IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DYLAN ROSE, Plaintiff, v. BERKELEY COMPUTE, INC. a/k/a SILICON.NET, Defendant.	))))))))))	C.A. No. 2025-1297-DG **UNDER SEAL**[1]

MAGISTRATE'S REPORT

Date Submitted: January 22, 2026
Date Decided: March 5, 2026

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GIBBS, M.

[1] This report is being issued under seal to protect confidential information that may not have been made public through the hearing. Under Court of Chancery Rule 5.1, I will unseal this report unless, within five (5) days, either party files a notice stating grounds for any continued restriction and requesting a determination whether good cause exists therefor.

The parties in this advancement action filed cross-motions for summary judgment on the issue of the plaintiff's entitlement to advancement of legal fees incurred in defending a California lawsuit. For reasons I discuss in this report, I grant both motions in part and deny both motions in part.

I. GENERAL BACKGROUND

Plaintiff Dylan Rose ("Rose") is a co-founder of Defendant Berkeley Compute, Inc. ("Berkeley"). Rose and two other individuals formed Berkeley on July 11, 2024.[2] Rose "served as its CTO from September 18, 2024 to September 19, 2025."[3] "Rose was also a director of Berkeley from July 12, 2024 until October 27, 2025."[4]

Before (and after) forming Berkeley, Rose served as CEO of Evergreen Systems, Inc. ("Evergreen"), "a technology company that developed and sold hardware primarily for usage with the Chia Blockchain."[5] Rose served as CEO of Evergreen in 2021, briefly stepped out of that position between 2022 and 2023, and resumed the role "until [Evergreen] filed for an Assignment for Benefit of Creditors

[2] Aff. of Paul Hainsworth in Supp. of Def.'s Combined Opening Br. in Supp. of Mot. for Summ. J ("Hainsworth Aff."), Dkt. 17 ¶ 29.

[3] Verified Compl. for Advancement ("Compl."), Dkt. 1 ¶ 4.

[4] Def.'s Combined Opening Br. in Supp. of Mot. for Summ. J ("DOB"), Dkt. 17 (citations omitted).

[5] Aff. of Dylan Rose in Supp. of Pl.'s Opening Br. in Supp. of Mot. for Summ. J. ("Rose Aff."), Dkt. 14 ¶ 4.

in February 2025[.]"[6] In 2022, Evergreen entered into a consulting agreement with Galactechs, LLC, "whereby Galactechs would [provide] software development services for Evergreen."[7] Between 2023 and 2024, Galactechs also provided support to Evergreen while "Evergreen was trying to diversify away from" its "existing mining hardware business."[8] Galactechs was founded and is managed by nonparty James Hoerr ("Hoerr").[9]

By 2024, Hoerr and Rose were in an intense dispute regarding Evergreen's alleged failure to pay Galactechs for its work.[10] Later, after Evergreen initiated its assignment for the benefit of creditors proceeding, Berkeley allegedly purchased, from a third party,[11] GPU software created by Galactechs during its work at Evergreen.[12] Hoerr and Galactechs believe the disputed software is rightfully theirs given Evergreen's alleged failure to compensate Galactechs.[13] These issues

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[6] Hainsworth Aff. ¶ 39.

[7] *Id.* ¶ 41; *see also* DOB Ex. B (Consulting Agreement).

[8] *Id.* ¶ 42.

[9] Reply Br. in Further Supp. of Pl.'s Mot. for Summ. J ("PRB"), Dkt. 18 Ex. J ("Am. Cal. Compl.") ¶ 1.

[10] Hainsworth Aff. ¶ 50.

[11] Rose organized the third-party acquisition of the software and the subsequent sale of the software to Berkeley. *See id.* ¶¶ 63–65.

[12] *See id.* ¶¶ 52–66. *But see* Am. Cal. Compl. ¶¶ 13, 29, 31.

[13] *See, e.g.*, Am. Cal. Compl. ¶ 31.

ultimately led Hoerr and Galatechs to initiate a lawsuit against Rose, Evergreen, Berkeley and others in California.[14]

A. The Underlying Proceeding

Hoerr and Galactechs filed their lawsuit in a California state court on August 11, 2025 ("California Action"). The defendants in the California Action are Rose, Rose's partner, Taylor Digital Services, LLC and its founder, Michael Taylor ("Taylor"), Evergreen, Pantheon Compute, Inc., Berkeley, and 50 Doe parties.[15] The plaintiffs in the California Action assert eight causes of action against the named defendants.[16] The premise of the California Action is that Hoerr and Galactechs provided software and systems engineering services to Evergreen and Rose, and that this work was "often without pay, based on promises by Rose of future equity, long-term employment, and project ownership."[17] The California Action alleges that instead of fulfilling these promises, "Rose transferred valuable contracts, hardware,

[14] *See generally id.*

[15] Compl. Ex. B ("Cal. Compl."). According to the California Complaint, Pantheon Compute, Inc. "is a Wyoming corporation created to receive contracts and hardware formerly belonging to Evergreen, and to continue profiting from work created and funded by Plaintiffs without compensation." *Id.* ¶ 11.

[16] *Id.* at 1.

[17] *Id.* ¶¶ 18–20.

and IP into Pantheon Compute and [Berkeley], retaining no liability under Evergreen."[18]

B. Rose Requests Advancement

On September 13, Rose issued a formal advancement demand ("Demand") to Berkeley.[19] The Demand explicitly was made under the Indemnification Agreement.[20] Rose provided a signed undertaking to repay advanced expenses should it be later determined that he is not entitled to indemnification, but he did not specify the amount of fees requested to be advanced or reimbursed or provide documentary evidence of expenses.[21]

On September 16, Berkeley, through CFO Betty Kayton ("Kayton"), responded to the Demand ("Response"). She had by that time been informed, and noted in the Response, that Rose requested $10,000 "to use to retain legal counsel."[22] Kayton offered to Rose "a one-time full recourse loan of $10,000[,]" but noted that "Berkeley is not waiving any of its rights under the indemnification agreement[.]"[23]

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[18] *Id.* ¶ 22.

[19] *See* Pl.'s Opening Br. in Supp. of Mot. for Summ. J. ("POB"), Dkt. 14.

[20] *Id.* Ex. C at 1–3. The Demand did not assert a right to advancement under Berkeley's bylaws.

[21] *See id.* Ex C at 4.

[22] *Id.* Ex. D at 1.

[23] *Id.*

Kayton stated that Berkeley was still reviewing the Demand in accordance with the Indemnification Agreement.[24]

Rose responded on the same day, requesting Berkeley's position on its interpretation of the Indemnification Agreement and noted that he was "trying to stay within the confines of the indemni[fication] agreement[.]"[25] On September 30, Kayton wrote to Rose, stating that he had "not complied with the requirements of Section 6 of the Indemnification Agreement, which requires that 'you submit to the Company a written [request], including therein or therewith such documentation as is reasonably . . . necessary to determine whether and to what extent [Rose is] entitled to indemnification.'"[26] Kayton stated that Rose had not provided such documentation.[27] She stated that Berkeley "will consider a request for indemnification if you comply with the requirements of Section 6 [of the Indemnification Agreement]."[28]

In response, on September 30, "Rose provided a receipt reflecting payment of a $10,000 retainer to Jeff Lewis Law[.]"[29] The parties continued to discuss Rose's

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[24] *Id.*

[25] *Id.* Ex. D at 3.

[26] *Id.* Ex. E at 1.

[27] *Id.*

[28] *Id.*

[29] DOB at 23 (citing DOB Ex. H).

entitlement to advancement into October. On October 6, Kayton asserted that Rose still needed to "send [Berkeley] a copy of the engagement letter with the attorney showing that he has agreed to represent [Rose] in the [California] litigation and request[ed] the retainer."[30]

On October 20, Kayton contacted Rose's counsel. She told the lawyer that Berkeley believed Rose had not sufficiently documented the $10,000 retainer agreement but that "Berkeley is obliged to respond to Indemnitee's request within 30 days after receiving an indemnification request which meets the requirements in Section 5 [of the Indemnification Agreement][.]"[31] Kayton requested account information so that Berkeley could transfer $10,000 to Rose's counsel.[32] On October 27, Rose confirmed that his counsel received the $10,000 transfer.[33] Berkeley continues to dispute Rose's entitlement to advancement.[34]

C. The Amended California Complaint

On December 15, Hoerr and Galactechs filed an amended complaint in the California Action. The amended complaint includes additional allegations relating

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[30] POB Ex. E at 2.

[31] *Id.* Ex. F at 2–3.

[32] *Id.* Ex. F at 3.

[33] *Id.* Ex. F at 1.

[34] *See, e.g.*, DOB at 49 ("Plaintiff is not entitled to advancement in connection with the California Action[.]").

to Berkeley. For example, the California plaintiffs allege that "Defendants' post-contract misappropriation of GPU software . . . was facilitated through an asset purchase in the ABC proceeding by Berkeley Compute."[35] They allege that they "performed additional software development after Evergreen's breach, in reliance on new promises by Dylan Rose that Berkeley Compute would compensate them and pay off Evergreen's debts."[36] The fact portion of the amended complaint concludes with the allegation that "Defendants, including Berkeley, are liable for using and profiting from Plaintiffs' unpaid work with full knowledge of the underlying breach, and having participated in and benefited from the wrongful conduct."[37]

The amended complaint asserts the same causes of action as the original complaint. Those causes of action are as follows:

1. Count 1 is a claim of "Fraud and Deceit" against all defendants.
2. Count 2 is a claim of "Conversion" against all defendants.
3. Count 3 is a claim of "Breach of Contract" against Evergreen and Rose.
4. Count 4 is a claim of "Promissory Fraud/Estoppel" against Evergreen and Rose.

[35] Am. Cal. Compl. ¶ 29.

[36] *Id.* ¶ 30.

[37] *Id.* ¶ 31.

5. Count 5 is a claim of "Defamation" against Rose and two of the other individual defendants.

6. Count 6 is a claim of "Tortious Interference with Prospective Economic Advantage" against Rose and one of the other individual defendants.

7. Count 7 is a claim of "Misappropriation of Trade Secrets" against all defendants.

8. Count 8 is a claim of "Unfair Business Practices," alleging violations of a California statute, against all defendants.[38]

D. The Instant Action

Rose filed the complaint in this action on November 10, seeking advancement from Berkeley of all fees incurred in the California Action.[39] On November 21, the parties stipulated to have this Court determine Rose's entitlement to advancement on cross-motions for summary judgment.[40] The parties completed briefing on the cross-motions on January 16, 2026. I heard oral arguments on January 22, and I took the matter under advisement as of that date.

E. Plaintiff's Advancement Rights

Rose asserts advancement rights under an Indemnification Agreement he executed with Berkeley. The Indemnification Agreement provides advancement

[38] *Id.* at 6–11.

[39] Dkt. 1.

[40] Dkt. 11 (Case Scheduling Order).

rights to Indemnitees in connection with Proceedings by reason of their Corporate Status:

> Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free. This Section 5 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9.[41]

Berkeley does not dispute that Rose is an Indemnitee.[42]

The terms "Proceeding" and "Corporate Status" are defined in Section 13 of the Indemnification Agreement. A "Proceeding" is

> any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, including any appeal therefrom, in which Indemnitee was, is or will be involved

[41] Indemnification Agreement § 5.

[42] DOB at 30.

> as a party or otherwise**, by reason of his or her Corporate Status, by reason of any action taken by him or her, or of any inaction on his or her part, while acting in his or her Corporate Status;** in each case whether or not he or she is acting or serving in any capacity at the time any liability or expense is incurred for which indemnification, reimbursement or advancement of expenses can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his or her rights under this Agreement.[43]

"Corporate Status" means "the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the request of the Company."[44]

To summarize, the Indemnification Agreement provides that Berkeley "**shall advance** all Expenses incurred by or on behalf of" Rose, "in connection with" a very broad class of "actual, threatened, or completed proceeding[s] . . . **by reason of**" Rose's status as "a director, officer, employee, agent or fiduciary of [Berkeley] or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that [Rose] was serving at the rest of [Berkeley]." This is a mandatory advancement obligation.[45]

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[44] Indemnification Agreement § 13(a).

[45] *See, e.g.*, *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 206–207 (Del. 2005) ("In addition, Section 6.2 of Homestore's bylaws contains a mandatory advancement provision: '[t]he Corporation *shall pay* all expenses (including attorney's fees) incurred by such a director

II. LEGAL STANDARD

The parties have filed cross-motions for summary judgment. "Summary judgment will be granted if 'there is no genuine issue as to any material fact . . . the moving party is entitled to judgment as a matter of law.'"[46] "The existence of cross-motions does not necessarily make summary judgment for either party inappropriate, nor does it change the standard for summary judgment."[47] "Rather, the [C]ourt examines each motion separately, and 'if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, then summary judgment is appropriate.'"[48]

"Summary judgment is an appropriate way to resolve advancement disputes because 'the relevant question turns on the applications of the terms of the corporate instruments setting forth the purported right to advancement and the pleadings in the proceedings for which advancement is sought.'"[49] "'[I]n determining whether to

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or officer in defending any such Proceeding as they are incurred in advance of its final disposition.'") (emphasis in original).

[46] *Rhodes v. bioMerieux, Inc.*, 2024 WL 669034, at *7 (quoting Ct. Ch. R. 56(c)).

[47] *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1007 (Del. Ch. 2007) (citations omitted).

[48] *Id.* (citations omitted).

[49] *Senior Tour Players 207 Mgmt. Co. LLC v. Golftown 207 Hldg. Co., LLC*, 853 A.2d 124, 126–27 (Del. Ch. 2004) (quoting *Weinstock v. Lazard Debt Recovery GP, LLC*, 2003 WL 21843254, at *2 (Del. Ch. Aug. 1, 2003)).

award advancement[,] the Court will 'look to the plain meaning of the advancement provision[s]' in the governing instruments."[50] "Even when presented with cross-motions for summary judgment, the [C]ourt is not relieved of its obligation to deny summary judgment if a material factual dispute exists."[51]

II. ANALYSIS

Plaintiff seeks advancement under the Indemnification Agreement[52] for the expenses he has incurred and will incur in connection with the California Action. Defendant disputes Plaintiff's entitlement to advancement, arguing that the California Action is not a Proceeding brought "by reason of" of Rose's Corporate Status.[53] Defendant also argues that Rose has failed to present a statement that complies with the requirements of the Indemnification Agreement.[54] I address each argument in turn.

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[50] *Rhodes*, 2024 WL 669034, at *7 (quoting *Senior Tour Players 207 Mgmt. Co.*, 853 A.2d at 127).

[51] *Fasciana v. Electr. Data Sys. Corp.*, 829 A.2d 160, 166 (Del. Ch. 2003).

[52] In his reply brief, Rose argued for the first time that advancement is also appropriate under Berkeley's bylaws (the "Bylaws"). *See* Reply Br. in Further Supp. of Pl.'s Mot. for Summ. J. ("PRB"), Dkt. 18 at 12–13 n.8. Because the Demand was expressly made under the Indemnification Agreement, and because Rose did not raise the issue of entitlement under the Bylaws until his reply brief, I do not consider this argument. *See Emerald P'rs. v. Berlin*, 726 A.2d 1215, 1225 (Del. 1999).

[53] *See* DOB at 28–45.

[54] *See id.* at 45–48.

A. The California Action is a Covered Proceeding, In Part.

Defendant primarily argues that Rose "is not 'involved as a party' in the California Action 'by reason of his or her Corporate Status' or, 'by reason of any action taken by him or her, or of any inaction on his or her part, while acting in his or her Corporate Status[.]'"[55]

The Indemnification Agreement employs a "by reason of" standard. A proceeding is brought against an individual "by reason of" an individual's corporate capacity "if there is a nexus or causal connection between any of the underlying proceedings . . . and one's official corporate capacity, . . . without regard to one's motivation for engaging in that conduct."[56] This Court "interprets [the by reason of standard] broadly in favor of advancement[.]"[57] To determine Rose's entitlement to advancement, "I must read the [amended complaint], along with the papers filed in this action, as a whole. I must then interpret the substance of the allegations supporting each claim to determine whether the claim was brought 'by reason of' [Rose's] conduct as a [corporate agent]."[58]

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[55] *Id.* at 30 (citations omitted).

[56] *Homestore, Inc.*, 888 A.2d at 214 (citing *Perconti v. Thornton Oil Corp.*, 2002 WL 982419, at *3–5 (Del. Ch. May 3, 2002); *Reddy v. Elec. Data Sys. Corp.*, 2002 WL 1358761, at *5–7 (Del. Ch. June 18, 2002)).

[57] *Mooney v. Echo Therapeutics, Inc.*, 2015 WL 3413272, at *8 (Del. Ch. May 28, 2015).

[58] *Imbert v. LCM Interest Hldg. Co.*, 2013 W L1934563, at *6 (Del. Ch. May 7, 2013).

"In considering each count of the Amended Complaint, the Court must determine whether it was [Rose's] actions as a [corporate agent] that are at issue because 'if there is a nexus or causal connection between any of the underlying proceedings . . . and one's official capacity, those proceedings are 'by reason of the fact' that one was a corporate [agent].' This Court has held that the nexus is established if 'the corporate powers were used or necessary for the commission of the alleged misconduct.'"[59] Necessarily, "the conduct complained of must occur at a time when one" held their official, covered title.[60]

i. Count I

Count I asserts a claim of "Fraud and Deceit" against all California defendants. Berkeley argues Count I is not advanceable because "[a]ny actions that Rose took underlying Count I were taken in his personal capacity, or on behalf of Evergreen."[61] I agree.

Count I alleges that "Defendants made false promises of compensation, equity, and long-term collaboration."[62] Count I specifically notes that the representations at issue "were made by Rose after Grant Cermak was let go from

[59] *Id,* at *5 (quoting *Homestore, Inc.*, 888 A.2d at 214; *Bernstein*, 953 A.2d at 1011).

[60] *Bernstein*, 953 A.2d at 1011.

[61] DOB at 33.

[62] Am. Cal. Compl. ¶ 32.

Evergreen and Rose assume[d] the role of CEO *in or about November 2023*."[63] Count I alleges that "Plaintiffs were induced into continuing to provide work and services to Evergreen and Rose, for reduced pay in exchange for *increased equity in Evergreen*" among other things.[64]

Count I is asserted against Berkeley, but it is not clear how Berkeley is implicated in the conduct at the center of the cause of action. Elsewhere in the amended complaint, Rose is alleged to have taken actions that helped Berkeley acquire the GPU software. The gravamen of the claim asserted in Count I, however, is "false promises" made to Hoerr and Galatechs before Berkeley was formed. [65] The Court must look to the substance of the claim, as opposed to the words a plaintiff has chosen to use in the pleading. Rose's involvement in Berkeley's alleged acquisition of the software is not the wrongful conduct alleged in this count. Rose's authority to act for Berkeley was not used or necessary for the conduct alleged against him in Count I. Count I is not advanceable.

ii. Count II

Count II asserts a claim of conversion against all defendants. Count II alleges that "Defendants took Plaintiffs' proprietary code, systems, and infrastructure and

[63] *Id.* ¶ 33 (emphasis added).

[64] *Id.* ¶ 34 (emphasis added).

[65] *Id.* ¶ 32.

claimed ownership without payment or consent."[66] Although the complaint alleges that Count II "relates to software that rightfully belonged to the Plaintiffs long before the Plaintiffs even knew that a new company was being formed[,]" it is clear that at least part of the alleged wrongful conduct required Rose's use of Berkeley's corporate powers. Count II alleges that (1) Rose facilitated a transfer of Plaintiffs' property to Berkeley;[67] and (2) that Berkeley later gave the property to Rose.[68] Count II is advanceable.

iii. Count III

Count III is a breach of contract claim. Count III alleges breaches of two different contracts. The first is the contract "Evergreen entered into . . . with Plaintiffs for consulting and development services *in April 2022*."[69] The second is an alleged oral agreement reached in November 2023. The oral agreement was allegedly "entered into for the development of GPU Software which was to include

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[66] *Id.* ¶ 38.

[67] *See id.* ¶ 25. More specifically, Rose allegedly enabled Berkeley to acquire the property by finding an intermediate buyer.

[68] *See id.* ¶ 29 ("Defendants' post-contract misappropriation of GPU software, including FastFarmer and ChiaPool, was facilitated through an asset purchase in the ABC proceeding by Berkeley Compute. Plaintiffs are informed and believe, and based thereon allege, that the assets were then turned over to Dylan Rose to continue operation for Defendants' benefit.").

[69] *Id.* ¶ 43 (emphasis added).

a position for Hoerr with Berkeley Compute . . . subject to Plaintiffs agreeing to an approximately 40% reduction in pay."[70]

Count III alleges that both contracts were made while Rose served at Evergreen, not Berkeley.[71] It alleges that failures to pay, breaching both agreements, began "in or about January 2024."[72] Plaintiffs do not allege who specifically entered into the oral agreement, but I conclude from the timing and subject alleged that it was Rose and Hoerr, and that the agreement concerns the same false promises alleged in Count I.[73] Berkeley had not yet been formed, so it appears unlikely that the oral contract included a promise to employ Hoerr at Berkeley Compute.[74] Accordingly, I find that Count III does not allege conduct that required Rose to use Berkeley's corporate powers. Count III is not advanceable.

iv. Count IV

Count IV is styled as a "Promissory Fraud/Estoppel" claim. Unlike most other counts in the amended complaint, Count IV is asserted only against Rose and

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[70] *Id.* ¶ 44.

[71] *Compare id.* ¶¶ 43 ("Evergreen entered into a written agreement with Plaintiffs for consulting and development services in April 2022."); 44 ("In or about November 2023, an oral agreement was entered into for the development of GPU Software[.]"), *with* Hainsworth Aff. ¶ 1; Rose Aff. ¶ 3.

[72] Am. Cal. Compl. ¶ 46.

[73] *Compare id.* ¶¶ 43–46, *with id.* ¶¶ 33–35.

[74] *See* Hainsworth Aff. ¶ 1 (stating Berkeley was founded on July 11, 2024); Rose Aff. ¶ 3 ("Berkeley was founded in mid-2024 by myself, Jonmichael Hands, and Paul Hainsworth, who is now the CEO of Berkeley.").

Evergreen.[75] Plaintiffs allege that Rose made promises that induced Plaintiffs "to provide work and services to Evergreen and Rose."[76] The promises were allegedly made before Berkeley's formation.[77] It cannot be said that Berkeley's powers were used or needed for Rose to commit the conduct alleged in Count IV, and the Count is not advanceable.

v. Count V

Count V is a defamation claim against Rose and two other individual defendants. It alleges that Rose, Rose's partner, and Taylor made defamatory communications about Hoerr over the social app Discord and in other spaces.[78] The communications are alleged to include *Taylor's* February 18, 2025 statement that Taylor chose not to move forward with employing Hoerr because of Hoerr's alleged conduct at Evergreen.[79] Taylor is specifically alleged to have "accused [Hoerr] of 'sabotage,' and [to have argued] that this 'sabotage' caused the demise of Evergreen."[80]

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[75] Am Cal. Compl at 8.

[76] *Id.* ¶ 34.

[77] *See id.* ¶ 49 ("Rose promised Plaintiffs long-term employment, equity, and partnership as an inducement to work without compensation. At one point, Rose moved from Oxnard to San Francisco claiming that he was working on investments for Evergreen, but was actually using company funds to start [Berkeley].").

[78] *See id.* ¶¶ 55–58.

[79] *See id.* ¶ 57.

[80] *Id.* ¶ 57.

The California plaintiffs allege that Rose "made a statement supporting the allegations of 'sabotage' when he claimed in a post, also on February 18, 2025, that he had to 'hack' into the [Evergreen] system because of alleged action taken by Hoerr[.]"[81] Rose is also alleged to have "made the statement that Hoerr 'did not care about customers[.]'"[82]

The username affiliated with the foregoing communications is "drose."[83] Rose concedes "drose" is his personal Discord account.[84] Nevertheless, Rose argues that Count V was brought against him by reason of his Corporate Status with Berkeley. Rose argues that he has in the past posted job listings on Discord for Berkeley using the same personal account.[85] Rose also attests that often used his personal account for corporate purposes at Berkeley.[86] For support, Rose points to Exhibit I, an October 2024 posting for a position he listed on Discord for Berkeley using the same personal account.[87] The amended complaint contains no facts to

[81] *Id.* ¶ 58.

[82] *Id.* ¶ 58.

[83] *See* POB at 41.

[84] Rose Aff. ¶ 12.

[85] POB at 26.

[86] Rose Aff. ¶ 12.

[87] *See* POB Ex. I.

support the conclusory allegation that Rose made defamatory statements on "YouTube[] and elsewhere,"[88] and Rose does not address that allegation.

As previously explained, "[t]his Court has held that the requisite nexus [or causal connection] is established if the 'corporate powers were used or necessary for the commission of the alleged misconduct.' This language has been interpreted broadly, and includes all actions brought against an officer or director 'for wrongdoing that he committed in his official capacity,' and for all misconduct that allegedly occurred 'in the course of performing his day-to-day managerial duties.'"[89]

Berkeley asserts that, although "Rose made the statements complained of in the California Action while Rose was an employee and director of Berkeley, the allegedly defamatory statements were made purely in Rose's personal capacity or capacity as CEO of Evergreen, did not relate to Berkeley at all, and were not made on behalf of, nor with any corporate authority from Berkeley."[90] I agree with Berkeley. Based on the facts alleged and evidence presented, I cannot find that Rose

[88] Am. Cal. Compl. ¶ 24 ("Rose defamed Hoerr on Discord, YouTube, and other community forums[.]"); *see also id.* ¶ 55.

[89] *Imbert*, 2013 WL 1934563, at *5 (quoting *Homestore*, 888 A.2d at 214; *Reddy*, 2002 WL 1358761, at *6).

[90] DOB at 40.

used or needed Berkeley's corporate powers when making the only allegedly defamatory statement the California plaintiffs attributed to Rose in the amended complaint.

When assessing advancement claims, the Court must evaluate the conduct alleged in the underlying pleadings to determine whether the alleged conduct arose *by reason of* the party's corporate position.[91] The amended complaint identifies allegedly defamatory statements that are wholly unrelated to Berkeley. The assertions in Rose's affidavit and the job posting reflected in Exhibit I do not establish a sufficient nexus or causal connection between those communications and Rose's Corporate Status.

That evidence effectively reveals only that Rose was, and was known to be, affiliated with Berkeley.[92] It does not demonstrate that any use of Rose's personal Discord account is "inextricably intertwined" with his former role at Berkeley.[93]

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[91] *See, e.g.*, *Charney v. Am. Apparel, Inc.*, 2015 WL 5313769, at *16 (Del. Ch. Sept. 11, 2015) (quoting *Holley v. Nipro Diagnositcs, Inc.*, 2014 WL 7336411, at *8 (Del. Ch. Dec. 23, 2014); *Weaver v. ZeniMax Media, Inc.*, 2004 WL 243163, at *4 (Del. Ch. Jan. 30, 2004)).

[92] *See* Rose Aff. ¶ 12 ("I often used my personal Discord account for corporate purposes at Berkeley. For example, I have posted job openings into groups on Discord on behalf of Berkeley, interacted with stakeholders regarding the corporate strategy of Berkeley, and users on Discord mentioned my username to discuss my position as a corporate officer at Berkeley.").

[93] *Pontone v. Milso Indus. Corp.*, 100 A.3d 1023, 1051 (Del. Ch. 2014).

This Court explained why such arguments fail to establish entitlement to advancement in *Charney v. American Apparel, Inc.*:

> [The plaintiff] seeks to extend the concept of "corporate powers" . . . to include what is essentially the social status and reputation he obtained as the 'face' of the Company . . . .
>
> [T]his type of "influence" is not a "corporate power" because there is no allegation in the . . . Proceeding that [the plaintiff] inappropriately misused Company information to violate the Standstill Agreement. Put differently, basing a right to advance on vague notions of one's persona as the founder and past leader of a corporation would render meaningless the requirement of a causal connection to the use or misuse of corporate power necessary to trigger the advancement provision in the Indemnification Agreement.[94]

The amended complaint does not allege that Rose disclosed Berkeley's information, confidential or otherwise, or that Rose used information he acquired by reason of his corporate status with Berkeley to make the alleged communications.[95] The communications relate solely to information Rose gained through Evergreen.[96]

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[94] *Charney*, 2015 WL 5313769, at *17.

[95] *See Evans v. Avande, Inc.*, 2022 WL 2092126, at *4 (Del. Ch. June 9, 2022) ("[T]his court has refrained, in advancement and indemnification proceedings, from inferring the use of confidential information. It has, instead, looked to whether such use was specifically alleged in the pleadings in the plenary action.").

[96] *See, e.g.*, Am. CA Compl. ¶¶ 55–58. *Cf. Bernstein*, 953 A.2d at 1012 ("These claims bear no nexus to Bernstein's status as a director or officer. There are no allegations that Bernstein relied on information he obtained as a director or officer in order to render legal advice. . . . Nothing indicates that Bernstein used his corporate powers to draft the relevant documents, to advise TractManager, Inc. to enter into them, or to recover legal fees from TractManager, Inc.") (internal citation omitted).

Thus, even if Rose were a "spokesperson" for Berkeley,[97] the specific communications at issue do not establish the use of or need for Berkeley's corporate powers. Accordingly, Count V is not advanceable.

vi. Count VI

Count VI is a claim of tortious interference with prospective economic advantage.[98] The California plaintiffs allege that Hoerr was prepared to enter a role at Taylor Digital Services, a nonparty entity, but that "Rose interfered and caused the offer to be rescinded."[99] The amended complaint alleges that "Taylor rescinded a job offer to Hoerr at [Rose]'s insistence, despite earlier intent to hire him based on merit."[100]

Rose attempts to support his request for advancement by explaining in his affidavit that "Berkeley retained Taylor Digital as a consultant in late October 2024" and that "Taylor Digital and Mr. Taylor reported to [Rose], as the CTO, in connection with this work."[101] This relationship, Rose says, establishes the requisite nexus or causal connection between his corporate capacity with Berkeley and

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[97] *See* PRB at 36–37.

[98] *See* Am. Cal. Compl. at 10.

[99] *Id.* ¶ 63.

[100] *Id.* ¶ 25.

[101] Rose Aff. ¶ 11.

Count VI because "discussions with a potential independent contractor, especially those preparing to work underneath that officer, would implicate the corporate capacity of the officer."[102]

The Hainsworth Affidavit calls Rose's logic into question. There, Hainsworth attests that Rose and Taylor have a relationship outside of Taylor's work with Berkeley.[103] Importantly, if Rose told Taylor not to work with Hoerr, the amended complaint alleges facts inconsistent with the allegation that Rose used or misused corporate powers when doing so. In Paragraph 57, the California plaintiffs allege that Taylor explained that he elected "'to not move forward'" with Hoerr because of Hoerr's alleged conduct when ending his relationship with Evergreen. Taylor is alleged to have stated that he does not "work with people that burn things down on their way out."[104]

As explained in *Charney*, status alone does not give rise to the use or misuse of corporate powers.[105] Rose cites only his status as a superior, or potential superior, to Taylor as a basis for advancement rather than any use of corporate power.[106] Rose's status or potential influence alone does not entitle him to advancement for

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[102] PAB at 25.

[103] *See* DOB at 5–6; Hainsworth Aff. ¶ 53.

[104] Am. Cal. Compl. ¶ 57.

[105] *See Charney*, 2015 WL 5313769, at *17.

[106] *See* DOB at 24–25.

the alleged misconduct because "there is no allegation in the [California Action] that [Rose] inappropriately misused Company information to [tortiously interfere]."[107] The amended complaint does not allege the use or misuse of Berkeley's information and the Court infers neither. Instead, the only reasonable inference I can draw from the pleadings in the California Action is that the tortious interference claim is supported by communications between Rose and Taylor regarding Hoerr's relationship with Evergreen.[108]

There is nothing in the record that indicates that Rose used or needed the corporate powers derived from Berkeley to commit the interference alleged in the amended complaint. The California plaintiffs allege that Taylor confirmed that

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[107] *Charney*, 2015 WL 5313769, at *17. Rose does not argue that his communications used Berkeley's information or required corporate powers from Berkeley in any way. Rose instead argues that he "made allegedly defamatory statements *on behalf of Berkeley* regarding the California Plaintiffs and their business relations with Berkeley." POB at 26–27 (emphasis added). The pleadings underlying the California Action do not support this interpretation. *See* Am. Cal. Compl. ¶¶ 56–57 (alleging defamatory statements pertained to Hoerr's time at Evergreen).

[108] *See* Am. Cal. Compl. ¶ 57 ("[O]n or about February 18, 2025, Taylor accused Plaintiff of 'sabotage,' and that this 'sabotage' caused the demise of Evergreen. Taylor said, 'Can't believe how classes [sic] this post is from a disgruntled former contractor who's [sic] actions and sabotage directly caused the situation in the first place. He went even further when he made the statement that Plaintiff's alleged conduct was responsible for '….causing damage to my own investments'…, *and was what caused him '…to not move forward with you (Hoerr), with you on DIG, I don't work with people that burn things down on their way out*.' This was an astonishingly slanderous statement in view of the fact that Taylor intended to hire Hoerr even weeks after he left Evergreen. . . . Taylor also said that Hoerr had 'intended to take down Evergreen,' which was a completely and totally untrue and defamatory statement.") (emphasis added).

Hoerr's conduct at Evergreen led to Hoerr losing the employment opportunity.[109] There is accordingly no sufficient nexus or causal connection between Rose's Corporate Status at Berkeley and the allegations of Count VI. Count VI is not advanceable.

vii. Count VII

Count VII is a claim for misappropriation of trade secrets asserted against all defendants.[110] This Count is analogous to Count II in that it alleges misuse by all Defendants of the California plaintiffs' GPU software. For the same reasons stated in the analysis of Count II, Rose's defense relating to this claim is advanceable.

viii. Count VIII

Count VIII is a claim for unfair business practices, asserted against all defendants under a California statute.[111] This is a general claim, based on all of the allegations in the amended complaint. Plaintiff alleges that "the conduct described [in the amended complaint] constitutes unlawful and unfair business practices."[112] Count VIII thus implicates Rose's Corporate Status with Berkeley to the extent it is

[109] *See id.* ¶¶ 56–58; 62–63.

[110] *Id.* at 10.

[111] *See id.* at 10–11. The California plaintiffs specifically assert a cause of action under Chapter 5 of the California Business and Professions Code.

[112] *Id.* ¶ 70.

implicated in the preceding counts of the amended complaint. Count VIII is therefore advanceable to the extent that it relates Counts II and VII.[113]

B. Berkeley's Argument on Fee Disclosures

Berkeley's final argument is that summary judgment should be entered in its favor because Rose's previous advancement demands were inadequately presented to Berkeley.[114] Because Rose's previous demands were formally inadequate, Berkeley argues that "the Court should find that Rose's initial demand and continued refusal to provide adequate supporting invoices renders his advancement demand deficient."[115] This Court has past rejected this argument as being overly formal at the entitlement stage.[116] In any event, disputes over the presentation of advancement demands are generally resolved after entitlement has been determined.[117]

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[113] *Cf. Hyatt v. Al Jazeera Am. Hldgs. II, LLC*, 2016 WL 1301743, at *11 (Del. Ch. Mar. 31, 2016) ("Finally, Count VII seeks numerous declarations that former members of Current must indemnify Al Jazeera for the Claim Certificates at issue in Counts I through VI. Therefore, Count VII is advanceable to the extent it seeks declarations related to those counts that are advanceable—namely, Counts I, II, III, and V.").

[114] *See* POB at 45–48.

[115] DOB at 46.

[116] *See Davis v. EMSI Hldg. Co.*, 2017 WL 1732386, at *11 (Del. Ch. May 3, 2017) (citing *Reddy*, 2002 WL 1358761, at *8).

[117] *See, e.g.*, *id.* ("Plaintiffs are entitled to advancement. The next step is to devise a set of procedures that will be used by the parties at the direction of the Court to manage Plaintiffs' specific demands for advancement and to settle any disputes regarding the amounts requested.") (citing *Danenberg v. Fitracks, Inc.*, 58 A.3d 991 (Del. Ch. 2012)).

The Court has found that Rose is entitled to advancement of fees incurred in defending Counts II, VII, and VIII. For all fees already incurred and yet to be advanced, and for all fees yet to be incurred, Rose must provide Berkeley with reasonable supporting information, as contemplated by this Court's decision in *Danenberg v. Fitracks, Inc.*[118]

C. Rose's Entitlement to Fees-on-Fees and Prejudgment Interest

"When parties seeking advancement achieve only limited success, their award of fees must reflect their limited success."[119] "[T]he determination of the level of success is a nonscientific inquiry that simply involves a reasoned consideration of the issues at stake in the case and an assessment of the plaintiffs' level of success."[120] Fees-on-fees are thus awarded to Rose commensurate to his success in prosecuting this advancement action. Rose established his entitlement to advancement of fees relating to three of the eight counts brought in the California Action. He is therefore entitled to a proportionate award of fees-on-fees.

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[118] *See Danenberg*, 58 A.3d at 1003–04.

[119] *Ephrat.*, 2019 WL 2613281, at *10 (citing *Zaman v. Amadeo Hldgs., Inc.*, 2008 WL 2168397, at *39 (Del. Ch. May 23, 2008)).

[120] *Id.* at *11 (quoting *Zaman v. Amadeo Hldgs., Inc.*, 2008 WL 2168397, at *39 (Del. Ch. May 23, 2008)).

Delaware courts award prejudgment interest as a matter of right.[121] "Where, as here, the underlying obligation to make arises *ex contractu*, we look to the contract itself to determine when interest should begin to accrue."[122] The record shows that Berkely initially disputed Rose's demand to pay a retainer of $10,000.[123] Rose made the demand for advancement and provided an undertaking to repay expenses on September 13, 2025.[124] But, under the Indemnification Agreement, Berkeley's obligation does not arise until it receives a statement or statements that "reasonably evidence the Expenses incurred by Indemnitee[.]"[125] Rose provided such a statement on September 30.[126] Rose's claim for prejudgment interest must be measured from that date.[127]

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[121] *See Pontone*, 100 A.3d at 1058 (quoting *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818, 826 (Del. 1992)).

[122] *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818, 826 (Del. 1992) (citing *Watkins v. Beatrice Cos., Inc.*, 560 A.2d 1016, 1020 (Del. 1986)).

[123] *See* POB Ex. C.

[124] *See id.* Exs. D; E.

[125] Indemnification Agreement § 5.

[126] *See* DOB Ex. H.

[127] *See In re Genelux Corp.*, 2015 WL 639023, at *6 (Del. Ch. Oct. 22, 2015); *see also Colaco v. Cavotec Inet US Inc.*, C.A. No. 10369-VCL, Dkt. 32 at 67 (Del. Ch. Mar.10, 2015) ("I recognize that a rule requiring the plaintiff to provide sufficient support or the claimant to provide sufficient support for its demand has the potential for manipulation by the defendants. The party responding can always say, 'Oh, you didn't provide us enough. Oh, you didn't provide us enough.' But what I think our cases provide is that if you support your demand with invoices and provide a good-faith explanation, that's enough.").

On October 30, Berkeley attempted to pay $10,000 to Rose's counsel; but by then, ZARose had paid the retainer himself. Rose maintains, and Berkeley does not dispute, that Berkeley has yet to allow Rose's counsel to transfer the $10,000 to Rose to reimburse his out-of-pocket expenses.[128]

Accordingly, as to the $10,000 retainer, Rose is entitled to receive prejudgment interest at the legal rate running from October 30, 2025, *i.e.*, thirty days after the effective date of September 30. For any other fees incurred to date that have been requested and supported by reasonable evidence, but improperly withheld, Rose is entitled to prejudgment interest accruing from the date of the request.

III. CONCLUSION

Rose's motion for summary judgment is granted with respect to his entitlement to advancement for Counts II, VII, and VIII. Berkeley's motion for summary judgment is granted with respect to the remaining counts. This is a Final Report. Pursuant to the Chancellor's assignment letter,[129] either party may take exceptions to this report by lodging a notice of exceptions within three days after issuance. If no exceptions are taken or this report is adopted by order of the Court after considering exceptions, the parties must meet and confer, and submit a joint

[128] *See* POB Ex. F at 1; PRB at 38 ("[A]lthough Berkeley remitted payment to Mr. Rose's counsel in the California Action, it refused his counsel's request to send the payment to Mr. Rose for reimbursement.").

[129] Dkt. 4.

proposed implementing order that meets the requirements set forth in *Fitracks v. Danenberg, Inc.*