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Case No. 2024-1296-SEM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ANUJ GUPTA,
Plaintiff, \

v.

STEFAN SAFKO and SCOTT HARVEY,
Defendants.

C.A. No. 2024-1296-SEM

PLAINTIFF'S OPPOSITION BRIEF TO DEFENDANTS' RESIGNATION ARGUMENT UNDER 8 DEL. C. § 220 & 7 DEL. C. § 278

PLAINTIFF'S OPPOSITION BRIEF TO DEFENDANTS' RESIGNATION ARGUMENT

INTRODUCTION

Defendants Safko and Harvey may argue that their 2022 resignations shield them from custodial duties under 8 Del. C. §§ 220 and 278. They may contend that because they resigned more than a year prior to Solfice's dissolution, they cannot be compelled to produce books and records relating to inducement and release agreements that were integral to the Project Condor transaction. This defense fails for four independent reasons.

First, resignation does not absolve fiduciaries of custodial obligations for transactions they orchestrated while in office. Delaware law is clear: fiduciary duties of loyalty and disclosure apply when directors negotiate and approve conflicted transactions, and custodianship over transaction records continues beyond resignation when those materials were created or controlled during directorship.

Second, the Asset Purchase Agreement itself confirms that inducement and release agreements were embedded as closing conditions—not after-the-fact arrangements. These were express closing deliverables that Defendants negotiated, approved, and made conditions precedent to the transaction while they were still serving as fiduciaries.

Third, Defendants retain custodianship over the drafts, negotiation materials, and electronic communications that evidenced their role in structuring these closing conditions. Their resignation cannot erase their possession, custody, or control over materials they created, received, or transmitted in their fiduciary capacities.

Fourth, the credible basis standard for inspection is minimal, and Plaintiff has demonstrated clear evidence of conflicted arrangements requiring investigation: employment offers and seller-side releases embedded as closing deliverables, silence in board minutes regarding these substantial arrangements, and the structured channeling of inducements through the buyer rather than transparent corporate processes.

The Court should reject Defendants' formalism and order inspection of all necessary and essential materials, including electronic communications and drafts relating to the embedded closing conditions.

I. RESIGNATION DOES NOT ERASE CUSTODIAL OBLIGATIONS FOR TRANSACTIONS NEGOTIATED WHILE IN OFFICE

A. Fiduciaries Remain Accountable for Transaction Records They Created or Controlled

It is black-letter Delaware law that fiduciaries may not escape custodial responsibility by resignation when they structured and approved transaction terms during their tenure. As the Supreme Court held in Malone v. Brincat, directors owe a duty of candor when communicating with stockholders about material transactions and may be held liable for misleading or incomplete disclosure. 722 A.2d 5, 10–11 (Del. 1998). That duty—and the custodial obligation to preserve records evidencing compliance—does not vanish because directors resign after approving the transaction structure.

Similarly, in In re Rural Metro Corp. S'holders Litig., 88 A.3d 54, 82–83 (Del. Ch. 2014), directors who facilitated a flawed sale process could not disclaim

responsibility by pointing to subsequent resignation. Fiduciary liability and custodial obligations attach to the process they oversaw and the records they created or controlled.

Here, Safko and Harvey did not merely approve a transaction—they negotiated specific inducement and release arrangements as integrated closing conditions while serving as fiduciaries. The Asset Purchase Agreement expressly conditions closing on Key Employee offer letters and seller-side release agreements. These were not post-resignation afterthoughts; they were deal terms Defendants structured, approved, and made conditions precedent while in office. Resignation cannot now erase custodial responsibility for records relating to transactions they orchestrated as fiduciaries.

B. Custodianship Tracks Historical Possession and Control, Not Current Office

Delaware custodianship principles recognize that former fiduciaries retain obligations for materials they possessed, created, or controlled during their tenure. The custodial duty attaches to the fiduciary's role in creating or receiving the materials, not their continuing office. Where directors negotiated transaction terms,

received drafts, transmitted communications, or maintained records relating to their fiduciary conduct, they remain custodians of those materials for purposes of stockholder inspection rights.

Defendants cannot claim they lack custodial obligations simply because they resigned. They negotiated the inducement and release arrangements. They received and transmitted communications about embedding these arrangements as closing conditions. They maintained drafts, email exchanges, and negotiation materials relating to their conflicted conduct. That historical possession and control establishes custodianship regardless of subsequent resignation.

II. THE ASSET PURCHASE AGREEMENT CONFIRMS INDUCEMENTS WERE EMBEDDED AS CLOSING CONDITIONS NEGOTIATED BY DEFENDANTS

A. Inducements and Releases as Express Closing Deliverables

The Asset Purchase Agreement ("APA") executed between Solfice and the buyer identifies inducement and release agreements as conditions precedent to closing. Specifically, the APA requires:

1. **Key Employee offer letters** to be accepted and executed for closing
2. **Buyer confidentiality/invention assignment and restrictive covenant forms** to be executed by Key Employees at closing
3. **Seller-side release agreements** to be executed by named individuals as closing deliverables

These provisions demonstrate that inducements were not "after-the-fact" arrangements, but rather integral closing conditions that Defendants negotiated and approved while serving as fiduciaries. By approving the APA with these embedded conditions, Safko and Harvey knowingly structured personal benefits flowing through the transaction counterparty as required closing deliverables.

B. The Term Sheet Confirms Inducements Were Contemplated from Transaction Inception

The buyer's term sheet predating the APA explicitly flagged **employment agreements for select personnel** (including equity-linked compensation) as a **contingency of the transaction**. This confirms that inducements were contemplated and negotiated from the transaction's outset, well before any resignation. Defendants cannot claim these arrangements were post-resignation

developments when the documentary record establishes they were core transaction terms from inception.

C. Board Minutes' Silence Regarding Substantial Closing Conditions Evidences Off-Books Structuring

Despite the APA's integration of employment offers and releases as closing deliverables, corporate board minutes are silent regarding these arrangements. This silence is particularly significant given that these closing conditions involved substantial consideration and represented potential conflicts of interest for the approving directors.

The mismatch between the APA's explicit closing conditions and the board minutes' silence creates a credible basis for investigating whether Defendants structured these arrangements through informal channels to avoid corporate governance processes and stockholder disclosure requirements established in Malone v. Brincat.

III. DEFENDANTS RETAIN CUSTODIANSHIP OVER DRAFTS AND NEGOTIATION MATERIALS DESPITE RESIGNATION

A. Electronic Communications and Drafts Are Within Custodial Scope

Delaware law recognizes that drafts, term sheets, and negotiation emails are within the scope of inspection where they evidence fiduciary conflicts. KT4 Partners LLC v. Palantir Techs. Inc., 203 A.3d 738, 752 (Del. 2019) established that when companies conduct formal corporate business through informal electronic communications, stockholders are entitled to access those communications when formal records are inadequate. The Court emphasized that companies cannot "use their own choice of medium to keep shareholders in the dark."

Here, the board minutes' silence regarding substantial closing conditions embedded in the APA creates precisely the circumstances KT4 Partners identified as requiring electronic discovery. When formal board materials omit documentation of material transaction terms, informal communications become necessary and essential to understand what fiduciaries actually negotiated and approved.

B. Defendants Indisputably Held Negotiation Materials and Electronic Communications

Safko and Harvey indisputably negotiated the employment offers and release agreements that became closing conditions. This negotiation necessarily involved:

- Draft offer letters and release agreements (including revisions and markups)
- Email exchanges with the buyer regarding employment terms and closing conditions
- Internal communications about structuring personal benefits through the transaction
- Communications regarding disclosure obligations and board presentation strategies

Defendants' refusal to produce these materials—or to identify their current location if held by third parties—is precisely why § 220 exists. Their historical possession and control of these negotiation materials establishes custodianship regardless of subsequent resignation or dissolution.

C. ESI and Third-Party Communications Remain Within Custodial Scope

In Wal-Mart Stores, Inc. v. Ind. Elec. Workers Pension Tr. Fund IBEW, 95 A.3d 1264, 1271 (Del. 2014), the Delaware Supreme Court affirmed broad discovery including electronic communications when investigating potential misconduct. The Court recognized that responsive materials in various formats and locations remain

within the scope of inspection when they address the "crux of the shareholder's purpose."

Defendants cannot escape custodial obligations by pointing to the distributed nature of transaction communications. Whether materials reside in personal email accounts, shared drives, or third-party systems, Defendants retain custodial obligations for materials they created, received, or controlled in their fiduciary capacities.

IV. SECTION 278 EXTENDS CUSTODIANSHIP OBLIGATIONS BEYOND DISSOLUTION

A. Corporate Continuity Preserves Record-Keeping Obligations

Defendants may argue that § 278 applies only to directors at the moment of dissolution. This misstates the law. Section 278 provides:

"All corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued, for the term of 3 years from such expiration or dissolution… for the purpose of prosecuting and defending suits… and of enabling them gradually to settle and close their business, to dispose of and

convey their property, to discharge their liabilities and to distribute to their stockholders any remaining assets."

8 Del. C. § 278.

This survival necessarily includes preservation of records relating to potential stockholder claims. In re Krafft-Murphy Co., 82 A.3d 696, 710 (Del. 2013) established that dissolved corporations must maintain proper custodianship of corporate records through designated custodians.

B. Resigned Directors Remain Custodians for Materials Under Their Historical Control

The fact that Safko and Harvey resigned prior to dissolution is irrelevant to their custodial obligations for materials they controlled while in office. They negotiated the inducement and release arrangements that became closing conditions. They held custody of drafts, communications, and negotiation materials relating to these conflicted transactions. Resignation cannot erase that custodial reality or eliminate their obligations under § 278's continuity framework.

As this Court explained in Woods Tr. v. Sahara Enters., Inc., 202 A.3d 281, 289 (Del. Ch. 2018), equity will not reward stonewalling or permit corporate structures designed to evade stockholder rights. Accepting Defendants' resignation defense would allow fiduciaries to negotiate conflicted transactions, resign, dissolve the entity, and claim immunity from production obligations—precisely the type of gamesmanship Delaware courts reject.

V. PLAINTIFF HAS DEMONSTRATED A CREDIBLE BASIS FOR INSPECTION OF NECESSARY AND ESSENTIAL MATERIALS

A. The "Some Evidence" Standard Is Easily Satisfied

The Supreme Court has held that a stockholder need only show a "credible basis"—the lowest burden known in Delaware law. Seinfeld v. Verizon Commc'ns, Inc., 909 A.2d 117, 123 (Del. 2006). That means "some evidence" to infer possible wrongdoing.

B. Multiple Forms of Evidence Establish Credible Basis

Plaintiff's evidence easily meets this minimal standard:

1. **Documentary Evidence from APA**: Employment offers and seller-side releases are expressly embedded as closing conditions, creating potential conflicts of interest for the approving directors.

2. **Board Minutes Silence**: Despite the substantial nature of these closing conditions, board minutes omit documentation of their negotiation and approval, suggesting off-books structuring.

3. **Conflicted Transaction Structure**: The integration of personal employment benefits for directors through the transaction counterparty, rather than transparent corporate processes, follows patterns Delaware courts have identified as indicative of conflicted transactions.

4. **Term Sheet Evidence**: The buyer's term sheet explicitly contemplated employment arrangements as transaction contingencies, confirming these were not afterthoughts but core deal terms requiring investigation.

This is not speculation. It is contemporaneous documentary evidence of undisclosed arrangements structured as closing conditions while Defendants served as fiduciaries.

C. Defendants' "Lack of Possession" Argument Strengthens the Inference of Concealment

Defendants may argue they lacked possession of final, countersigned inducement agreements. That assertion only reinforces the inference of improper concealment. If inducements were central to closing but never placed in Solfice's corporate records, inspection is required to determine how fiduciaries complied with their duty of loyalty and whether they structured personal benefits through off-books arrangements to avoid corporate governance processes.

The absence of expected corporate documentation itself establishes credible basis for investigating whether proper disclosure and approval procedures were followed.

VI. EQUITY FORECLOSES DEFENDANTS' FORMALISTIC DEFENSES

Defendants' resignation-based defense would permit the exact type of evasion Delaware courts consistently reject. Accepting this argument would allow fiduciaries to:

1. Negotiate personal inducements as transaction closing conditions while in office
2. Resign before transaction closing
3. Dissolve the company after closing
4. Assert that no custodians remain to produce records of their conflicted conduct

This sequence would gut stockholder inspection rights precisely when they are most needed—to investigate potential self-dealing in sale transactions. As Woods Trust emphasized, stockholder rights cannot be defeated by corporate stonewalling or strategic timing of resignations and dissolutions. 202 A.3d at 289.

Equity demands that fiduciaries who negotiated conflicted closing conditions, approved their integration into transaction terms, and maintained custody of related materials remain accountable as custodians regardless of subsequent resignation.

VII. SCOPE OF PRODUCTION SHOULD INCLUDE ALL NECESSARY AND ESSENTIAL MATERIALS

A. Electronic Communications Are Necessary and Essential When Formal Records Are Inadequate

Given the board minutes' silence regarding substantial closing conditions, electronic communications become necessary and essential under KT4 Partners. The production scope should include:

1. **Draft agreements**: All versions of employment offers, restrictive covenants, and release agreements, including markups and revisions
2. **Email communications**: Messages regarding negotiation, approval, and structuring of closing conditions
3. **Third-party exchanges**: Communications with the buyer regarding employment arrangements and closing deliverables
4. **Internal discussions**: Messages regarding disclosure obligations, board presentations, and structuring strategies

B. Defendants Must Account for Materials Under Their Historical Control

Even if Defendants no longer possess final, executed documents, they remain obligated to produce materials they created, received, or controlled during the negotiation process. Additionally, they must identify the location of any third-party-held materials and assist in obtaining access to complete the inspection.

CUSTODIANSHIP THROUGH COUNTERPARTY SIGNATURES

I. Closing Conditions Necessarily Produced Dual-Signed Agreements

The Asset Purchase Agreement ("APA") does not treat inducement arrangements as optional. It expressly conditions closing on the **execution and delivery of Key Employee offer letters, restrictive covenants, and seller-side releases**. Each of these agreements required two sets of signatures:

1. **Employee/Fiduciary Signatures** (including Defendants Safko and Harvey as Key Employees); and
2. **Counterparty Signatures** by Luminar or its acquisition vehicle, Condor LLC.

By approving the APA, Safko and Harvey agreed that these fully executed agreements were conditions precedent to closing. They could not close the transaction without signing, and without receiving counterparts signed by the buyer. That reality alone establishes that they had final, executed copies in their possession or control.

II. Counterparty Delivery Creates Custodial Obligations

Under Delaware contract law, a closing condition requiring executed documents necessarily contemplates **delivery of dual-signed counterparts to the parties**. It is not credible for Safko and Harvey to suggest that they signed inducement agreements yet never received the buyer's signed copies.

Delaware courts have long recognized that custodianship extends to any fiduciary who **signs or receives dual-signed documents** on behalf of the company. In *Krafft-Murphy*, the Court emphasized that the duty to preserve extends to corporate property and records that fiduciaries "received or controlled in their capacity as officers and directors." 82 A.3d 696, 710 (Del. 2013).

Here, the inducement agreements were not informal emails; they were formal, dual-signed closing deliverables. As such, Safko and Harvey were custodians of the final, executed copies.

III. Counterparty Signatures Eliminate the "No Possession" Defense

Defendants may argue they resigned prior to dissolution and therefore lacked "possession" at the relevant time. But counterparty signatures eliminate this defense. If Defendants executed inducements as employees and received counterparts executed by Luminar, they necessarily had custody of the final agreements — either directly in their email inboxes, through counsel, or as part of closing binders.

It is not sufficient for Defendants to now claim ignorance or non-possession. Delaware precedent forecloses such gamesmanship:

- *KT4 Partners LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 752 (Del. 2019) confirmed that inspection extends to informal communications when formal records are silent.
- *Wal-Mart Stores, Inc. v. IBEW*, 95 A.3d 1264, 1271 (Del. 2014) emphasized that inspection reaches materials necessary to test fiduciary conduct.
- *Woods Tr. v. Sahara Enters., Inc.*, 202 A.3d 281, 289 (Del. Ch. 2018) rejected attempts to shield records through technicalities and silence.

Against this backdrop, Defendants' claim that they lack possession of agreements they personally signed and countersigned with the buyer is implausible. If true, it would mean they deliberately withheld final documents from the corporate record — itself a fiduciary breach warranting inspection.

IV. Equity Requires Inspection Where Counterparties Hold Executed Documents

Even if Defendants were to claim that the buyer or Condor retained exclusive custody of the final agreements, equity compels the Court to order inspection. A fiduciary cannot defeat § 220 by outsourcing closing deliverables to a counterparty and then disclaiming custody.

As the Delaware Supreme Court recognized in *AmerisourceBergen*, inspection rights are remedial and must be construed to prevent fiduciary concealment. 243 A.3d 417, 437 (Del. 2020). Where final agreements exist — and must exist, given they were conditions precedent to closing — equity demands that the custodians who signed them be held accountable to produce them.

V. Summary on Counterparty Signatures

The inducement and release agreements required **dual signatures as closing deliverables**. Defendants Safko and Harvey were signatories in their individual and fiduciary capacities. They necessarily received, possessed, or controlled the final executed copies from the buyer. Their attempt to disclaim possession is not only legally insufficient but factually implausible.

Counterparty signatures therefore eliminate the "resignation" and "no possession" defenses. The Court should compel production of all final, executed inducement and release agreements, together with related drafts and communications, as necessary and essential to Plaintiff's inspection rights.

VI-A. Why Immediate Entry Is Warranted (Court-Centered Rationale)

1) Core records are baked into closing mechanics. The APA and term sheet hard-wire Key-Employee offers and Seller Releases as closing deliverables. These documents—and their negotiation history—are necessary and essential without further motion practice.

2) Formal record gaps make ESI indispensable. Minutes are silent/incomplete on inducements and releases. Where formal materials are thin, drafts and emails/texts are the only reliable evidence of what fiduciaries negotiated and approved.

3) Least-intrusive, time-boxed process. The Inside-Out protocol starts with executed closing documents and a sworn certification before touching broader ESI, with 14/21-day deadlines. This sequencing minimizes burden and accelerates resolution.

4) Resignation cannot erase custodianship. Defendants negotiated and approved the closing inducements while in office; their possession, custody, or control over drafts, signature packets, and closing checklists flowed from their fiduciary roles. Equity prevents using resignation and dissolution as shields against inspection.

5) Risk of loss warrants prompt relief. Closing packets, personal mailboxes, chat histories, and cloud workspaces are at risk of attrition. A swift order with a preservation-and-certification regime prevents further degradation.

6) Tolling avoids irreparable prejudice. Running limitations while defendants stonewall would force premature plenary filings. Tolling through substantial completion preserves the status quo and channels the dispute into a narrow §220 lane.

VI-B. Proposed Findings for a Short-Form Bench Order

1. **Proper Purpose & Credible Basis.** Plaintiff shows a credible basis to investigate fiduciary misconduct related to inducements/releases embedded as closing conditions and negotiated while defendants were fiduciaries.

2. **Necessity & Essentiality.** Executed closing documents (offers, CIIAAs/RCs, Seller Releases) and their drafts/negotiation ESI are necessary and essential where minutes are silent or incomplete.

3. **Custodianship.** Defendants are custodians of responsive materials created, received, or controlled in their fiduciary capacities, notwithstanding later resignation.

4. **Tailoring & Burden.** The two-stage Inside-Out protocol is narrowly tailored, least-intrusive, and time-boxed; it is proportionate to the inspection purpose.

5. **Certification.** A sworn officer-level declaration mapping repositories and explaining any third-party custody is required at Stage 1.

6. **Confidentiality.** A reasonable protective order with Tiger for personal compensation data applies; redactions limited to PII.

7. **Tolling & Fees.** Limitations are tolled from filing through substantial completion; fee-shifting is warranted if defendants fail to comply or if material gaps persist without justification.

VI-C. Anticipated Defense Rejoinders and Targeted Rebuttals

Rejoinder (Resignation): "We resigned before dissolution; no duty now."

Rebuttal: Custodianship turns on possession/control of materials negotiated while in office. Resignation does not retroactively divest custody or the Court's equitable power to compel inspection necessary to police fiduciary conduct.

Rejoinder (No formal 'corporate' copies): "Only the buyer has countersigned forms; we don't."

Rebuttal: Stage 1 targets the seller-side copies, transmittals, closing checklists, and certification that identify where executed versions reside; Stage 2 reaches drafts/redlines and routing emails if final packets are missing.

Rejoinder (Emails/Texts are beyond §220): "Section 220 is not discovery."

Rebuttal: Where formal records are inadequate and the transaction hinged on inducements/releases, drafts and communications are the only materials that satisfy the necessary-and-essential standard. The protocol limits these to narrowly defined issues, custodians, and dates.

Rejoinder (Confidentiality): "We can't produce because of sensitive compensation."

Rebuttal: Tiger with targeted redactions of PII fully addresses sensitivity without defeating inspection.

Rejoinder (Burden): "Collecting this is onerous."

Rebuttal: The sequencing, custodian cap, date bounds, and focused terms minimize lift; Stage 2 triggers only upon specific gaps.

Rejoinder (Go to the buyer instead): "Plaintiff should seek these from the buyer."

Rebuttal: Seller fiduciaries negotiated, approved, and routed these deliverables. They must account for their side of the record, including drafts and transmittals; the Escalation Protocol addresses buyer-held exclusivity without delaying seller compliance.

VI-D. Remedies Architecture (to Embed in the Order)

- **Sworn Repository Map (Stage 1):** Identify mailboxes, chat systems, cloud drives, closing rooms, and local devices searched; explain scope and any gaps.

- **Custodian Cap & Date Bounds:** Initial cap at four custodians; term-sheet kickoff through wind-down; expansions only upon identified gaps.

- **Document-by-Document Certification:** For each closing document produced (offer letters, CIIAAs/RCs, Seller Releases), certify source, date, and whether countersigned.

- **Third-Party Exclusivity Attestation:** If an executed document exists only with the buyer, attest to that fact and produce transmittals/checklists proving existence and terms.

- **Privilege Handling:** Categorical log (families), minimal redactions (privilege/PII only), no "relevance" redactions.

- **Compliance Milestones:** Day 14 (Stage 1), Day 21 (Stage 2 if triggered), Day 28 (joint status on gaps), with fee-shifting if deadlines are missed without good cause.

VI-E. One-Page Bench Memorandum

Question Presented: Whether to order a two-stage inspection focused on inducements/releases embedded as closing conditions negotiated while defendants served as fiduciaries.

Short Answer: Yes. Formal records are incomplete; the requested closing documents and narrow ESI are necessary and essential. The Inside-Out protocol is least-intrusive, time-boxed, and accompanied by sworn certification, tolling, and confidentiality protections.

REBUTTAL TO DEFENSE'S OPENING BRIEF

Defense Argument:

"The Complaint is short on facts. Most of the alleged facts are contained in Exhibit A to the Complaint, which is a formal demand letter dated September 28, 2022, addressed to Solfice from counsel for Plaintiff and other purported stockholders in Solfice. Although the letter states that Solfice was required to respond to the demand within five days, no Section 220 action was filed until this action was filed in December 2024, more than two years later."

Plaintiff Rebuttal:

Defendants' complaint-about-the-complaint fails because Section 220 exists precisely to let stockholders obtain the facts before pleading merits claims. When fiduciaries refuse to cooperate with a proper § 220 demand—as happened after the September 2022 letter and follow-up emails—the record will look "thin" by definition. Delaware law does not require a stockholder to prove a merits case or litigate end-use to secure inspection; it is a summary, pre-suit investigative remedy keyed to a credible basis and a proper purpose. See AmerisourceBergen Corp. v. Lebanon Cty. Emps.' Ret. Fund, 243 A.3d 417, 437–40 (Del. 2020); Seinfeld v. Verizon Commc'ns, Inc., 909 A.2d 117, 123 (Del. 2006).

The timing critique also misses the mark. Laches turns on both delay and prejudice; a period spent attempting to resolve informally amid continued non-compliance does not bar a live inspection controversy. And to the extent Defendants suggest corporate incapacity, 8 Del. C. § 278 preserves the entity for wind-up litigation and enforcement of inspection rights, with discretion to extend as justice requires. Any gap between the initial demand (Sept. 2022) and the verified complaint (Dec. 2024) reflects Defendants' stonewalling, not Plaintiff's abandonment.

Defendants' premise—that Plaintiff should have scoured public filings to piece together material facts—reverses fiduciary obligations. Delaware law places the duty of clear, transparent disclosure on corporate fiduciaries; stockholders are not required to "rummage" through prior public filings to divine material information. Where material compensation inducements, releases, or closing deliverables were not plainly disclosed, inspection is warranted, and disclosure shortcomings can defeat cleansing doctrines in deal contexts. See In re Baker Hughes Inc. Merger Litig., C.A. No. 2019-0638-AGB (Del. Ch. Oct. 27, 2020); Zalmanoff v. Hardy, 2018 WL 5994762, at *4 (Del. Ch. Nov. 13, 2018).

Finally, the requested scope is narrowly tailored to the stated purpose: board-level closing documents, inducement and release agreements, and directly related records. If formal records exist, they should be produced; if the company

conducted material business through email or informal channels, the Court should order ESI because a company cannot defeat § 220 by choosing not to keep formal books. See KT4 Partners LLC v. Palantir Techs., Inc., 203 A.3d 738, 751–55 (Del. 2019). This tailored protocol aligns with AmerisourceBergen's "necessary and essential" standard and ensures Plaintiff can confirm or dispel credible concerns about undisclosed conflicts and inducements.

Plaintiff's timing was not the product of delay, but of necessity. Following the June 2022 asset sale, Plaintiff issued a Section 220 demand in September 2022. Thereafter, Plaintiff monitored Luminar Technologies' SEC filings for disclosure of Solfice-related terms and compensation. Those filings—particularly the annual reports—arrived with significant lag, creating a disclosure gap that prevented Plaintiff from cross-referencing the demand against contemporaneous public filings. Only after Luminar's disclosures were finally made, and inconsistencies became apparent, did Plaintiff escalate by filing the Verified Complaint in December 2024.

The elongated timeline also reflects the way the transaction was structured. Defendants and the buyer designed a one-year transaction arc with staggered closings and deferred deliverables, effectively adding delay and obscurity around

inducements, compensation, and closing conditions. This structuring had the foreseeable effect of pushing material disclosures outside the immediate transaction window and complicating Plaintiff's ability to evaluate conflicts in real time. Far from showing lack of diligence, Plaintiff's course of action—demanding records promptly, sending preservation letters, awaiting Luminar's SEC filings, and filing the complaint within the three-year statutory survival window—demonstrates measured and deliberate pursuit of inspection rights in the face of engineered delay.

Defense Argument:

"According to Exhibit A, Plaintiff was the record holder of 1,191,666 shares of common stock of Solfice as of September 28, 2022, Defendant Safko was then the Company's Chief Executive Officer, and Defendant Harvey was then the Company's Chief Technology Officer, and both Defendants "agreed to accept offers of employment with Buyer as a condition of closing."8 Neither Defendant is currently an officer or director of Solfice."

Plaintiff Rebuttal:

Exhibit A confirms that, at the time of the September 28, 2022 demand, Safko (CEO) and Harvey (CTO) were the fiduciaries who orchestrated the APA sale and managed the constellation of stakeholders needed to close it—including negotiating employment with the buyer as a condition to closing. That central role creates unparalleled information asymmetry: no one on the Solfice cap table possesses more knowledge (or control) over closing deliverables, inducements, and releases than the two officers who negotiated the transaction and then moved to the

buyer. Those materials are "necessary and essential" to investigate conflicts and disclosure issues and fall squarely within the scope of a tailored § 220 inspection.

Delaware law does not allow fiduciaries to escape custodial obligations by structuring key deal terms in side letters or informal channels. When formal records are incomplete, the Court compels production of emails and other ESI because a company (or its agents) cannot defeat § 220 by choosing not to keep traditional minutes and resolutions. Thus, to the extent inducements, releases, or closing-condition employment agreements were carried in emails or buyer-facing documents they controlled, those records must be produced.

Nor do later resignations insulate the deal custodians from record production tied to a transaction they engineered while in office. The corporation's capacity to prosecute and defend suits—and to resolve an inspection dispute—is expressly preserved for at least three years after dissolution, with further extensions in the Court's discretion. The Court routinely uses that authority to ensure access to the

"necessary and essential" materials in the possession, custody, or control of those who managed the transaction.

The timeline undercuts Defendants' narrative. The asset sale was disclosed, and within approximately two months Plaintiff served a Section 220 demand; preservation letters followed. Section 220 required a prompt response within five business days. The ensuing gap is the officers' doing—not Plaintiff's—because they chose to delay and not produce responsive materials. Both the demand and the verified complaint were filed within the three-year statutory window, preserving this inspection dispute squarely within the Court's remit.

Substance also favors inspection. As CEO and CTO, Safko and Harvey orchestrated the APA process, negotiated buyer-conditioned employment, and managed the closing deliverables. That central role creates unmatched information asymmetry: no one on the Solfice cap table holds more knowledge or control over inducements, releases, and other closing papers. Those materials are necessary and essential to investigate conflicts and disclosure issues. Officers cannot avoid

custodial duties by parking key terms in side letters or informal channels; if formal records are incomplete, production must include emails and other ESI.

Later changes in title do not erase custodianship over records they created or controlled while in office. Delaware's survival statute preserves the corporation's capacity to resolve inspection rights within (and, as needed, beyond) three years. The correct remedy is a tailored production order: board-level closing documents, inducement/release agreements, and related ESI sufficient to test conflicts and confirm what was promised and paid.

Finally, the buyer-conditioned employment and undisclosed inducements heighten fiduciary disclosure duties. Delaware courts have sustained claims where officers responsible for a transaction failed to provide clear, transparent disclosure of material information, reinforcing why inspection is warranted to test conflicts and compensation tied to closing. Here, the same dynamic supports targeted production from the fiduciaries who negotiated the deal and then joined the buyer.

Defense Argument:

"According to the Complaint, this action seeks inspection of Solfice's books and records related to Solfice's sale of assets to Luminar Technologies, Inc. "and the compensation structures that followed."[9] According to Exhibit A to the Complaint, the asset sale was approved by Solfice's board of directors and completed on June 15, 2022, more than three years before the Complaint was served on either Defendant.

Plaintiff filed the Complaint on December 13, 2024. No summons was issued before June 24, 2025.[11] Plaintiff did not complete service on Defendant Safko until August 2, 2025, and did not complete service on Defendant Harvey at all."

Plaintiff Rebuttal:

Defendants' service argument distorts the record. Plaintiff filed a verified complaint on December 13, 2024, well within the three-year statutory survival period under 8 Del. C. § 278. That statute preserves the corporation's capacity to be sued for at least three years after dissolution, and empowers this Court to extend the window where inspection controversies remain unresolved. Both the original demand letter

and the complaint fall inside that statutory period. Preservation letters were also sent, ensuring no prejudice or loss of relevant materials.

The delay in formal service was not due to Plaintiff's inaction but to Defendants' calculated evasion. The affidavit of service documents multiple certified mailings in July 2025, which Safko refused to collect, and at least two in-person attempts where he physically declined to accept papers offered by a process server. Only after these repeated efforts, including contradictory information from neighbors, was personal service completed on August 2, 2025. Harvey, by contrast, received service by certified mail on July 21, 2025. These facts demonstrate diligence on Plaintiff's part and intentional obstruction by Defendants.

Service of process is not a race to beat the statutory survival clock; it is a procedural step designed to ensure notice, which both Defendants ultimately received. Delaware law is clear that a defendant cannot profit from willful avoidance of service. Equitable principles, combined with the preservation letters and repeated attempts to serve, prevent Defendants from claiming prejudice where their own evasion caused delay.

Accordingly, the complaint was timely filed, the statutory survival period was respected, and Defendants were served through persistent, good-faith efforts that overcame their evasive conduct. Their attempt to reframe this as Plaintiff's failure should be rejected, and the Court should instead recognize the pattern of avoidance as further evidence of custodial misconduct.

Defense Argument:

"Plaintiff has not diligently pursued his alleged inspection rights. The asset sale in question closed on June 15, 2022.[15] In September 2022, Plaintiff and two other stockholders retained counsel to send a formal demand letter to the Company, but this action was not filed until December 2024, and service was not even attempted until July 2025. Plaintiff filed a *pro se* Complaint riddled with legal errors.[16] Plaintiff lacks a proper purpose for inspection because any substantive claims he might make in the future would be barred by laches."

Plaintiff Rebuttal:

Defendants' laches argument ignores black-letter Delaware law on tolling. The statute of limitations for fiduciary-duty claims is tolled when a timely Section 220 demand is made, because the purpose of inspection is to allow stockholders to evaluate and, if appropriate, prepare claims. Plaintiff and other stockholders served a formal Section 220 demand letter in September 2022—within two months of the June 2022 closing. That demand preserves inspection rights and tolls related fiduciary claims. See *Weinstein Enterprises v. Orloff*, 870 A.2d 499, 507 (Del.

2005) (proper Section 220 demand suspends limitations while stockholder pursues inspection); *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 118–20 (Del. 2002).

It is Defendants' refusal to respond—not Plaintiff's diligence—that explains the timing. Section 220 requires a corporation to respond within five business days. Solfice did not, and instead forced stockholders to pursue court intervention. Preservation letters were also sent to ensure no loss of material evidence. Plaintiff's verified complaint was filed in December 2024, comfortably within the three-year statutory window under 8 Del. C. § 278, and service was effectuated despite repeated evasive behavior by Safko documented in the affidavit of service. Defendants cannot turn their obstruction into a laches defense.

Further, Delaware precedent makes clear that inspection rights are not extinguished simply because a related plenary claim may face limitations issues. The credible-basis standard requires only evidence of possible mismanagement or wrongdoing, not a demonstration that claims are presently actionable. See *AmerisourceBergen Corp. v. Lebanon Cty. Emps.' Ret. Fund*, 243 A.3d 417, 437–38 (Del. 2020).

In short, the September 2022 demand tolled the statute; the December 2024 complaint and subsequent service were timely; and Defendants' continued failure

to comply cannot be repackaged as Plaintiff's supposed lack of diligence. Equity does not permit fiduciaries to stonewall inspection and then invoke laches based on delay of their own making.

Defense Argument:

"For the above reasons, Defendants respectfully request that the Court grant their motion to dismiss the Verified Complaint or, in the alternative, drop Defendants as parties to this action, and that the Court award Defendants their attorneys' fees and expenses incurred in connection with this action, to the extent permitted by law."

Plaintiff Rebuttal:

Defendants' request for dismissal or for dropping them as parties misstates their continuing custodial obligations and ignores the statutory framework. As directors and officers who orchestrated the APA sale, negotiated buyer-conditioned employment, and received undisclosed inducements, Safko and Harvey remain the fiduciary custodians of Solfice's closing documents and related records. Delaware law makes clear that resignation does not insulate fiduciaries from their duty to account for records they created or controlled while in office. The Verified Complaint is therefore properly brought against them.

Nor is dismissal appropriate when Plaintiff has established both standing and a proper purpose. The September 2022 demand was made within two months of the asset sale, tolling limitations and preserving inspection rights. The Verified

Complaint was filed within the three-year statutory window under 8 Del. C. § 278, and service was ultimately effected despite Defendants' evasive conduct. A Section 220 action is not judged by whether plenary claims are already actionable but by whether a stockholder has shown a credible basis for investigating potential mismanagement. That standard has been met.

Defendants' request for fee shifting is equally unfounded. Fee shifting in Delaware follows the American Rule and is reserved for bad faith litigation conduct. Plaintiff's actions here—prompt demand, preservation letters, verified complaint, and multiple good-faith attempts to effect service—demonstrate diligence, not bad faith. By contrast, Defendants' refusal to comply with the statutory five-day response obligation under § 220 and their deliberate evasion of service reflect the very type of conduct that warrants judicial sanction, not fee relief.

Accordingly, the Court should deny Defendants' motion in its entirety. The Verified Complaint is timely, properly directed against the fiduciaries who controlled the relevant records, and grounded in a classic proper purpose under § 220. Rather than awarding fees to Defendants, the Court should enforce Plaintiff's inspection

rights and consider cost-shifting against Defendants for their stonewalling and obstruction.

Defense Argument:

"In addition, Plaintiff has not submitted the required proof that he is a stockholder of Solfice. He attached to his Complaint a copy of a stock certificate prominently stamped "CANCELED."[5] Under Section 220(c)(1), a plaintiff "shall first establish that... [s]uch stockholder is a stockholder." The Court should dismiss the Complaint because Plaintiff has failed to establish that he is a stockholder in Solfice."

Plaintiff Argument:

Plaintiff's Stockholder Status Is Established; the "CANCELED" Overlay Proves Nothing. Section 220(c)(1) requires a plaintiff to establish stockholder status, which Plaintiff does through the Company's own capitalization records and sworn issuance documents. The "CANCELED" legend appearing on Plaintiff's digital certificate is an administrative flag applied by cap-table vendors upon dissolution or system offboarding; it does not negate historical ownership or current standing. See, e.g., Carta guidance explaining that when a company dissolves or departs the platform "all outstanding securities on its cap table are marked as 'canceled'." Delaware courts focus on substance over form and do not permit companies to weaponize record-keeping artifacts to defeat inspection rights

when the corporation knows the plaintiff is a stockholder. *Knott Partners L.P. v. Telepathy Labs, Inc*., C.A. No. 2021-0583-SG (Del. Ch. Nov. 23, 2021) (company could not rely on an unupdated ledger to deny § 220 rights). Finally, unlike a merger, dissolution does not extinguish stockholders; § 278 expressly continues the corporation to "distribute to its stockholders any remaining assets," confirming the existence of stockholders during winding-up. The merger cases Defendants cite (e.g., *Weingarten*; *Swift*) are therefore distinguishable.

Defense Argument:

"The Court also lacks personal jurisdiction over Defendants. Under 10 *Del*. *C*. § 3114(a), directors of Delaware corporations consent to service of process:

> *...in all civil actions or proceedings brought in this State, by or on behalf of, or against such corporation, in which such director, trustee or member is a necessary or proper party, or in any action or proceeding against such director, trustee or member for violation of a duty in such capacity, whether or not the person continues to serve as such director, trustee or member at the time suit is commenced.*

Section 3114 does not apply here because: (i) this is not a civil action or proceeding brought by, on behalf of, or against a Delaware corporation (which is not named as a party) and (ii) Defendants are not necessary or proper parties in a Section 220 action (Section 220(c) only allows the Court to "order the corporation to permit" inspection of books and records)."

Plaintiff Rebuttal:

Jurisdiction lies under § 3114 because this § 220 case is, in substance, "by or on behalf of" a Delaware corporation that survives dissolution under § 278, and the former directors are proper parties to effectuate inspection as

custodial fiduciaries. At minimum, any caption defect is curable under Rule 21; the Court may also appoint trustees/receivers under § 279 to take charge of the dissolved corporation's records—further confirming that directors can be compelled in this forum.

Dissolution doesn't erase the corporation for governance suits; § 278 keeps it "in being" for winding-up and litigation.

A dissolved Delaware corporation "shall nevertheless be continued" for at least three years (or longer by order) to defend and prosecute suits and "to distribute to its stockholders." A § 220 action squarely fits that survival purpose, so the case is "by or on behalf of" the corporation even if the caption initially omitted it.

§ 3114 reaches these directors because they are "necessary or proper" to effectuate inspection, and Hazout confirms the statute's breadth.

Delaware's Supreme Court in *Hazout v. Tsang Mun Ting* read § 3114 broadly: nonresident directors/officers consent to Delaware jurisdiction in any civil action where the corporation is a party and the director is a "necessary or proper party," and also for actions alleging violations of duties in that capacity—regardless of continued service at filing. Where a dissolved company's records are in former directors' custody, they are proper participants for relief.

Directors are "custodial fiduciaries" of corporate records; Chancery compels production from directors' files and accounts when the company's records are under their control.

Chancery routinely treats directors' materials (including personal accounts) as within the company's control for § 220 and orders production accordingly. That practice confirms directors' custodial role and why they are proper targets for an order ensuring inspection works in the real world—especially post-dissolution.

If the Court wants a cleaner procedural vehicle, it has two easy fixes—neither warrants dismissal.

- **Rule 21 cure:** "Misjoinder is not a ground for dismissing an action." The Court can add the dissolved corporation or drop superfluous parties on just terms.

- **§ 279 trustee/receiver:** Chancery may appoint directors as trustees or appoint a receiver "at any time" to take charge of the dissolved corporation's property and "prosecute and defend, in the name of the corporation" as needed. Records are quintessential § 279 "property."

Why defendants' framing of § 220(c) is too cramped.

Defendants say § 220(c) only authorizes an order to "the corporation." True—but Delaware courts fashion practical relief to ensure the corporation *actually* produces what it controls, including documents held by directors. In a dissolution posture, the Court uses § 278/§ 279 and its equitable tools to make that command effective; naming or compelling the custodial fiduciaries is part of that toolbox, not a jurisdictional defect.

Personal Jurisdiction Over Custodial Fiduciaries. This action vindicates a Delaware statutory governance right "by or on behalf of" a Delaware corporation that survives dissolution for litigation and wind-up. 8 Del. C. § 278. Under 10 Del. C. § 3114, the former directors—who retain custody of responsive corporate records—are at least "proper" parties to effectuate inspection, and *Hazout* confirms § 3114's broad reach over nonresident directors in such circumstances. To the extent the caption requires alignment, the remedy is a Rule 21 amendment, not dismissal; alternatively, the Court may appoint trustees or a receiver under § 279 to take charge of the dissolved entity's records and effectuate production.

Defense Argument:

"Nor does personal jurisdiction exist under the Delaware long-arm statute, 10 *Del. C.* § 3104. The fact that Defendants are former directors of a Delaware corporation does not establish sufficient contacts with the State for long-arm jurisdiction.[6] The Court should dismiss the Complaint under Court of Chancery Rule 12(b)(2) for lack of personal jurisdiction over Defendants.

Finally, the Court should dismiss the Complaint against Defendant Harvey under Court of Chancery Rule 12(b)(5) for insufficient service of process. Mr. Harvey was not served either personally or by mail under 10 *Del. C.* § 3104, nor was he served through the corporation's registered agent in Delaware under 10 *Del. C.* § 3114."

Plaintiff Rebuttal:

Service on Harvey (Electronic Return Receipt). Delaware's long-arm statute permits service "**by any form of mail** … **requiring a signed receipt**," and provides that "**proof of service shall include a receipt signed by the addressee or other evidence of personal delivery**." 10 Del. C. § 3104(d)(3), (e). Plaintiff served Harvey by registered/certified mail with **Electronic Return Receipt**, and

the USPS record contains **the recipient's signature** and delivery confirmation. USPS expressly treats the **eRR as equivalent to the green-card return receipt** for signed proof of delivery. That satisfies § 3104(d)(3); the Rule 12(b)(5) motion fails. The evidence of this is attached as Exhibit L in the Affidavit of Service, which is part of the court's docket.

Defense Conduct and Its Implications

1) Procedural gamesmanship to avoid the merits.

Rather than engage with the narrow inspection issues, Defendants have pursued threshold skirmishes—jurisdiction, caption formalities, and service—despite actual notice and participation. This sequencing is not about clarifying parties; it is about postponing discovery into the very records that would resolve the dispute.

2) Misuse of dissolution formalities to deny standing.

Defendants lean on a cap-table "CANCELED" overlay and the corporation's dissolved status as if either extinguishes stockholder status or custodial obligations. Both points are administrative artifacts, not legal adjudications. The dissolved entity still exists for winding-up and litigation, and the directors who negotiated and closed the transaction remain the only realistic custodians of responsive records.

3) Jurisdiction objections that ignore their Delaware-directed conduct.

Defendants minimize their own Delaware-centered actions (approvals, closing instruments, dissolution filings) that created the records sought. At the same time, they appear in this forum to contest procedure while denying the forum's ability to compel the only people with possession, custody, or control—again, a tactic to block inspection, not a principled jurisdiction challenge.

4) Service objections contradicted by their own receipt.

Despite signed electronic return receipt, Defendants pressed a Rule 12(b)(5) argument. When a party both receives process and actively litigates, insisting on dismissal for curable service minutiae is tactical delay—especially where the remedy would be, at most, quash-and-refix.

5) Inconsistent positions in meet-and-confer and status reporting.

Defendants signal cooperation in principle, then retreat to threshold defenses; they acknowledge that certain closing materials exist (and may be held by counterparties) yet refuse to make reasonable requests or certifications. The effect is to hold Plaintiff in an endless pre-merits loop.

6) Withholding basic custodial certifications.

Defendants resist providing short, targeted certifications (who searched, where, and what was requested from counterparties). That refusal is telling: if they had conducted reasonable searches, a two-paragraph declaration would resolve most disputes.

7) Prejudice to a time-sensitive statutory right.

Section 220 is summary by design. Every month of procedural fencing erodes the utility of the remedy, risks loss of ephemeral ESI, and compounds the burden on a stockholder forced to litigate for foundational board-level materials.

Requested Relief Tailored to the Conduct

1. **Deny the threshold motions** (12(b)(2), 12(b)(5), and the standing challenge).

2. **Adopt a staged production protocol** with short deadlines:

    - **Stage 1 (Day 14):** board minutes/consents, closing deliverables, and fully-executed compensation/release papers in Defendants' possession; **plus** a short **search certification**.

    - **Stage 2 (Day 21):** documented requests to counterparties (buyer/ affiliates/agents) and production of any received materials; **plus** a declaration describing responses.

3. **Order custodial declarations** identifying locations searched (personal and corporate accounts/devices used for company business), custodians, date ranges, and specific counterparties contacted.

4. **Preservation directive** for all deal-related ESI (including text, chat, personal email used for corporate matters).

5. **Rule 21 caption cure** (if the Court desires alignment), without dismissal.

6. **§ 278 survival acknowledgment** and, if needed, **§ 279 fallback** (appointment of a trustee/receiver limited to records custody).

7. **Fee-shifting warning or conditional fee-shift** if Defendants fail to comply with Stage 1/2 or submit materially incomplete certifications.

Exhibit Ledger — §220 (Gupta v. Safko & Harvey)

Use this ledger to track produced and sought materials tied to inducements/releases embedded as APA closing conditions. Update "Status," "Bates," and "Notes" as productions come in.

Legend

- **Status:** In hand / Sought from Defendants / Sought from Buyer / To collect / Withheld (privilege) / Pending Tiger
- **Conf.:** Proposed confidentiality designation (None / Confidential / Tiger)

Exhibits

- **Exh. A — Puttagunta §220 Demand** (Sept. 20, 2022)
    - **Source/File:** EXHIBIT A - Puttagunta - 220 Demand (00822156-6xACD46).docx.pdf
    - **Description:** Stockholder demand seeking Selected Books & Records re: Key-Employee offers and Seller Releases embedded as closing deliverables.

- **Relevance:** Establishes proper purpose and scope; requests ESI when formal records are incomplete.
- **Expected Custodians:** Safko; Harvey; Board Secretary, Shanmukha Sravan Puttagunta, Anuj Gupta, Jason Creadore
- **Status:** In hand | **Conf.:** Confidential | **Bates:** TBD
- **Cross-Refs:** B, C
- **Notes:** Attach mailing proof if used as foundation.

- **Exh. B — Condor Term Sheet** (Dec. 7, 2021)
  - **Source/File:** EXHIBIT B - Condor Term Sheet 12_7_21.pdf
  - **Description:** Buyer term sheet conditioning the deal on employment agreements for select personnel; inducements contemplated from outset.
  - **Relevance:** Credible basis that employment arrangements were integral closing terms.
  - **Expected Custodians:** Safko; Harvey; Deal Coordinator
  - **Status:** In hand | **Conf.:** Confidential | **Bates:** TBD

- **Cross-Refs:** A, C
- **Notes:** Use to frame early date range for ESI.

- **Exh. C — Asset Purchase Agreement (Executed)** (June 15, 2022)
  - **Source/File:** EXHIBIT C - Project Condor - Asset Purchase Agreement - Executed 6.15.22.pdf
  - **Description:** § 7.2(e) Key-Employee offer letters/CIIAA/RCs as **conditions to closing**; § 7.2(f) Seller Release Agreements executed at closing.
  - **Relevance:** Core proof that inducements/releases are closing deliverables; anchors "necessary and essential."
  - **Expected Custodians:** Safko; Harvey; Outside Counsel Liaison
  - **Status:** In hand | **Conf.:** Confidential | **Bates:** TBD
  - **Cross-Refs:** B, D–J
  - **Notes:** Cite sections in brief/order.

- **Exh. D — Preservation Letters to Safko & Harvey** (Aug. 29, 2022)
  - **Source/File:** (Not yet filed here)

- **Description:** Written preservation notices sent prior to demand/ complaint.
- **Relevance:** Shows notice of retention duty; supports custodianship and spoliation risk.
- **Expected Custodians:** Safko; Harvey, Stefan Safko
- **Status:** In hand | **Conf.:** None | **Bates:** TBD
- **Cross-Refs:** A, C, J
- **Notes:** Add certified mail receipts if available.

- **Exh. E — Seller Officer's Certificate (Closing)** (June 2022)
  - **Source/File:** (From closing packet)
  - **Description:** Officer certifies satisfaction of APA § 7.2(e) employment-arrangement conditions and receipt of Seller Releases.
  - **Relevance:** Confirms existence/completion of closing deliverables; locator for executed versions.
  - **Expected Custodians:** Corporate Secretary; Safko
  - **Status:** Sought from Defendants | **Conf.:** Confidential | **Bates:** TBD

- **Cross-Refs:** C, F, G
- **Notes:** Request native + metadata.

- **Exh. F — Closing Checklist / Binder Index** (June 2022)
  - **Source/File:** (From closing packet)
  - **Description:** Checklist/binder index listing Key-Employee offers, CIIAAs/RCs, and Seller Releases as deliverables.
  - **Relevance:** Maps where documents live; supports Stage-1 production.
  - **Expected Custodians:** Deal Coordinator; Outside Counsel
  - **Status:** Sought from Defendants | **Conf.:** Confidential | **Bates:** TBD
  - **Cross-Refs:** C, E, G–J
  - **Notes:** Produce with transmittals.

- **Exh. G — Seller Release Agreements (Executed)** (June 2022)
  - **Source/File:** (From closing packet)
  - **Description:** Executed releases by named individuals (including any for Safko/Harvey if applicable).

- **Relevance:** Direct evidence of release consideration and closing mechanics.
- **Expected Custodians:** Signatories; Corporate Secretary
- **Status:** Sought from Defendants / Buyer | **Conf.:** Tiger | **Bates:** TBD
- **Cross-Refs:** C, E, F
- **Notes:** Provide list of signatories if not all available.

- **Exh. H — Key-Employee Offer Letters (Accepted)** (June 2022)
  - **Source/File:** (From closing packet)
  - **Description:** Employment offers/acceptances for designated Key Employees effective at closing.
  - **Relevance:** Confirms inducement structure tied to closing.
  - **Expected Custodians:** HR/CEO; Key Employees
  - **Status:** Sought from Defendants / Buyer | **Conf.:** Tiger | **Bates:** TBD
  - **Cross-Refs:** C, E, F, I
  - **Notes:** Limit PII; redact SSNs.

- **Exh. I — Buyer CIIAA / Restrictive Covenant Forms** (June 2022)

- **Source/File:** (From closing packet)
- **Description:** Confidentiality/invention assignment and non-compete/ non-solicit instruments signed at closing.
- **Relevance:** Part of § 7.2(e) condition; shows integration with offers.
- **Expected Custodians:** Key Employees; HR Liaison
- **Status:** Sought from Defendants / Buyer | **Conf.:** Tiger | **Bates:** TBD
- **Cross-Refs:** C, H
- **Notes:** Request exemplars + executed versions.

- **Exh. J — Transmittal Emails / Signature Packets / Routing Sheets** (May–June 2022)
  - **Source/File:** (Email/Deal Room)
  - **Description:** Email chains, DocuSign envelopes, trackers showing circulation/execution of H–I and G.
  - **Relevance:** Necessary and essential ESI where minutes are silent; establishes who negotiated/approved.
  - **Expected Custodians:** Safko; Harvey; Deal Admin

- **Status:** Sought from Defendants | **Conf.:** Confidential | **Bates:** TBD
- **Cross-Refs:** C, F
- **Notes:** Produce with minimal metadata.

- **Exh. K — Board Consents / Written Actions re: Closing Conditions** (2022)
  - **Source/File:** (Corporate records)
  - **Description:** Any consents noting employment/release deliverables, or delegations to officers.
  - **Relevance:** Confirms board-level approval; or identifies gaps in formal record.
  - **Expected Custodians:** Board Secretary
  - **Status:** Sought from Defendants | **Conf.:** Confidential | **Bates:** TBD
  - **Cross-Refs:** C
  - **Notes:** If none exist, certify absence.

CONCLUSION

Safko and Harvey were the fiduciaries who negotiated employment inducements and seller-side releases as express closing conditions in the Asset Purchase Agreement. They approved the integration of these arrangements as conditions precedent to closing while serving in their fiduciary capacities. Their subsequent resignation does not erase the custodial duty that attached when they created, received, or controlled materials relating to these conflicted transactions.

The Court should deny any motion to dismiss based on resignation timing, compel inspection of inducement and release agreements (including drafts and related electronic communications), toll limitations for related claims, and shift fees in light of Defendants' bad-faith refusal to produce materials evidencing their custodial obligations.

Delaware Section 220 and Section 278, together with the Court's equitable powers, provide comprehensive authority to ensure that resigned fiduciaries cannot escape accountability for conflicted transactions they orchestrated while in office.

WORD COUNT CERTIFICATION UNDER Ct. Ch. R. 171(f)

This brief complies with the word limitation of Court of Chancery Rule 171(f). According to the word-count feature of Microsoft Word, this brief contains roughly 8,709 / 14,000 words, excluding the case caption, and authorities, signature block, certificate of service, and any appendices.

Dated: September 11th, 2025 Anuj Gupta

Pro Se Plaintiff

Respectfully submitted,

/s/ Anuj Gupta

Anuj Gupta

Pro Se Plaintiff