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IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERTA ANN K.W. WONG LEUNG REVOCABLE TRUST U/A DATED 03/09/2018, Plaintiff-Below, Appellant, v. AMAZON.COM, INC., Defendant-Below, Appellee,	No. 103,2026 Court Below: Court of Chancery of the State of Delaware C.A. No. 2023-1251-BWD **PUBLIC VERSION FILED JUNE 22, 2026**

APPELLANT ROBERTA ANN K.W. WONG LEUNG REVOCABLE TRUST U/A DATED 03/09/2018'S REPLY BRIEF

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NATURE OF PROCEEDINGS

After establishing during her first appeal that Plaintiff[1] had a credible basis to inspect Amazon's books and records, the Court of Chancery imposed the Forum Restriction that Amazon sought. Amazon's demand to have this provision imposed as a condition of inspection was the genesis of this litigation. At that time Plaintiff filed this action, there was no other related stockholder litigation pending, the only related action was the FTC action, and Amazon had not adopted an exclusive forum provision. After taking this matter through discovery, pre-trial briefing, and trial, Amazon now seeks to change the playing field. Its defense of the Court of Chancery's decision is based on events that happened after trial that did not provide a legitimate basis for Amazon's request for the forum provision at the time of trial.

There are four main issues with the arguments raised in Amazon's Answering Brief ("AB"). First, Amazon defends the Court of Chancery by focusing only on the fact that the court has recognized that such provisions may be ordered in certain circumstances. In so doing, Amazon (and the Court of Chancery) ignored the high standard for the imposition of a forum selection clause this Court's jurisprudence has articulated.

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[1] Capitalized terms not defined herein have the same meaning as in Appellant's Opening Brief ("OB").

Second, Amazon's defense of the Court of Chancery's analysis of the case-specific factors at play in this instance by heavily focusing on events that post-dated the demand, discovery, pre-trial briefing, and trial itself. For example, Amazon points to two copy-cat demands received after this Court held that Plaintiff established a credible basis, as though that could somehow have justified Amazon's reasons for wanting to have the Forum Restriction before it even knew these demands existed. Similarly, Amazon glosses over how the Court of Chancery ignored the practical reality that the only pending related litigation is not in Delaware, but in federal court in Washington. Amazon pretends the FTC litigation is completely different than the subject matter of Plaintiff's Demand, even though this Court found the FTC Complaint to be "central" to the Demand. Amazon (and the Court of Chancery) ignore this source of potential efficiency—overlapping discovery—as a legitimate reason for wanting to preserve the right to sue outside of Delaware.

Third, Amazon wants to rewrite the script now that it has finally adopted an exclusive forum provision in its bylaws. Amazon sees no irony in claiming an efficiency is to be gained in letting it re-write the record after trial. Amazon demanded the imposition of a "sweeping" restriction on stockholder rights without having an exclusive forum provision in its bylaws, or any related litigation pending in Delaware. Amazon then litigated this 8 *Del. C.* § 220 ("§ 220") demand through discovery, pre-trial briefing, and trial itself on that basis. Not once did during its first trip through the Court of Chancery did Amazon ever mention even the possibility of adopting an exclusive forum provision in its bylaws.

Finally, Amazon's defense of the Court of Chancery's imposition of the Forum Restriction ignores the validity of Plaintiff's proffered reasons to want to preserve the ability to sue outside of Delaware. This Court's own jurisprudence recognizes that even "remote" possibilities for these safety valves to be required are meaningful. Yet Amazon claims that Plaintiff's reasons are not valid because they are speculative. That is the very nature of wanting these protections—to prevent potential procedural hurdles and impediments that would defeat the "summary" nature of § 220 proceedings or otherwise prejudice plaintiff's rights as a stockholder. Moreover, Plaintiff's arguments regarding potential escape valves for a Forum Restriction were not waived. These are consistent with Plaintiff's position throughout the litigation: that this is a summary proceeding and Plaintiff has articulated specific concerns regarding the potential need to file elsewhere.

In sum, Amazon's arguments only highlight how the Court of Chancery abused its discretion in imposing a "sweeping" restriction on stockholder rights in circumstances that were far from "amply supporting" such a provision, and where Amazon's exclusive forum provision in its bylaws was only adopted after trial.

Accordingly, the Court should remand with instructions to remove the Forum Restriction, or at minimum, modify it so that Plaintiff can utilize the books and records obtained to intervene in a related action if necessary, or in circumstances where the Court of Chancery lacks jurisdiction, without seeking relief from the Court of Chancery's judgment.

ARGUMENT

I. AMAZON'S CLAIM THIS COURT DID NOT ARTICULATE A HIGH STANDARD FOR THE IMPOSITION OF THE FORUM RESTRICTION DOES NOT WITHSTAND SCRUTINY

Amazon's argument that "the 'high' standard plaintiff claims the court was supposed to apply … doesn't exist" requires ignoring the language articulating this standard in this Court's jurisprudence.[2] Amazon's overly myopic argument on this point relies on its contention that "[i]n *Treppel*, this Court did not even once use the word 'standard'—let alone admonish the Court of Chancery that a 'high' threshold must be met to justify a jurisdictional use restriction."[3] Amazon goes so far as to claim that "[t]he lesson from … *Treppel* and *KT4* is that there is no presumption—for or against—when the court is evaluating the propriety of a jurisdictional use restriction."[4] Amazon is off base.

This Court has treated jurisdictional use restrictions as unique from other types of conditions on inspection. This Court in *Treppel* held that agreed to a forum provision as a condition for inspection was "novel," but was permissible in certain

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[2] AB at 12–13.

[3] *Id.* at 13 (citing *United Techs. Corp. v. Treppel*, 109 A.3d 553, 558 (Del. 2014) ("*Treppel*")).

[4] AB at 13–14 (citing *Treppel* and *KT4 Partners LLC v. Palantir Techs. Inc.*, 203 A.3d 738 (Del. 2019) ("*Palantir*")).

circumstances.[5] The Court further explained that "[w]e also believe ***caution is needed*** because use restrictions under §220(c) have traditionally been tied to case-specific factors."[6]

In *Palantir*, the Court reiterated that such provisions are "not routine" and that "the Court of Chancery ***must be cautious*** about limiting the jurisdictions in which a petitioner can use in litigation the books and records it receives from a § 220 action."[7] Far from suggesting "there is no presumption—for or against"[8] such a provision, the Court explained the needed caution was "for an obvious reason: § 220 itself does not contain any statutory language restricting stockholders from using the books and records they inspect in lawsuits brought outside of Delaware."[9] In discussing the history of the provision, the Court explained that "despite the long history of litigation under § 220, the imposition of jurisdictional use restrictions was

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[5] *Treppel*, 109 A.3d at 560.

[6] *Id.* at 561 (emphasis added).

[7] *Palantir*, 203 A.3d at 743 (emphasis added).

[8] AB at 13.

[9] *Palantir*, 203 A.3d at 743.

a new phenomenon, and not at all a common condition to be routinely imposed. *Treppel* itself signaled as much."[10]

Amazon's argument that "nothing in *KT4* suggests that forum restrictions are generally disfavored"[11] is again contradicted by *Palantir*. There, in recounting its prior decision in *Treppel*, this Court explained it permitted the possibility of a jurisdictional use restriction "cautiously even in a situation where the company's request … was amply supported by its bylaws and the circumstances of the petitioner's demand."[12] This Court recognized such caution "[u]nderscor[ed] the importance of not reading into § 220 a sweeping restriction on stockholder rights not found in its text."[13] Moreover, in *Palantir* itself, the Court's only other decision considering the propriety of a jurisdictional use restriction on inspection, the Court found an abuse of discretion in granting such a provision without any safety valves or exceptions.[14]

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[10] *Palantir*, 203 A.3d at 760.

[11] AB at 13.

[12] *Palantir*, 203 A.3d at 762.

[13] *Id.*

[14] *Id.* at 764–65.

II. AMAZON'S DEFENSE OF THE COURT OF CHANCERY'S APPLICATION OF THE STANDARDS ARTICULATED IN *TREPPEL* AND *PALANTIR* TO THIS CASE FAILS

Amazon's description of the "case-specific" factors in *Treppel* reduces them to nothing of substance.[15] Amazon argues that "plaintiff treats the 'case-specific' factors identified in *Treppel* as independent requirements that must be satisfied—separate boxes that must be checked—to justify a forum restriction in every case."[16] This attempt to divorce the analysis from any guidance whatsoever should be rejected.

First, Amazon's defense of the Court of Chancery's citation to the "four demands seeking to investigate breaches of fiduciary duty based on purported anticompetitive conduct" as supportive of "the risk of multijurisdictional derivative litigation [being] even more compelling than the evidence presented in *Treppel*" is wrong.[17] *Treppel* was a unique situation involving repeated and interwoven litigation of the ***same*** issues "that [were] already the subject of derivative litigation in the Court of Chancery and this Court."[18]

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[15] AB at 14–15.

[16] *Id.*

[17] AB at 9, 15–16 (citing *Treppel*, 109 A.3d at 560; AB at 17; Opinion at 17).

[18] *Treppel*, 109 A.3d at 560.

Indeed, *Treppel* presented far more compelling efficiency concerns than presented by Amazon. *Treppel* involved two different plaintiffs initiating inspection demands, litigation demands, and derivative litigation (pursued through a motion to dismiss and an appeal) related to the same conduct and during an overlapping period of time.[19] One plaintiff—Harold Grill ("Grill")—filed an inspection demand in July 2012, then a derivative action in November 2012, which was dismissed in June 2013 and summarily affirmed six months later.[20] Meanwhile, another plaintiff—Lawrence Treppel ("Treppel")—sent a litigation demand letter on August 22, 2012 (one month after Grill's inspection demand), which the company rejected in December 2012.[21] Treppel responded to the rejection of his litigation demand in March 2013, seeking inspection of documents to "evaluate" the board's decision to deny his litigation demand.[22] This chronology is shown in the chart below:

[19] *Treppel*, 109 A.3d at 554–57.

[20] *Id.*

[21] *Id.*

[22] *Id.*

Date[23]	Plaintiff	Action
July 10, 2012	Grill	Inspection Demand Sent
August 22, 2012	Treppel	Litigation Demand Letter Sent
November 5, 2012	Grill	Derivative Action Filed
December 2012	Treppel	Company Rejected Litigation Demand
March 12, 2013	Treppel	Response Sent to Rejection of Litigation Demand, Seeking to Evaluate Board's Decision With Inspection Rights
June 5, 2013	Treppel	Action to Inspection Books and Records Filed
June 18, 2013	Grill	Derivative Action Dismissed by Court of Chancery
December 19, 2013	Grill	Derivative Action Dismissal Summarily Affirmed
February 12, 2014	Treppel	Court of Chancery Decision Denying Forum Use Restriction
December 23, 2014	Treppel	Supreme Court Opinion Reversing and Permitting Possibility of Forum Use Restriction

Thus, given the repeated and intertwined litigation, the Court recognized that the company "has already invested substantial resources in addressing not only Treppel's § 220 litigation, but also the related *Grill* litigation."[24] On top of that, "the corporation ha[d] a forum selection bylaw calling for litigation in Delaware."[25] These highly unique considerations led the Court to conclude that there was "a

[23] *Harold Grill 2 IRA v. Chenevert*, 2013 WL 3014120, at *1–3 (Del. Ch. June 18, 2013) *aff'd*, 83 A.3d 737 (Del. 2013); *Treppel v. United Techs. Corp.*, 2014 WL 558756, at *1 (Del. Ch. Feb. 12, 2014).

[24] *Treppel*, 109 A.3d at 561.

[25] *Id.*

legitimate concern on United Technologies' part that it and its stockholders could face excessive costs and the risk of inconsistent rulings if Treppel were to file suit elsewhere."[26]

Thus, Amazon's contention that the "evidence of the risk of multijurisdictional derivative litigation was even more compelling [here] than the evidence presented in *Treppel*, where the company could point to only the possibility of competing demands and derivative suits in the future"[27] is not based on a fair comparison to *Treppel*. Here, the prior inspection demand was not intertwined with Plaintiff's demand, in time or in subject matter, as in *Treppel*. Rather, the prior inspection demand at issue in *Oklahoma Firefighters* was made by another stockholder six years ago in 2020. That was two years before the complaints filed by the Washington and California Attorneys' General, and three years before the FTC Complaint that is "[c]entral to the Demand."[28] Given the time and subject matter differences, the *Oklahoma Firefighters* action does not come close to

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[26] *Id.* at 560.

[27] AB at 16.

[28] *Okla. Firefighters Pension & Ret. Sys. v. Amazon.com, Inc.*, 2022 WL 1760618, at *3 (Del. Ch. June 1, 2022); *Roberta Ann K.W. Long Revocable Tr. U/A Dated 03/09/2018 v. Amazon.com, Inc.*, 345 A.3d 965, 971 (Del. 2025) ("Supreme Court Opinion").

representing the same concern that Amazon "and its stockholders could face excessive costs and the risk of inconsistent rulings" as in *Treppel*.[29]

Amazon's argument regarding "the multiple demands Amazon had received" does not even mention the demands that post-dated the parties' § 220 trial.[30] Nor does Amazon even try to connect them to a legitimate interest on the part of Amazon in enforcing a condition of inspection before these demands even existed.

Nor do these demands "support[] the court's conclusion that Amazon had 'established … a legitimate interest in receiving consistent rulings from Delaware courts on fiduciary duty claims governed by Delaware law.'"[31] This quote is disconnected to the case-specific nature of the concern in *Treppel*. There, the Court recognized the company's "legitimate interest in having consistent rulings on related issues of Delaware law, and having those rulings made by the courts of this state" stemmed from the highly intertwined and extensive nature of the prior litigation by Treppel and the other plaintiff, Grill.[32]

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[29] *Treppel*, 109 A.3d at 560.

[30] *See* AB at 15–16.

[31] AB at 16 (citing Letter Opinion of Vice Chancellor Bonnie W. David at 17 (Del. Ch. Nov. 5, 2025) (omission in original)).

[32] *Treppel*, 109 A.3d at 560.

Treppel itself illustrates this point, immediately after discussing the need for "caution" because "use restrictions under § 220(c) have traditionally been tied to case-specific factors."[33] The Court explained that "if a petitioner files for books and records and has a good faith purpose to investigate possible wrongdoing, and there has been no prior litigation in this or other forums, then the Court of Chancery might conclude that there is no reason to impose a use restriction."[34] The Court recognized that in such a circumstance, "the possible complications the restriction injects into the § 220 litigation may not be justified by any substantial interests of the respondent corporation."[35] That is the situation here.

Similarly, Amazon's argument that "[t]he court was likewise entitled to consider the resources Amazon has already expending in defending a related inspection action in Delaware"[36] is equally toothless and unconnected to *Treppel*'s logic. Amazon makes no connection between this claimed "litigation efficiency" and the circumstances presented in *Treppel*.[37] There is none. In *Treppel*, the Court

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[33] *Treppel*, 109 A.3d at 561.

[34] *Id.*

[35] *Id.*

[36] AB at 16.

[37] *Id.*

explained that "[t]he absence of pre-existing litigation would be relevant because the company and its stockholders would not have suffered the costs of defending duplicative litigation, and the petitioner may decide not to pursue any plenary action at all."[38] There is no meaningful connection between a hypothetical future action filed here, and the inspection demand in *Oklahoma Firefighters*, that predated the key government actions at issue here, including the "central" FTC Complaint.[39] To the extent there is a connection, it is far too tenuous to "amply" support the type of sweeping restriction on stockholder rights that was imposed here.

Amazon also attempts to justify the Court's refusal to acknowledge that the only pending related litigation is currently in a forum other than Delaware.[40] Amazon claims the Court should properly consider the litigation of a far narrower inspection demand many years ago as an efficiency benefit to the Forum Restriction. Amazon argues in the next breath that the currently pending FTC action is not meaningful from an efficiency standpoint. Amazon, however, acknowledges that "a suit by the FTC and multiple state attorneys general against Amazon is pending" in

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[38] *Treppel*, 109 A.3d at 561–62.

[39] Supreme Court Opinion at 18.

[40] AB at 16–17.

Washington.[41] Yet it claims that lawsuit "is not related in the sense that lawyers and courts usually mean when identifying cases that can be efficiently paired for case management and adjudication."[42] But that narrow definition of efficiency runs counter to what Amazon says about the "related inspection action in Delaware" that certainly cannot be "efficiently paired for case management and adjudication."[43] Moreover, it is a gross oversimplification to claim the "relevant facts are all different" in the FTC action than a potential action here.[44] This Court previously recognized that "[m]ost of the Demand focused on detailing the FTC complaint" and that it was "[c]entral to the Demand."[45]

Amazon ignores that Plaintiff's Demand is based on the FTC Complaint in arguing that the pending litigation in Washington does not make this case "'akin to'" *Palantir*.[46] But Amazon ignores that this related case exemplifies the efficiency highlighted in *Palantir*. First, "unlike in *Treppel*, where the jurisdictional use

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[41] AB at 16.

[42] *Id.*

[43] *Id.*

[44] *Id.* at 17.

[45] Supreme Court Opinion at 7, 18.

[46] AB at 17.

restriction promoted the efficiency-oriented goals of the corporation's forum selection clause" the same clause "in this case expands the number of forums in which these fierce adversaries would simultaneously litigate over issues where there was likely to be overlapping documentary discovery and witness testimony."[47] While an action brought here would be different than the FTC action, and have different defendants and claims, it would be about many of the same central core issues. In short, it would involve a significant amount of "overlapping documentary discovery and witness testimony."[48]

Further, as of the time of the parties' trial (and before the Court reversed the Court of Chancery's decision regarding credible basis), Amazon had not "already received demands from three other stockholders seeking to investigate the same claims."[49] One of these demands was the *Oklahoma Firefighters* demand from years ago. That demand did not include key components of Plaintiff's Demand, including the "central" FTC Complaint. The other two were received after trial, and explicitly reference Plaintiff's pending § 220 litigation. Thus this situation is akin to *Palantir*,

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[47] *Palantir*, 203 A.3d at 763.

[48] *Id.*

[49] AB at 17–18.

where "there was no prior litigation against [the company] in Delaware related to the purposes that the Court of Chancery found proper."[50]

[50] *Palantir*, 203 A.3d at 762.

III. AMAZON'S LATE-ADOPTED FORUM-SELECTION BYLAW DOES NOT CHANGE THE ANALYSIS

Amazon's claim that "Plaintiff does not dispute that the bylaw represented the Amazon board's determination that internal affairs litigation should proceed only in Delaware, and that the bylaw was therefore relevant to Amazon's legitimate concern to avoid multijurisdictional derivative litigation" is wrong.[51] Plaintiff ***does*** dispute that this late-adopted provision is relevant to a purported "legitimate concern" that Amazon argued at trial, i.e., prior to the bylaw being adopted.[52]

Further, Amazon asserts that "[n]or does plaintiff dispute that the bylaw was validly adopted and would apply to any derivative suit arising from its demand."[53] Whether or not the bylaw would apply to a suit arising from Plaintiff's demand, however, has never been discussed. Plaintiff's silence on the issue does not mean anything given it has not been raised. For the avoidance of doubt, Plaintiff reserves all rights. If Plaintiff files an action based on this Demand, Plaintiff will evaluate then the validity of any argument Plaintiff is bound by the bylaw adopted well after

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[51] AB at 18.

[52] A350–51 at 109:7–110:4.

[53] AB at 18.

Plaintiff's demand, its § 220 complaint, the parties' briefing on the complaint, and the § 220 trial.

Amazon's argument that Plaintiff has been "inconsistent in its litigation positions" is also wrong.[54] While the parties were briefing the § 220 action for trial, and arguing at trial, there was no exclusive forum provision in place at Amazon, nor had it ever even so much as suggested this was a possibility. Amazon does not argue otherwise in its answering brief.[55] It is irrational to suggest it was inconsistent for Plaintiff to acknowledge the presence of a forum provision would have changed the analysis on this record. The testimony was given—***before all the pre-trial briefing and trial itself***—when the provision admittedly did not exist. Indeed, Plaintiff propounded interrogatories that went directly to this topic, asking Amazon to (1)"[e]xplain why Amazon has not adopted a Delaware forum-selection clause in its bylaws,"[56] and to (2) "[i]dentify all instances in which Amazon's Board considered whether to adopt a forum-selection clause in Amazon's bylaws, including the dates of such instances, and the yes/no outcomes of any such votes on whether to adopt a

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[54] AB at 18–19.

[55] *See id.*

[56] A1063–64.

forum-selectin clause."[57] Amazon's response to both interrogatories was to "object[] ... on the grounds that [the interrogatory] seeks information that is not relevant to the issues to be tried in this proceeding."[58]

Amazon's attempt to distinguish its post-trial adoption of the forum selection bylaw from the improper post-trial creation of evidence in *Tornetta v. Musk* fails.[59] Amazon argues that attempting to "flip[] the outcome of an adverse post-trial decision based on evidence they created after trial" "is not remotely what Amazon did[.]"[60] Yet, Amazon acknowledges that the evidence was created and introduced after trial.[61] Thus, the only part Amazon takes issue with is attempting to "flip[] the outcome of an adverse post-trial decision."[62] This argument hinges on Amazon's contention that this circumstance is different because "[w]hen Amazon adopted the bylaw, no post-trial decision had been rendered" and "then-Magistrate David's report … did not reach, let alone resolve, the parties' dispute over the propriety of a

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[57] A1064.

[58] A1063; A1064.

[59] AB at 19 (citing *Tornetta v. Musk*, 326 A.3d 1203 (Del. Ch. 2024), *rev'd sub nom.*, *In re Tesla, Inc. Derivative Litig.*, 351 A.3d 1005 (Del. 2025)).

[60] AB at 19.

[61] *Id.*

[62] *Id.* (alteration in original).

forum restriction. Nor did the court's decision adopting the report's recommendation to enter judgment for Amazon."[63] This purported distinction carries no weight and in fact shines light on Amazon's gamesmanship. To wit, Amazon got to see a preview of how then-Magistrate David reacted to the issues at trial, and her report itself, before making this decision. Moreover, while Amazon claims it did not adopt this bylaw in response to this litigation, we'll never know on this record, because Amazon said its reasons for not adopting such a provision were irrelevant.[64]

Amazon's efficiency argument strains credulity given the nature of this litigation. In essence, Amazon argues that the Court's consideration of Amazon's late-adopted exclusive forum provision bylaw "serve[s] the interest of justice", despite all that has happened in the case.[65] The absence of this provision, however, has driven much, if not all, of the litigation in this matter.[66] It was a central facet of

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[63] *Id.*

[64] *See* OB at 14; A1048–69 at A1064, Responses to Interrogatory Nos. 13 and 14.

[65] AB at 20 (citing *Lola Cars Int'l Ltd. v. Krohn Racing, LLC*, 2010 WL 1818907, at *3 (Del. Ch. Apr. 23, 2010)).

[66] Supreme Court Opinion at 972.

discovery,[67] pre-trial briefing,[68] and trial itself. Nevertheless, Amazon argues it can simply flip a switch at any point and wipe the slate clean of the work undertaken by this Court, the Court of Chancery, and Plaintiff. That is not remotely efficient, nor does it "serve the interests of justice."

Amazon relies on *Lola Cars* to support its argument that the court is "entitled to consider post-trial evidence" here because doing so would "serve the interests of justice."[69] But *Lola Cars* does not support Amazon's position. There, the Court of Chancery considered the admission of post-trial evidence to undermine the credibility of two key trial witnesses. The Court admitted one of two affidavits which related to "an issue that first came to light late in the discovery process" and concluded that the "materiality of the evidence outweigh[ed] any inconvenience or prejudice to the nonmoving party[.]"[70] Here, the absence of the bylaw has been at issue since the demand, through discovery, and at trial. Amazon refused to respond to discovery requests related to the adoption of such a bylaw, calling the issue "not

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[67] A1048–69 at Interrogatory Nos. 13, 14; A17–A19.

[68] A51–58; A117–23; A153–59; A192–201.

[69] AB at 20.

[70] *Lola Cars*, 2010 WL 1818907, at *3.

relevant."[71] To now permit Amazon (and the Court of Chancery) to limit Plaintiff's inspection rights based on a bylaw adopted a month after trial is prejudicial to Plaintiff and does not work to the interest of justice.[72]

Nor does *Treppel* support Amazon's interpretation of what would be efficient or "serve the interests of justice."[73] In *Treppel*, the company adopted a forum selection clause in its bylaws "on December 11, 2013," which was ***before*** the January 13, 2014 trial.[74]

Accordingly, Amazon's forum provision bylaw adopted at the 25th-hour after trial does not tilt the analysis in its favor.

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[71] A1048–69 at Interrogatory Nos. 13, 14.

[72] *See also In re BGC Partners Derivative Litig.*, 2021 WL 5563914, at *1–2 (Del. Ch. Nov. 26, 2021) (rejecting request to supplement trial record and noting that "[t]he admission of late-submitted evidence is not favored."); *Haldeman v. Worrell*, 2016 WL 4184011, at *2 (Del. Ch. Aug. 8, 2016) (rejecting request to supplement trial record, in part, because the requesting party "could have discovered [the evidence] with the exercise of reasonable diligence."); *Whittington v. Dragon Grp., LLC*, 2012 WL 3089861, at *3 (Del. Ch. July 20, 2012) (rejecting request to supplement trial record, holding that "it would not serve the interests of fairness, justice, or judicial economy to allow Defendants to supplement the record. This is not a situation where newly discovered evidence warrants reopening the record to avoid undue prejudice. Instead, Defendants have been in possession and aware of this evidence at all relevant times.").

[73] AB at 20.

[74] *Treppel*, 109 A.3d at 556 (noting date of bylaw adoption); *Treppel*, 2014 WL 558756, at *1 (noting date of trial).

IV. PLAINTIFF ARTICULATED SEVERAL LEGITIMATE REASONS TO SUE ELSEWHERE, BUT THE COURT OF CHANCERY STILL IMPOSED THE FORUM PROVISION WITHOUT ANY CORRESPONDING SAFETY VALVES

Each of Plaintiff's proffered reasons for not wanting to agree to the forum provision are valid.

The Forum Restriction creates a risk of issue preclusion because it prevents Plaintiff from intervening in derivative actions that threaten it with preclusive effect. In *California State Teachers Retirement System v. Alvarez* this Court explained that stockholder plaintiffs utilizing § 220's tools at hand would be wise to intervene in related pending derivative actions initiated by "fast filers."[75] Plaintiff's Opening Brief argued that the Forum Restriction interfered with stockholders' ability to follow *Alvarez*'s guidance and should be rejected for that reason.[76] Amazon did not respond to *Alvarez.*

Amazon's argument that *Silberberg v. Acacia Communications, Inc.* is distinguishable because there was already a pending derivative action misses the point of taking proactive measures.[77] In *Silberberg*, a derivative action had already

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[75] 179 A.3d 824, 832 n.29 (Del. 2018).

[76] OB at 40–41.

[77] AB at 23; *Silberberg v. Acacia Commc'ns, Inc.*, 2018-0262-TMR (Del. Ch. May 29, 2018) (TRANSCRIPT) ("*Acacia* Tr.").

been filed with no § 220 documents. The court therefore had no issue concluding that a forum restriction "could prevent the best possible derivative allegations on demand futility from being presented to the Massachusetts court."[78] That does not make Plaintiff's reliance on this case "misplaced."[79] Instead, it illustrates why preserving the potential of using the § 220 documents in actions in other jurisdictions is beneficial. The current absence of such a suit does not mean that there is no risk of that ever arising.

Amazon is then left with quibbles about Plaintiff's concerns that "it 'may' want to sue individuals not subject to personal jurisdiction in Delaware" or intervene in a related derivative action outside of Delaware mark.[80] While Amazon complains that these are "entirely hypothetical" justifications, that is the nature of requesting such limitations in advance.[81] Plaintiff did not want to agree to a provision that could cause procedural and practical impediments at some point. Nor does Plaintiff need to meet some kind of actionability requirement to stave off imposition of a forum

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[78]*Acacia* Tr. at 50:5–24.

[79] AB at 23.

[80] *Id.* at 22–23.

[81] *Id.*

provision.[82] In any event, *Palantir* makes clear that even a "remote" potential for defendants to "not be subject to personal jurisdiction in Delaware" is a rational concern supporting a safety valve on conditions of inspection.[83]

The same is true for the possibility of intervening in a derivative action, regardless of Amazon's late-adopted forum-selection bylaw. It is not certain, as Amazon suggests, that a "future derivative action … will be subject to Amazon's forum-selection bylaw."[84] For example, in *Seafarers Pension Plan on behalf of Boeing Co. v. Bradway*, the Seventh Circuit rejected the application of an exclusive forum provision providing that "the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for … any derivative action or proceeding brought on behalf of the Corporation."[85] Moreover, as of the time of trial, Plaintiff's concern was even more pronounced given that Amazon did not have an exclusive forum provision in place.

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[82] *AmerisourceBergen Corp. v. Lebanon Cnty. Emps.' Ret. Fund*, 243 A.3d 417, 431 (Del. 2020) ("We … take this opportunity to dispel the notion that a stockholder who demonstrates a credible basis from which the court can infer wrongdoing or mismanagement must demonstrate that the wrongdoing or mismanagement is actionable.").

[83] *Palantir*, 203 A.3d at 764.

[84] AB at 23.

[85] 23 F.4th 714, 717–18 (7th Cir. 2022).

Finally, Amazon's argument regarding the ability for Plaintiff to seek modification of a use restriction under Court of Chancery Rule 60(b) flips the standard on its head.[86] First, Plaintiff has not waived these arguments—they are natural extensions of what Plaintiff argued throughout the briefing of this matter from the trial court to now: that Plaintiff needs to preserve the ability to intervene in actions outside Delaware and may have to file an action elsewhere if the Court of Chancery lacked personal or subject matter jurisdiction. The "exceptions" have been part of Plaintiff's argument from the start.

Second, Amazon is again trying to turn the imposition of a forum restriction into a norm. The default should not be that the Court of Chancery imposes a forum restriction and then stockholders must move for further relief under Rule 60. *Treppel* demonstrates why this would be problematic. True *Treppel* recognized that the Court could consider the plaintiff's "ability to seek a modification of the use restriction under Court of Chancery Rule 60(b)."[87] But, unlike here, that was only where the plaintiff demonstrated an "inability to articulate ***any*** legitimate reason why he needs to file suit in a forum other than Delaware," unlike here.[88] Moreover, this

[86] AB at 23–24.

[87] *Treppel*, 109 A.3d at 560.

[88] *Id.* (emphasis added).

was only considered in the first place because "the company's request for the restriction was amply supported by its bylaws and the circumstances of the petitioner's demand."[89] Granting forum selection provisions and putting the onus on stockholders to demonstrate why Rule 60 relief would not be sufficient would run counter to *Treppel*'s concern that "the Court of Chancery should also give weight to the importance of maintaining § 220 actions as streamlined, summary proceedings that do not get bogged down in collateral issues."[90] Amazon's protraction of this inspection action is a prime example why investigating stockholders should be given more hoops to jump through, even after establishing a credible basis to suspect wrongdoing.

Finally, Amazon argues that Plaintiff "offers zero authority for the notion that derivative claims governed by Delaware law could carry a procedural right unavailable under Delaware law."[91] But the issue is not so simple, and Amazon provides none of its own authority here either.[92] The right to a jury trial would

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[89] *Palantir*, 203 A.3d at 762 (citing *Treppel*).

[90] *Treppel*, 109 A.3d at 561.

[91] AB at 22.

[92] *See, e.g.*, Ann M. Scarlett, *Jury Trial Disparities Between Class Actions and Shareholder Derivative Actions in State Courts*, 72 Okla. L. Rev. 283, 304 (2019), available at https://scholarship.law.slu.edu/faculty/328/ (recognizing "eighteen

depend on the nature of the claims brought and the jurisdiction—both which at this point are purely hypothetical. Even if there is no certainty of a jury trial, it is at least a "remote" possibility, which was sufficient to support the plaintiff's "request for a safety valve" in *Palantir*.[93]

states appear to recognize a right to jury trial in shareholder derivative actions based on *Ross v. Bernhard*, or based on similar interpretations of their own state constitutions.").

[93] *Palantir*, 203 A.3d at 764.

CONCLUSION

Plaintiff respectfully submits that the Opinion should be reversed and the Court should hold that Plaintiff's inspection is not conditioned on a Forum Restriction, or alternatively, that any such restriction be modified to permit Plaintiff to use the books and records obtained through its Demand to intervene in a derivative action outside of Delaware concerning the subject matter of its Demand without obtaining permission from the Court of Chancery first, and to provide for alternative for circumstances where the Delaware Court of Chancery lacks personal or subject matter jurisdiction.

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CERTIFICATE OF SERVICE

I, Samuel L. Closic, hereby certify on this 22nd day of June, 2026, that I caused a copy of the foregoing *Public Version of Appellant Roberta Ann K.W. Wong Leung Revocable Trust U/A Dated 03/09/2018's Reply Brief* to be served by eFiling via File & Serve*Xpress* upon the following counsel of record:

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