Id.*

Vividion's independent financial advisor, Centerview Partners, recommended Vividion "not to conduct a market check on Bayer's offer" or analyze the value of its IP rights. A75 ¶ 68. In view of Bayer's lucrative offer, and worried about information leaks that could affect the timing of Vividion's IPO if the Merger fell through, Centerview recommended that Vividion accept the negotiated Merger terms. *Id.* The Board followed Centerview's advice, abandoned its IPO, and unanimously approved the Merger Agreement on July 9, 2021. A69, A92 ¶¶ 55, 111.

Pursuant to its obligations under the Merger Agreement, and with Bayer's full knowledge and approval, Vividion negotiated an amendment to its

License Agreement with Scripps, which it signed on July 13, 2021. The amendment reflected the renegotiated terms of several licenses to Scripps's patents and applications and expressly terminated Vividion's exclusive license to, among others, the '444 application. A73-74 ¶¶ 64–66; A616-24.

CHP vaguely alleges that, during renegotiations of the License Agreement, Cravatt first "downplayed the significance of the '444 application." A73 ¶ 65. But CHP does not identify any specific representation Cravatt made or allege that any representation was fraudulent. *Id.* CHP speculates that, as Vividion's co-founder and scientific consultant, Cravatt provided "input" to the Vividion Board. A74-75 ¶ 67. CHP does not allege that any other defendant was involved in renegotiating the License Agreement. *Id.*

The Merger closed on August 19, 2021. A50-51 ¶ 11. CHP received about $250 million for its 12.5% stake in Vividion, which CHP admits was a "significant premium" for its stock. A50, A75-76 ¶¶ 10, 70.

C. Cravatt, Woiwode, and Parker founded Belharra, which licensed the '444 application after the Merger.

Months before Bayer approached Vividion with its unsolicited acquisition proposal, on March 18, 2021, defendant below/appellee Belharra was founded by, among others, Cravatt and Parker. A65 ¶ 48. Eighteen months after the

Merger closed, Belharra entered into a license agreement with Scripps that included the '444 application. *See* A84 ¶ 87. Belharra then spent years developing its technology. A66 ¶ 50. Entities affiliated with defendant-below/appellee Versant, but not Versant itself, invested $50 million in Belharra in 2024. A49 ¶ 7. Defendant-below/appellee Inception, a Versant-affiliated startup engine, provided Belharra "resources," such as office space and general startup support. *Id.*

II. PROCEDURAL BACKGROUND

A. CHP sued defendants over Belharra's post-Merger license from Scripps.

Three years after the Merger closed, CHP filed this lawsuit in the Court of Chancery. Defendants moved to dismiss and, in response, CHP filed the amended Complaint that is the subject of this appeal.

CHP alleges Cravatt and Woiwode breached their fiduciary duties to Vividion, engaged in fraud, and were unjustly enriched because they "downplayed" the value of the '444 application to Vividion and Bayer during Merger negotiations so Belharra could eventually license it from Scripps. A85-86, A90-94 ¶¶ 90–93, 105–17.

CHP alleges Parker, Belharra, Versant, and Inception aided and abetted this breach by "helping to found Belharra," although CHP does not allege that they were contractually restricted from doing so or that they played any role in the

Merger. A87-90 ¶¶ 95–103. And CHP alleges Parker, Belharra, and Versant were unjustly enriched by the release of Vividion's license to the '444 application in connection with the Merger, because it allowed Belharra to eventually license the application from Scripps. A94 ¶¶ 115–17.

B. The Court of Chancery dismissed CHP's lawsuit because the Complaint asserted extinguished derivative claims.

Defendants moved to dismiss the Complaint. Among other bases for dismissal, they argued that CHP's claims were derivative and thus extinguished by the Merger. A232-45. The Court of Chancery agreed. In a well-reasoned opinion, the Court held CHP's claims were derivative and did not satisfy any conditions of the narrow *Parnes* exception such that they could proceed directly. Op. 10–15.

First, CHP failed to allege a side transaction between Vividion and any insiders. Op. 15. As the Court explained, Cravatt and Woiwode "did not obtain the '444 Application IP directly through the renegotiation or by operation of the Merger." *Id.* "Rather, they negotiated for Scripps to retain the '444 Application IP, which [they] later licensed from Scripps." *Id.* Because defendants received no special benefits from Vividion in connection with the Merger, and because "[t]here is no allegation that an internationally renowned research institute [Scripps] was complicit in [the] alleged scheme," there was no possible side transaction to invoke the *Parnes* exception. *Id.*

Second, the Court of Chancery concluded CHP failed to allege Cravatt and Woiwode decreased the Merger price. As the Court explained, "the parties signed the Merger Agreement before [Cravatt and Woiwode] renegotiated the Scripps License Agreement." Op. 13. Critically, the Merger Agreement "fixed a $2 billion price *regardless of the outcome of those renegotiations*." *Id.* (emphasis added). Thus, CHP could not establish causation under *Parnes* because the Merger consideration would not change whether Bayer acquired the license to the '444 application at closing or not. *Id.* CHP also failed to allege Cravatt and Woiwode obstructed Bayer's due diligence or that they obscured the '444 application and affected the Merger price. *Id.*

Third, the Court held that the alleged diversion (renegotiation of the Scripps license) was not material in the context of a $2-billion Merger, given that Bayer had assigned no independent value to the '444 application. Op. 13–14.

Finally, the Court explained that CHP could not establish causation because it failed to allege that defendants controlled or manipulated the Board into approving Bayer's offer, including its request to release the license to the '444 application. The Board was majority independent and had complete knowledge about and access to Vividion's IP. Thus, CHP failed to allege any corruption of the Merger "process." Op. 15.

The Court thus dismissed the Complaint with prejudice.

ARGUMENT

I. THE COURT OF CHANCERY CREDITED CHP'S WELL-PLEADED ALLEGATIONS.

A. Question Presented

Whether the Court of Chancery credited CHP's well-pleaded allegations, including those regarding misconduct during Merger negotiations, when it dismissed the Complaint with prejudice.

B. Scope of Review

"The decision of the Court of Chancery granting a motion to dismiss under Court of Chancery Rule 12(b)(6) is reviewed by [the Supreme] Court de novo." *Feldman v. Cutaia*, 951 A.2d 727, 730 (Del. 2008). In doing so, the Supreme Court, like the Court of Chancery, need not "accept conclusory allegations unsupported by specific facts or … draw unreasonable inferences in favor of the non-moving party." *Price v. E.I. du Pont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011), *overruled on other grounds by Ramsey v. Georgia S. Univ. Advanced Dev. Ctr.*, 189 A.3d 1255, 1277 (Del. 2018).

C. Merits of Argument

The Court of Chancery accepted CHP's well-pleaded allegations as true but correctly held the Complaint failed to state a claim. As the Court explained, the "crux" of CHP's claim was that Cravatt and Woiwode "misrepresented the value of the ’444 application” during license renegotiations with Scripps. Op. 13. But the alleged misconduct could not have impacted the Merger price: the license renegotiations happened after Bayer conducted due diligence, the $2-billion price was fixed, and the Merger Agreement was executed. *Id.* Because this reasoning is coextensive with CHP’s second question presented, further discussion is addressed in Argument II below.

In any case, CHP’s argument that the Court failed to credit its allegations of misconduct during Merger negotiations is wrong. *See* OB 26–36. The Court repeatedly acknowledged those allegations. Op. 1, 9, 10, 12. It did not ignore them. It just concluded the allegations were legally insufficient to support a *Parnes* claim. Op. 12–15. That conclusion was correct.

Indeed, much of what CHP claims was ignored consists of conclusory and speculative assertions or immaterial conduct. Allegations that Cravatt and Woiwode “manipulated” Vividion, “tainted” its process, “shaped” negotiations, “played an important role” in diligence, or “lied and concealed information” lack supporting facts permitting a reasonable inference of wrongdoing or describe facially innocuous conduct. *See* OB 27–36. The Court of Chancery properly declined to credit such allegations because they were not well pleaded and did not support a *Parnes* claim. *See In re Hennessy Cap. Acquisition Corp. IV S'holder Litig.*, 318 A.3d 306, 323, 325-26 (Del. Ch. 2024), *aff'd*, 337 A.3d 1214 (Del. 2024).

CHP's remaining arguments mischaracterize the record or the Court's opinion. For example, CHP asserts that the Court ignored its allegation that Cravatt and Woiwode misrepresented the '444 application as "immaterial and worthless" during Merger negotiations. OB 28. In fact, the Court addressed and rejected that theory, explaining it was a mischaracterization of Vividion's representation and warranty in the Merger Agreement not to release any "material" IP after signing, which provision *excluded* the '444 application that Bayer had *already* determined was immaterial. Op. 6–7. The Court correctly read the Complaint to state that (1) Bayer made its decision after conducting unrestricted due diligence and (2) Vividion's disinterested Board unanimously accepted Bayer's term on the advice of an independent financial advisor. Op. 5–6, 13. There were thus no well-pleaded allegations to support a claim of fraud in connection with the Merger negotiations. *See also* Section II.C.2.b(ii), *infra.*

Nor did the Court misdescribe the Complaint. OB 31-34. It recognized the legal insufficiency of CHP's claims, but it did not fail to acknowledge well-pled allegations.

First, the Court's observation that CHP did not allege defendants obstructed due diligence (Op. 13) reflected the undisputed reality that Bayer conducted full and unrestricted due diligence, the '444 application was publicly filed with the USPTO, described in a peer-reviewed *Cell* publication, and listed in the Merger Agreement's disclosure schedules. A51, A60-63, A68 ¶¶ 12, 39–42, 54; A188-202. CHP does not allege that Cravatt withheld any document or blocked any inquiry. The Court permissibly concluded that these facts did not support a reasonable inference of obstructed diligence.

Second, the Court's statement that Scripps was not alleged to have been "complicit" in any scheme (Op. 15) was a fair assessment of the Complaint. CHP alleged only that Cravatt had "influence" over Scripps and that Scripps had a general "policy of collaborating" with named inventors. OB 32–33 (citing A84, A63). Those allegations were insufficient to plausibly plead that an internationally renowned research institute conspired to defraud Vividion's stockholders. The Court of Chancery identified a gap in CHP's pleading; it did not misconstrue it.

Third, CHP's conclusory assertion of Board "manipulation" could not overcome the undisputed allegations that the Board was majority independent, relied on Centerview's independent advice, and unanimously approved the Merger. A50, A75, A92 ¶¶ 11, 68, 111; A460-65. CHP's speculation that one director would have voted differently if better informed (A92-93 ¶ 111) does not establish a tainted process; at most, it suggests a single hypothetical dissent. As explained further below, accepting a $2-billion, premium deal on advice of an independent advisor was not "so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any ground other than [fraud]." *Kahn v. Stern*, 2017 WL 3701611, at *13 (Del. Ch. Aug. 28, 2017), *aff'd*, 183 A.3d 715 (Del. 2018).

Finally, CHP argues the Court improperly dismissed the remaining claims against Parker, Versant, and Inception. OB 36. But CHP concedes that "a claim for aiding and abetting a breach of fiduciary duty cannot survive if the underlying fiduciary duty claims do not." *Abraham v. Est. of Wirtz*, 2025 WL 3625719, at *13 (Del. Ch. Dec. 15, 2025); OB 36. Thus, these claims properly fell with its *Parnes* claims.

II. THE COURT OF CHANCERY CORRECTLY HELD THAT CHP COULD NOT STATE A DIRECT CLAIM UNDER THE NARROW *PARNES* EXCEPTION.

A. Question Presented

Whether the *Parnes* exception permits an otherwise extinguished derivative claim based on allegations that non-controlling directors failed to obtain additional Merger consideration for a single undeveloped patent application that the acquiror independently evaluated and chose to release to its licensor.

B. Scope of Review

The Court conducts *de novo* review of the dismissal decision, as noted above, *Feldman*, 951 A.2d at 730, and may affirm "if there is any ground asserted by [the Defendants] that can sustain the judgment of the [Court of Chancery]," *Rossdeutscher v. Viacom, Inc.*, 768 A.2d 8, 17 (Del. 2001).

C. Merits of Argument

CHP asserts derivative claims for harm allegedly done to pre-Merger Vividion that were extinguished by the Bayer-Vividion Merger. The Court of Chancery correctly credited CHP's well-pleaded allegations, but nonetheless determined that CHP could not prevail on its *Parnes* claim on any set of facts that could be inferred from the Complaint. This Court should thus affirm.

1. CHP asserts extinguished derivative claims.

It is well-settled that stockholders generally lose standing to bring derivative claims on behalf of a corporation that has been dissolved in a merger. *Lewis v. Ward*, 852 A.2d 896, 900–901 (Del. 2004) (citing Del. Ct. Ch. R. 23.1 and 8 *Del. C.* §§ 259(a), 327). Former stockholders may assert claims "following a merger in only two distinct circumstances: where the claims asserted are direct, rather than derivative, or where one of the exceptions recognized in *Lewis v. Anderson* applies." *Feldman*, 951 A.2d at 731 (discussing 477 A.2d 1040, 1046 & n.10 (Del. 1984)). CHP does not contend that its claims qualify under *Lewis*. Thus, unless CHP's claims are direct claims, they were extinguished.

CHP's claims are derivative. CHP alleges Cravatt and Woiwode breached their fiduciary duties to Vividion in a manner that "caused [Vividion] to enter the Merger [with Bayer] at an inadequate price." *See In re Massey Energy Co. Deriv. & Class Action Litig.*, 160 A.3d 484, 503 (Del. Ch. 2017). These are classic derivative claims because they alleged only "harm to [Vividion] by definition and not to any individual stockholder." *See id.* Further, any recovery would have flowed to pre-Merger Vividion, which could then distribute the proceeds to stockholders *pro rata*. *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1261 (Del. 2016).

2. The Court of Chancery properly concluded that the *Parnes* exception does not apply.

The *Parnes* exception, a very narrow exception to this general rule, does not permit CHP's claims to proceed directly here.

a. *Parnes* "very narrowly" permits direct claims for "egregious" misconduct in connection with a merger.

Parnes holds that a former target stockholder may assert claims post-merger if it "challenge[s] the validity of the merger itself, usually by charging the directors with breaches of fiduciary duty resulting in unfair dealing and/or unfair price." 722 A.2d at 1245; Op. 12.

Not all "alleged wrongs associated with [a] merger" that allegedly reduce the merger consideration target stockholders might otherwise have received are subject to challenge. *Parnes*, 722 A.2d at 1245. As Delaware courts have observed, "[i]n a merger negotiation, there are countless issues to be figured out[,]" some of which may properly result in terms that impact the consideration paid to all stockholders. *Golaine v. Edwards*, 1999 WL 1271882, at *9 (Del. Ch. Dec. 21, 1999). But "[i]t cannot be that the mere fact that an insider (or the affiliate of an insider) received a payment in connection with the merger in itself provides a sufficient basis for a target stockholder plaintiff to state an individual claim[.]" *Id.*

(citing *Kramer v. W. Pac. Indus., Inc.*, 546 A.2d 348, 350 n.2 (1988)). Thus, "Delaware Courts have interpreted the *Parnes* exception very narrowly." *Blue v. Fireman*, 2022 WL 593899, at *8 (Del. Ch. Feb. 28, 2022) (quoting *In re NYMEX S'holder Litig.*, 2009 WL 3206051, at *10 (Del. Ch. Sept. 30, 2009)).

To successfully invoke the *Parnes* exception, a former stockholder must allege facts supporting "that the fiduciary tainted the sale process" in some way. Op. 14. To invoke *Parnes* based on an alleged "side deal," a stockholder must allege: (1) a "side transaction" with an insider diverted merger consideration from the other stockholders; (2) that side transaction "material[ly]" decreased the merger consideration; and (3) an improper "link" between the side transaction and the target insiders' approval of the merger. *Blue*, 2022 WL 593899 at *9.[2]

While "the [*Parnes*] test is whether the alleged breaches of fiduciary duties resulted in unfair price *and/or* unfair process[,]" that does not extract the materiality requirement from the analysis. *In re Ply Gem Indus., Inc. S'holders Litig.*, 2001 WL 755133, at *5 (Del. Ch. 2001) (emphasis original). The alleged misconduct must result in an overall, materially "unfair price" or an "unfair process"

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[2] The Court of Chancery correctly cited to and applied the *Blue* test for alleged side transactions. Op. 13. CHP's Opening Brief notes the Court also cited a different application of *Parnes* regarding pre-merger derivative lawsuits, OB 42, but that did not impact its analysis.

that diverted material consideration from the target stockholders based on an improper demand by target insiders that they linked to the merger. *Id.*

Parnes itself is illustrative. There, the Court held that a former target stockholder could pursue her claims post-merger because the target chairman "informed all potential acquirors that his consent would be required for any business combination" and, "to obtain his consent, the acquiror would be required to pay [him]" $21 million in cash, a $5 million warrant, and $43 million in stock, and give him ownership interests in two proposed projects. 722 A.2d at 1245. This demand for an illegal bribe scared off all bidders except one, which agreed to it. *Id.* Because the chairman had "tainted the entire process of finding an interested merger partner and negotiating the transaction," the Court concluded the plaintiff could sue directly for breach of fiduciary duty. *Id.* at 1247. The Court reasoned: "It is inexplicable that independent directors, acting in good faith, could approve the deal." *Id.*

Every case since that has found the *Parnes* exception applies concerned allegations of similarly egregious side transactions in which target insiders demanded a material diversion of merger consideration or assets to themselves to secure their consent to the merger. *E.g., Blue*, 2022 WL 593899, at *11-14 (controlling stockholder threatened to nix merger unless target board awarded it stock interests that diverted $40 million of $120–$130 million in merger consideration); *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, 2018 WL 3120804, at *8, *13 (Del. Ch. June 25, 2018) (controller demanded target board pay him "unique benefits" in the form of "settlement of the indemnification claim" "worth over half a billion dollars as part of the [$3.1 billion] sale of the company" in order for him to approve the sale); *Houseman v. Sagerman*, 2014 WL 1600724, at *13 (Del. Ch. Apr. 16, 2014) (target board directly diverted material consideration to itself); *Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618, 661-65 (Del. Ch. 2013) (target managers diverted $15 million to themselves and $60 million to limited stockholders out of $82.5 million in merger consideration, leaving founders with $36,000), *abrogated on other grounds by El Paso*, 152 A.3d at 1264; *Dieterich v. Harrer*, 857 A.2d 1017, 1021-24 (Del. Ch. 2004) (target directors interfered with other merger offers to "obtain substantial amounts of … common stock at below-market prices[,]" which prevented target from being "acquired for nearly twice [the amount] eventually paid").

These cases make clear that *Parnes* does not apply where a plaintiff alleges just that insiders failed to maximize the total merger consideration, without more. Rather, insiders must have diverted material merger consideration or otherwise rendered the merger fundamentally unfair. CHP's theory—that Bayer *might* have paid more for Vividion under different circumstances—is a claim that fiduciaries failed to maximize value, not that they diverted merger consideration to themselves. CHP's claims thus fall far outside the narrow *Parnes* exception.

b. CHP's claims do not satisfy any of the requisite prongs of the *Parnes* exception.

The Court of Chancery properly concluded that the Complaint did not plead the "egregious" unfair dealing required to invoke the very narrow *Parnes* exception. *See* Op. 15; *Dieterich*, 857 A.2d at 1027. The overall contours and commercial reality of the Merger—which resulted in a $2-billion payout to the stockholders of a seven-year-old startup (with a negotiated $1.5 billion up front) in lieu of a risky IPO (the only alternative transaction)—demonstrate that the Merger was not the product of the type of egregious insider misconduct *Parnes* was designed to address. *See Golaine*, 1999 WL 1271882, at *6. The Court of Chancery thus correctly dismissed CHP's complaint with prejudice.

This Court should affirm the dismissal because CHP failed to allege: (1) any side transaction; (2) causation; (3) any material diversion of target assets; and (4) any improper diversion linked to approval of the Merger.

(i) CHP did not allege a "side transaction" because no defendant received special benefits in the Merger.

The Court of Chancery correctly determined CHP's complaint failed for the straightforward reason that it did not allege there was a side transaction between Vividion and any defendant in the Merger. Op. 15.

(a) No defendant received a license to the '444 application from Vividion in connection with the Merger.

A side transaction can only occur in the context of a merger when "management insiders, advisors, [or] the largest stockholders of the target … receive some benefits not shared with all the target stockholders, such as golden parachutes, advisory and consulting fees, new employment contracts, or additional merger consideration[.]" *Golaine*, 1999 WL 1271882, at *4. According to *Parnes* and every Delaware case that has held it applicable, there must be a direct diversion of merger funds to insiders. *E.g.*, *Parnes*, 722 A.2d at 1245; *Blue*, 2022 WL 593899, at *9; *Straight Path*, 2018 WL 3120804, at *1; *Houseman*, 2014 WL 1600724, at *13.

In this case, defendants did not receive *any* special benefits from Vividion in its release of the '444 application. Bayer and Scripps were its only beneficiaries. Bayer benefited because it avoided future obligations for an undeveloped technology it did not want. Scripps benefited because it was then free to license the '444 application on the open market. None of these benefits directly and uniquely flowed to Cravatt and Woiwode. Vividion's release of the '444 application, "unlike the transactions challenged in the *Parnes* line of cases discussed above, did not solely benefit a putative controller or a key fiduciary." *Brokerage Jamie Goldenberg Komen Rev Tru U/A 06/10/08 Jamie L Komen Tr. for Komen v. Breyer*, 2020 WL 3484956, at *11 (Del. Ch. Jun. 26, 2020).

CHP's allegation that Vividion's release of the '444 application to Scripps indirectly benefitted defendants because Belharra later was able to license it does not transform the release into a side transaction. *Parnes* applies only when "a controller improperly uses her control to extract a special benefit ***in the sale itself***[.]" *Straight Path*, 2018 WL 3120804, at *1 (emphasis added). "This is not the limited case seemingly countenanced by *Parnes* and its progeny where [a controller reduced the merger consideration] because [a merger party] offered him some personal pecuniary benefit." *NYMEX*, 2009 WL 3206051, at *11. Indeed, no Delaware case has ever held that a *potential* downstream benefit qualifies as a side transaction under *Parnes*.

The Court of Chancery thus correctly held that there was no side transaction alleged here and *Parnes* could not apply. Op. 15. "[Cravatt and

Woiwode] are not alleged to have received anything of value from [Vividion.]" *Id.* This should end the analysis.

Perhaps recognizing this fatal defect, CHP attempts on appeal to write out the side transaction requirement from the *Parnes* test. In the Court of Chancery, CHP agreed that a "side transaction" is essential to a *Parnes* claim under the *Blue v. Fireman* test. A1326. Now, the term "side transaction" does not appear in the Opening Brief.

CHP's argument would extend *Parnes* beyond its traditional bounds to reach *any* alleged "diversion" of value to a third party. OB 46–47. It contends that the "key inquiry" is simply whether stockholders lost consideration. *Id.* (emphasis omitted). To illustrate, CHP posits that the outcome would be the same if the CEO in *Parnes* had directed payments to a favored charity. *Id.* at 47. But that hypothetical does not fit the circumstances here. CHP's theory more closely resembles a claim for corporate waste—*i.e.*, that value was improperly transferred to a third party—which Delaware law has long treated as derivative and extinguished by a merger. *Kramer*, 546 A.2d at, 353–54. CHP's broader framing—that any act causing a monetary loss to the corporation gives rise to a direct claim, regardless of whether it benefits a target insider—goes further than any precedent supports, and its cited authorities do not require that result. *See Parnes*, 722 A.2d at 1246; *Straight Path*, 2018 WL 3120804, at *1.

(b) Anyone could have sought to license the ’444 application from Scripps after Vividion released it.

The Court of Chancery recognized another insurmountable obstacle to the existence of a cognizable side transaction here: *Scripps* licensed the ’444 application to Belharra long after the Merger closed. There was no transaction between Vividion and any defendant. Because CHP does not and cannot allege any defendant took anything for themselves in the Merger that was “not available” to the other stockholders, including CHP itself, the *Parnes* exception cannot permit its claims. *In re Alloy, Inc.*, 2011 WL 4863716, at *12 (Del. Ch. Oct. 13, 2011); *cf. Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 970, 980 (Del. Ch. 2000) (finding a *Parnes* claim where the target’s chairman, CEO, and controlling shareholder secured “various ‘side-deals’” that were “not available” to the other stockholders).

CHP does not allege that Cravatt and Woiwode induced Vividion to contractually “lock up” the license to the ’444 application in a manner that precluded anyone else from licensing it from Scripps. *Cf. Carr v. New Enter. Assocs., Inc.*, 2018 WL 1472336, at *11 (Del. Ch. Mar. 26, 2018) (discussing a cognizable “lock up" merger transaction). Rather, Belharra licensed the '444 application from Scripps long after the Merger closed, at fair market value. CHP, a founding investor with a Board designee, had reason to know that the '444 application was released and could have sought to license it itself.

CHP thus asks this Court to expand *Parnes* to include not only a "diversion" of target assets *to* innocent third parties, but free-market transactions *from* innocent third parties far in time *after closing*. Such a rule would obliterate the *Parnes* exception. Every time a target insider later acquires assets previously held by the target, the former target stockholders could challenge the merger under *Parnes*.

Even if an indirect side transaction could support a *Parnes* claim—*e.g.*, where target assets were first diverted to a conspiring intermediary who then handed them over to the insiders—no such facts are alleged here. *Cf. Straight Path*, 2018 WL 3120804, at *6, 12–13 (recognizing a possible *Parnes* claim where target assets were diverted to company in which defendant's "children held a 10% equity interest"). Scripps was a disinterested third party, and it could have licensed the '444 application to anyone. As the Court of Chancery recognized, there was no allegation that Scripps was complicit in defendants' alleged scheme. *See* Op. 15.

CHP nevertheless argues Cravatt "effectively ensured that Scripps would license the '444 application" to Belharra because his "continuing involvement" was "necessary to effectively use any license." OB 33. This is not sufficient to allege the license was locked up. Just because a future licensor of the '444 application may have benefitted from Cravatt's expertise does not mean Scripps could not have licensed the '444 application to another independent party. *Cf. Carr*, 2018 WL 1472336, at *11. Further, this argument underscores the immateriality of the '444 application at the time of the Merger: if the technology was valueless without future development, Bayer had no reason to pay more for it.

(ii) CHP's theory of causation is defective.

Even if CHP's claims based on a series of indirect transactions involving a disinterested third party were cognizable under *Parnes*, they separately fail because it was not reasonably conceivable that Cravatt's and Woiwode's alleged conduct impacted the Merger price. Op. 15.

(a) The Merger Agreement provided that Bayer would pay the same consideration regardless of whether Vividion released the license to the '444 application prior to closing.

CHP ignores that Bayer would have acquired the '444 application in the Merger if Vividion was unable to release the license pursuant to the terms of the Merger Agreement. The Merger Agreement required Vividion to "use commercially reasonable efforts" to renegotiate the Scripps license and release the '444 application. If Vividion was unable to release the license from Scripps, then Bayer would have acquired it in the Merger. The failure to release the license prior to closing would not impact the Merger in any way, including the price. Thus, the Court of Chancery reasoned that the $2-billion Merger price included the purchase of the license to the '444 application. Op. 15. Bayer simply assigned no value to the '444 application. For that reason, the Court of Chancery correctly concluded that CHP could not allege a cognizable theory of causation under *Parnes*. Op. 13.

Further, the alleged renegotiation of the license between Vividion and Scripps occurred *after* the Merger Agreement was negotiated and signed. As the Court of Chancery recognized, CHP alleged it was during this renegotiation that Cravatt allegedly "downplayed" the "true value" of the '444 application to Bayer and Vividion. Op. 13 (citing A73 ¶ 65). But because the Merger consideration would stay the same regardless of the outcome of that renegotiation, the Court properly concluded any alleged impropriety in connection with that renegotiation could not have affected the Merger price or process. Op. 1–2, 7, 13.

On appeal, CHP attempts to work around these fatal causation defects by arguing "the damage was done by the time the parties executed the merger agreement" and speculating Bayer might have paid more to acquire Vividion if it knew the "true value" of the '444 application. OB 45. But its Complaint did not allege Cravatt and Woiwode impeded Bayer's due diligence into the '444 application. It only speculates that they could have concealed information about it. The facts did not support such an inference. The '444 application was (1) publicly available (it was filed with the U.S. Patent and Trademark Office), (2) disclosed to Bayer in due diligence, and (3) related to a publication in a prestigious scientific journal. As the Court of Chancery recognized, CHP alleged no facts suggesting Bayer—one of the world's most sophisticated, international pharmaceutical conglomerates (*see* Op. 15)—was unable to sufficiently evaluate the value of the '444 application based on this information.

Further, CHP cannot rely on an omission theory because Cravatt and Woiwode, as Vividion directors, had no duty of disclosure *to Bayer*. *McRitchie v. Zuckerberg*, 315 A.3d 518, 536 (Del. Ch. 2024) (holding that a target director has no duty of disclosure to an acquiror).

Even so, CHP does not and cannot allege any omitted facts that conceivably could have altered Bayer's assessment of Vividion's value or affected price negotiations. Absent such allegations, no basis exists to infer any alleged conduct rendered the Merger price or process unfair.

Perhaps recognizing this causation defect, CHP pivots on appeal to a new argument it did not make below. CHP now contends Vividion could have "transfer[red] [the '444 application] to a separate entity held for stockholders' benefit[.]" OB 45. This is too speculative to be credited. CHP did not allege any facts suggesting Scripps would have, or even could have, permitted Vividion to transfer the '444 application to a third-party entity and then generate a return on it. CHP only alleges that, before Bayer made its unsolicited acquisition proposal, Vividion had created a "NewCo Exploratory Project" to explore new ideas. A64-65 ¶¶ 46–47. That is not specific enough to infer Vividion could have spun out a new company to somehow separately monetize the '444 application, or that there would have been any economic reason to do so. Further, even if Vividion hypothetically could have monetized the '444 application in this way, there can be no reasonable inference that any Merger consideration was diverted because the price was fixed and would not change regardless of whether Vividion released the IP prior to closing. CHP's claim is thus, at most, a non-cognizable claim for corporate waste. *See Golaine*, 1999 WL 1271882, at *10. In any case, this argument was waived because CHP did not raise it below. *See Emerald Partners v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999).

(b) The Merger was approved by a fully informed, majority independent Board.

The Court of Chancery properly held that CHP's claims suffered from another fatal causation defect. For *Parnes* to permit post-merger claims, they must be premised on self-interested actions by controllers in the merger, 722 A.2d at 1245, or insiders who perpetrated a "fraud-on-the-board," *In re Mindbody, Inc., S'holder Litig.*, 2023 WL 2518149, at *32 n.503 (Del. Ch. Mar. 15, 2023). *See* Op. 13–14.

Here, CHP admits a majority of the Board was disinterested and that all nine directors, including its designee Clarke, voted for the Merger. It does not allege Cravatt and Woiwode controlled that decision or Merger negotiations. Op. 14–15. Any control theory of causation thus fails. Op. 15; *Witmer v. Armistice Cap., LLC*, 344 A.3d 632, 652 (Del. Ch. 2025) (finding "control" had not been adequately pleaded where there were no allegations that defendant directors "steered the negotiations or otherwise dominated the Board"), *aff'd*, 2026 WL 849994 (Del. Mar. 27, 2026).

The Court of Chancery also appropriately concluded that CHP failed to allege a cognizable theory of fraud-on-the-board. Op. 14–15. As alleged, Bayer took unrestricted due diligence into Vividion's IP and instructed Vividion to use commercially reasonable efforts to release the license to the '444 application. The

Vividion Board, for its part, negotiated for the stockholders to receive an additional $500 million of the total consideration at closing, rather than contingent on achieving milestones. The Board determined that it was in the best interest of the stockholders to accept a deal providing a total of $2 billion. That decision—rather than demanding "hundreds of millions (if not billions)" more in Merger consideration—was not only commercially proper, it was the only reasonable choice. Certainly, it was not "so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any ground other than [fraud]." *Kahn*, 2017 WL 3701611, at *13.

Moreover, as the Court of Chancery correctly noted, Vividion's financial advisor, Centerview, counseled the Board against conducting a market check because the offer was so lucrative and because of the risk of information leaking before a potential IPO. CHP does not allege that Centerview's recommendation was based on, or informed by, anything Cravatt or Woiwode said about the '444 application. Centerview's advice rested on deal-level considerations—the attractiveness of Bayer's offer and IPO timing risk—independent of any particular patent application's value. It is thus clear that the Board relied on this independent advice, not on anything Cravatt or Woiwode said or did. Op. 5.

CHP also contends on appeal that the Court of Chancery did not fully credit its allegations that Cravatt and Woiwode "manipulated" the Board during the Merger process. OB 27–37. This argument rests on a mischaracterization of the Court of Chancery's decision. The Court acknowledged CHP's speculative allegations of misconduct during Merger negotiations but concluded—correctly—that those allegations, even if credited, did not state a claim under *Parnes*. Op. 15.

In all events, the Court of Chancery rightly concluded that CHP's "conclusory" claim of fraud fails. *See Alloy*, 2011 WL 4863716, at *11. CHP alleged only that Cravatt and Woiwode "shaped … Vividion's … thinking" and "consult[ed]" with it about its IP rights during the merger. OB 27–36. That is insufficient to plead fraud.

CHP's only purported allegation of fraud is that Cravatt and Woiwode misrepresented to Vividion's Board that the '444 application was "immaterial and worthless" during Merger negotiations. OB 48 (citing A82 ¶ 83). But CHP did not allege Cravatt or Woiwode said those words or their essence to anyone. What the Complaint actually alleged—as the Court of Chancery recognized in its decision—is that *Vividion* agreed in the Merger Agreement not to release any "material" IP rights between signing and closing. Op. 6 (citing A72-73 ¶ 63 (quoting A0161)). On that basis alone, CHP alleged Cravatt and Woiwode had characterized the '444 application as “immaterial” and then it abstracted “immaterial” to mean “worthless.” A71-73, A82 ¶¶ 60–64, 83 (alleging that because Cravatt and Woiwode also reviewed and signed the Merger Agreement, they represented the ’444 application was “worthless”).

Setting this “artful” pleading aside, CHP mischaracterizes the Merger Agreement. The representation and warranty concerning material IP expressly excepted the ’444 application because Bayer had already determined it was immaterial. Op. 6. The Court of Chancery thus correctly concluded “Vividion covenanted that it would not ‘amend in any material respect,’ or ‘knowingly waive, release or assign any material right of the Company under . . . any material IP Agreements,’ *other than* ‘as set forth in Section 5.1 of the [disclosure schedule].’” *Id.* (citing A160; A187-88) (emphasis added). For those reasons, CHP failed to assert a cognizable theory of fraud in connection with the Merger. Op. 13.

CHP’s omission theories fare no better. For one thing, based on the facts alleged, it was not reasonable to infer the Vividion Board was not fully informed about the ’444 application. The Board expressly contracted in the Merger Agreement to release that IP before closing. The only reasonable inference is that the Board considered whether it was in the best interest of the Company’s stockholders to agree that term. CHP's speculation about what was said or not said by Cravatt and Woiwode is insufficient to infer otherwise.

CHP's argument that the Court of Chancery did not credit its allegation that Cravatt and Woiwode violated their duty of disclosure to Vividion by failing to alert it to Belharra's existence similarly fails. OB 47–48. The Court of Chancery acknowledged CHP's arguments concerning Belharra. Op. 1, 4–5, 8–9. But it concluded CHP's allegations failed to support its *Parnes* claim. Nothing alleged supported that Cravatt and Woiwode did anything—or could have done anything—to influence the Merger terms, including the amount of consideration paid to stockholders. Op. 13. Cravatt and Woiwode were not on both sides of the Merger or the license renegotiations. *Cf. HMG/Courtland Props., Inc. v. Gray*, 749 A.2d 94, 114 (Del. Ch. 1999) (finding a breach of the duty to disclose where a director had an "undisclosed, buy-side interest[s]"—$355,000 invested personally—in the transactions he was negotiating for the sell-side); *Eisenberg v. Chicago Milwaukee Corp.*, 537 A.2d 1051, 1061 (Del. Ch. 1987) (directors had duty to disclose where they owned preferred stock that created a conflict of interest with common stockholders under the transaction). Nor did they "receive[] different consideration or derive[] some unique benefit" in the Merger "not shared with the common stockholders." *In re Crimson Expl. Inc. Stockholder Litig.*, 2014 WL 5449419, at *12 (Del. Ch. Oct. 24, 2014). Accordingly, there was no actionable nondisclosure.

(iii) CHP cannot allege a "material" diversion based on the release of a single license to a patent application that Bayer determined was valueless.

The Court of Chancery also correctly held that the alleged side transaction was not "material in the context of the merger." Op. 13. CHP failed to allege any well-pleaded facts supporting its speculative claim that the '444 application was material to a $2-billion Merger.

Delaware courts have found materiality only where a substantial percentage of the merger consideration was directly diverted to insiders. *See Blue*, 2022 WL 593899, at *9 (between 30% and 33% of the merger consideration was directly diverted); *Straight Path*, 2018 WL 3120804, at *13 ("over half a billion dollars" of value was directly diverted in a $3.1 billion merger); *Carsanaro*, 65 A.3d at 634 (almost 91% of the merger was directly diverted). CHP argues that diverted merger consideration need only exceed one percent of the total merger consideration, OB 50, but that misrepresents the case law, *see Blue*, 2022 WL 593899, at *12 (diversions in other cases were immaterial where "less than one percent of the overall merger consideration," not setting a floor at one percent).

The '444 application—to which even CHP pleads no market value at the time of the Merger—could not rise to that level of materiality. A single undeveloped patent application did not "wag[] the [$2] billion merger dog." *See Golaine*, 1999 WL 1271882, at *8 (an alleged $20 million diversion was immaterial to a multibillion-dollar merger). The only alleged valuation of the license to the '444 application at the time of the Merger is Bayer's valuation of *zero dollars*, which CHP admits is the "most probative evidence of fair value." *See DFC Global Corp. v. Muirfield Value Partners, L.P.*, 172 A.3d 346, 370 (Del. 2017).

In an attempt to avoid this glaring deficiency, CHP misstates the *Parnes* test on appeal. It now contends that any allegation of fraud in connection with a merger is sufficient to state an unfair "process" claim. OB 49–50 (citing *Cede & Co. v. Technicolor, Inc.*, 542 A.2d 1182, 1188 (Del. 1988)). That is incorrect. A *Parnes* claim requires that (1) the overall "merger price" was materially unfair or (2) unfair dealing by insiders in the "merger process" caused a material diversion of merger consideration. *Ply Gem*, 2001 WL 755133, at *5. CHP has not shown either.

CHP thus contends, as it unsuccessfully argued in the Court of Chancery, that the venture funding Belharra received years later is a proper proxy for the value of the '444 application at the time of the Merger. OB 51. It claims a $50 million investment from a Versant-affiliated fund should be multiplied by ten because venture capitalists "seek very high rates of return[.]" *Id.* While "elements of future value" "may be considered" in valuing the assets of a target company in a merger, value that is "the product of speculation," such as hypothetical future accomplishments of the post-merger entity, is not cognizable. *Weinberger v. UOP, Inc.*, 457 A.2d 701, 713 (Del. 1983). Here, CHP alleged no facts (as opposed to speculation) supporting that an undeveloped patent application had ***any*** value at the time of the Merger. *Cf. Del. Open MRI Radiology Assocs., P.A. v. Kessler*, 898 A.2d 290, 314–15 (Del. Ch. 2006) (a target's existing expansion plans that were backed by resources at the time of the merger had cognizable future value).

Even assuming Belharra's initial funding is an appropriate proxy for the value of a single patent application (it is not), it still would be immaterial. Versant invested $50 million in Belharra in 2024. A65-66 ¶ 49. Thus, as of 2024, the value of that technology, combined with all other Belharra assets, was 2.5% of the total Merger consideration. CHP cites no authority even suggesting that percentage would be material.

Ultimately, Bayer paid $2 billion for and acquired all Vividion assets *except* those, like the '444 application, that were returned to Scripps because Bayer did not want them. CHP has never contended—because it cannot contend—that $2 billion was an unfair price for the assets Bayer acquired. That forecloses its invocation of *Parnes*.

(iv) There was no "improper" diversion because appellees did not link the license release to merger approval.

Finally, CHP failed to allege Cravatt or Woiwode improperly linked the release of the '444 application to their approval of the Merger. That also renders *Parnes* unavailable. *Blue*, 2022 WL 593899, at *9. "Unlike in *Parnes* and *Straight Path*, missing from the Complaint are any facts to support a reasonable inference that [Cravatt and Woiwode] refused to negotiate or impeded the negotiation of [the Merger] transaction unless and/or until they received [the license to the '444 application from Vividion]." *Komen*, 2020 WL 3484956, at *12.

Indeed, even a target insider's demand for substantial payments to secure their consent to a merger can be proper when it "facilitate[s] the Merger and enable[s] stockholders to realize premium value for their shares." *In re Martha Stewart Living Omnimedia, Inc. S'holder Litig.*, 2017 WL 3568089, at *13 (Del. Ch. Aug. 18, 2017). "[W]hether such side transactions tainted the fairness of the transaction to the target stockholders becomes in large measure a judgment about whether it was appropriate or not for those side transactions to occur." *Blue*, 2022 WL 593899, at *9 (quoting *Golaine*, 1999 WL 1271882, at *6).

Here, Cravatt and Woiwode demanded nothing for their approval of the Merger and did not defraud anyone into giving them something of value. It was *Bayer* that "insisted [Vividion try to release the license to the '444 application] as a condition of the Merger" because it did not want to pay future royalties on licenses outside of Vividion's core business. *See Alloy*, 2011 WL 4863716, at *12. In agreeing to that term, the Board took the only commercially reasonable course of action. It thus squarely satisfied its duty to maximize value for stockholders. *See Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1985). Thus, because Cravatt and Woiwode did not link any side deal to their approval of the Merger, and because there are not allegations to support an inference other than that the Board agreed to renegotiate the Scripps license in good faith, the misconduct CHP alleges does not support a claim under *Parnes*. Because CHP cannot state a *Parnes* claim against Cravatt and Woiwode, its aiding and abetting claims fail, too. *Abraham*, 2025 WL 3625719, at *13.

Here too, CHP's theory of insider impropriety would, if accepted, expand *Parnes* beyond recognition, allowing claims that are merely temporally proximate to a merger to be accepted under what is supposed to be a narrow exception. Delaware courts have consistently rejected efforts to second-guess a merger by transforming claims that fiduciaries failed to maximize value for stockholders into direct challenges to a merger's fairness. *Parnes* is limited to cases involving an actual affirmative demand for the diversion of consideration in the sale of a company for good reason. It preserves the distinction between direct and derivative claims. This case should be no exception.

CONCLUSION

The Court should affirm the judgment of the Court of Chancery.

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