IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEVEN PHILLPOTT, Plaintiff. v. SK HYNIX NAND PRODUCT SOLUTIONS CORP., Defendant.	C.A. No. 2026-0276-DG **UNDER SEAL**[1]

FINAL REPORT DISMISSING INSPECTION ACTION

Date Submitted: April 28, 2026
Date Decided: May 28, 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 not 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 plaintiff in this action to inspect books and records under Section 220 of the Delaware General Corporation Law is a former employee and former stockholder of a large computer component manufacturing company. The plaintiff obtained his shares via the company's employee stock incentive award program. The incentive program authorized the company to repurchase the plaintiff's stock at its fair market value, and the company did so earlier this year. The plaintiff made a demand to inspect the company's books and records after receiving the call notice, but he did not file this action until after the restructuring transaction closed.

The defendant corporation has moved to dismiss the action for lack of standing and failure to state a claim. The defendant argues that the plaintiff had been divested of his stock ownership by the time he filed his complaint. Based upon the plain and unambiguous language of the relevant contract provisions, I agree. Because the plaintiff was not a stockholder on the date he filed the complaint, he lacks standing to pursue this action. I therefore recommend that the Court dismiss the complaint. My reasoning follows.

I. FACTUAL BACKGROUND

The following facts are drawn from the allegations in the complaint,[2] the attached exhibits and documents incorporated into the complaint by reference.

[2] Dkt. 1 ("Compl.").

A. The Parties

Plaintiff Steven Phillpott is a former stockholder of SK hynix NAND Product Solutions Corp., d/b/a Solidigm ("Company").[3] Phillpott acquired 372,695 shares of Company common stock through the Company's Equity Incentive Plan ("Incentive Plan").[4]

The Company is a U.S. subsidiary of South Korean corporation SK hynix, Inc., incorporated under the laws of Delaware with its principal place of business in California.[5] The Company was formed in 2021 after acquiring Intel's NAND[6] memory and storage device business.[7] The Company began restructuring its business in early February 2026, leading to the present dispute.[8]

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[3] Compl. ¶¶ 4, 6; *see id.* ¶ 14.

[4] Pl.'s Answering Br. in Opp. to Def.'s Mot. to Dismiss ("AB"), Ex. 2 ("Incentive Plan"), Dkt. 23.

[5] Compl. ¶¶ 5–6. The Complaint refers to South Korea by its official name the Republic of Korea. These names are used interchangeably. *See, e.g.*, Congressional Research Service, *South Korea: Background and U.S. Relations* (Dec. 21, 2023), https://www.congress.gov/crs_external_products/IF/PDF/IF10165/IF10165.43.pdf.

[6] NAND flash memory is a type of non-volatile storage technology that retains data without a power source, serving as the primary storage solution for electronics ranging from smartphones to enterprise-level solid-state drives. *See generally* Stephanie Susnjara & Ian Smalley, *What is NAND flash memory*?, https://www.ibm.com/think/topics/nand-flash (last visited May 12, 2026).

[7] Compl. ¶ 6.

[8] *See* Compl. ¶ 1.A.

B. The Company's repurchase rights under the Incentive Plan.

The Company adopted the initial Incentive Plan on April 27, 2022.[9] The Incentive Plan was amended twice. The first amendments were effective from February 6, 2025 until the second amendments and restatement took effect on February 28, 2026.[10] Persons issued shares under the Incentive Plan are referred to as "Participants."[11]

Section 14 of the Incentive Plan gave the Company the right to repurchase former Participants'[12] stock ("Call Option") for the aggregate fair market value.[13] The Incentive Plan defined fair market value as the value determined by the Company's board of directors, or

> (i) if the Common Stock . . . is admitted to trading on a national securities exchange, the fair market value on any date shall be the closing sale price reported on such date, or if no shares were traded on such date, on the last preceding date for which there was a sale of a share of Common Stock . . . on such exchange, or (ii) if the Common Stock . . . is then traded in an over-the-counter market, the fair market value on any date shall be the average of the closing bid and asked prices for such share of Common Stock . . . in such over-the-counter market for

[9] Incentive Plan § 10.

[10] *Id.*

[11] *Id.* § 2(r).

[12] *See id.* § 14(a) (defining a "Former Participant" as a Participant whose "employment with the Company or any of its Affiliates is terminated . . . .").

[13] *Id.* § 14.

> the last preceding date on which there was a sale of such share of Common Stock . . . in such market.[14]

Importantly, once the Company exercised the Call Option, the Former Participant would have to consummate the transaction on the closing date.[15]

The Incentive Plan placed two limits on the Company's Call Option rights. First, the Company had to provide a written notice at least 20 days before the stock purchase closed, and the closing date could be no later than 60 days after the notice date.[16] Second, the Company could not repurchase for six months after vesting any Participants' stock options that would not vest on the closing date.[17]

C. The Company exercises the Call Option.

On February 4, 2026, the Company announced a restructuring transaction, by which the Company's assets would be transferred to a new subsidiary of SK hynix, Inc.[18] The Company sent a notice to Incentive Plan Participants that it intended to exercise the Call Option.[19] The Company contacted Phillpott via letter dated February 9 with individualized information about his stock and a stated closing date

[14] *Id.* § 2(r).

[15] *Id.* § 14(c).

[16] *Id.* § 14(b).

[17] *Id.* § 14(f).

[18] Compl. ¶ 7; Compl. Ex. A, at *10–11.

[19] Compl. Ex. A, at *12.

of February 24.[20] The Company concluded the letter with instructions to execute a separate stock purchase agreement ("SPA") and to confirm payment information by the closing date.[21]

The SPA outlined the process by which the Company would exercise the Call Option. Section 2.1 of the SPA set the closing date for February 24. Closing would occur upon the electronic delivery of the executed SPA.[22] Section 2.2 outlined what the parties were required to do to consummate the transaction.[23] Finally, the SPA contained an integration clause, which stated that the SPA "supersede[d] all other prior agreements . . . both written and oral, between" Phillpott and the Company.[24]

D. Phillpott serves his inspection demand on the Company.

On February 19, Phillpott served his demand to inspect the Company's books and records ("Demand")[25] on the Company.[26] The Demand seeks 10 categories of books and records for five stated purposes: (1) to value Phillpott's shares; (2) to investigate possible mismanagement, waste, or wrongdoing; (3) to investigate

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[20] Compl. Ex. A, at *12–13.

[21] *Id.*

[22] SPA § 2.1.

[23] *See id.* § 2.2.

[24] *Id.* § 5.2.

[25] Compl. Ex. A.

[26] Compl. ¶ 12; Demand at 1; AB 5; Def.'s Opening Br. in Supp. of its Mot. to Dismiss the Compl. ("OB") 2, Dkt. 21.

possible breaches of fiduciary duty; (4) to evaluate a possible derivative claim and (5) to "[c]onsider any other course of action that the investigation might warrant pursuing."[27] Phillpott executed the SPA on February 24.[28]

The Company responded to the Demand on February 26.[29] In its response, the Company asserted that Phillpott lost his stockholder status on the closing date, February 24. Accordingly, the Company argued, Phillpott had no right to inspect the Company's books and records.[30]

II. PROCEDURAL POSTURE

On February 27, Phillpott filed the Verified Complaint to Inspect Books and Records.[31] On March 12, Phillpott filed a motion to expedite and requested a scheduling conference.[32] On March 17, the Company responded, asserting that Phillpott was not a stockholder and, therefore, lacked standing to bring this action.[33]

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[27] Demand 1–3.

[28] Compl. ¶¶ 13–15; OB 2–3; OB. Ex. 1; AB 5–6; SPA 5.

[29] Compl. ¶ 13; OB 5.

[30] Compl. Ex. C at 1–2; OB 2–5; AB 6; *see* Compl. ¶ 13.

[31] Dkt. 1.

[32] Dkt. 2.

[33] Dkt. 10 at 2–3.

The Company requested leave to file a motion to dismiss,[34] which the Court granted after conducting a scheduling conference.[35]

On March 25, the Company filed the motion to dismiss ("Motion") and its opening brief in support.[36] On April 6, Phillpott filed his answering brief.[37] On April 10, the Company filed its reply brief.[38] The Court held oral argument on April 28 and took the matter under advisement that day.[39]

III. ANALYSIS

The Company moved to dismiss the Complaint under Court of Chancery Rules 12(b)(1) and 12(b)(6).[40] A motion to dismiss for lack of standing may be brought under either Rule 12(b)(1) or 12(b)(6).[41] But if "'the issue of standing is so closely related to the merits, a motion to dismiss based on lack of standing is properly considered under Rule 12(b)(6) rather than Rule 12(b)(1).'"[42]

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[34] *Id.* at 3.

[35] Dkt. 21.

[36] Dkt. 21 ("Def.'s OB").

[37] Dkt. 23 ("Pl.'s AB").

[38] Dkt. 26 ("Def.'s Reply").

[39] Dkt. 29.

[40] Dkt. 21.

[41] *Swift v. Houston Wire & Cable Co.*, 2021 WL 5763903, at *2 (Del. Ch. Dec. 3, 2021)

[42] *Swift*, 2021 WL 5763903, at *2 (quoting *Appriva S'holder Litig. Co. v. ev3, Inc.*, 937 A.2d 1275, 1285-86 (Del. 2007)).

When evaluating a motion to dismiss under Rule 12(b)(6), Delaware courts "(1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as 'well pleaded' if they give the opposing party notice of the claim, [and] (3) draw all reasonable inferences in favor of the non-moving party . . . ."[43] The Court will grant a Rule 12(b)(6) motion if the "plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof."[44]

The Company contends that the Court should dismiss the Complaint and deny Phillpott's demand for inspection because he lost his stockholder status before filing this lawsuit. I concur.

A. Phillpott lacks standing to inspect the Company's books and records under Section 220(b).

Section 220 of the Delaware General Corporation Law gives a stockholder of a Delaware corporation "a qualified right to inspect the corporation's books and records."[45] Delaware law permits inspection "so long as certain formal requirements are met, and the inspection is for a proper purpose."[46] Section 220(b)

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[43] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002)).

[44] *Barkan v. Exabeam, Inc.*, 2025 WL 1088821, at *4 (Del. Ch. Apr. 11, 2025) (quoting *City of Fort Myers Gen. Empls.' Pension Fund v. Haley*, 235 A.3d 702, 716 (Del. 2020)).

[45] *Swift*, 2021 WL 5763903, at *3 (quoting *Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 143 (Del. 2012)).

[46] *Cent. Laborers* 45 A.3d at 144 (quoting *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 116 (Del. 2002)) (quotation omitted).

provides that "any stockholder . . . shall, upon written demand under oath, have the right during the usual hours for business to inspect for any proper purpose and to make copies and extracts from" the corporation's books and records.[47] The statute defines "stockholder" as "a person who is a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person."[48]

In order to inspect a corporation's books and records under Section 220(c), the stockholder must, at a minimum, prove "they are a stockholder."[49] As Vice Chancellor Glasscock explained in *Weingarten v. Monster Worldwide, Inc.*, Section 220(c) mandates that a plaintiff be a current stockholder at the time they initiate an inspection action to have standing.[50] The Court "has confirmed this basic and unassailable requirement [many times] since *Weingarten*."[51] One exception "[t]his [C]ourt has recognized [is] that stockholders can maintain standing if they lose their stock through a [transaction] while their Section 220 litigation is pending. But they must be stockholders when that litigation is filed."[52] Otherwise "the stockholder has

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[47] 8 *Del. C.* § 220(b).

[48] *Id.* § 220(a)(3).

[49] *Id.* § 220(c).

[50] 2017 WL 752179 (Del. Ch. Feb. 27, 2017).

[51] *Ma v. iShopShops, Inc.*, 2026 WL 1045756, at *3 (Del. Ch. Apr. 17, 2026) (collecting authorities).

[52] *Swift*, 2021 WL 5763903, at *4 (citing *Weingarten*, 2017 WL 752179, at *5).

not properly invoked the statutory right to seek inspection" and that failure is "'statutorily fatal' to both a stockholder's inspection demand and to a subsequent enforcement action."[53]

Phillpott concedes that he is no longer a stockholder.[54] But Phillpott contends that under the plain language of the SPA he did not lose his stockholder status until the Company delivered payment for his stock.[55] Phillpott maintains that because "payment was not delivered until *after* [he] filed suit[,]"[56] he has standing to pursue this action.[57] The Company counters that Phillpott's interpretation of the SPA fails as a matter of law and violates basic principles of contract interpretation.[58] The Company is correct. For the reasons stated below, I find that Phillpott's interpretation fails as a matter of law and that Phillpott lacks standing to pursue this action.

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[53] *Barkan*, 2025 WL 1088821, at *6 (quoting *Cent. Laborers*, 45 A.3d at 141, 144).

[54] Pl.'s AB at 1.

[55] *See id.* at 7.

[56] *Id.* (emphasis in original).

[57] *See id.* at 7–10.

[58] Def.'s Reply at 2–8.

1. Phillpott conveyed his stock to the Company on the Closing Date.

"'Under Delaware law, questions of contract interpretation can be pure questions of law that are appropriate to consider on a motion to dismiss.'"[59] But the "proper application of ambiguous contract provisions is a question of fact that cannot be determined on a motion to dismiss."[60]

"Delaware adheres to the 'objective' theory of contracts, i.e. a contract's construction should be that which would be understood by an objective, reasonable third party."[61] Delaware courts "[w]ill read a contract as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage" or "to render a provision or term meaningless or illusory."[62] "When the contract is clear and unambiguous, we will give effect to the plain[]meaning of the contract's terms and provisions."[63] "'Contract language is not ambiguous simply because the parties disagree on its meaning.'"[64] "[A] contract is ambiguous only

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[59] *Prokupek v. Consumer Cap. P'rs LLC*, 2014 WL 7452205 (Del. Ch. Dec. 30, 2014) (quoting *MCG Cap. Corp. v. Maginn*, 2010 WL 1782271, at *8 (Del. Ch. May 5, 2010)).

[60] *MCG Cap.*, 2010 WL 1782271, at *8.

[61] *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (quoting *NBC Universal v. Paxson Commc'ns*, 2005 WL 1038997, at *5 (Del.Ch. Apr. 29, 2005)).

[62] *Id.* at 1159 (quotation omitted).

[63] *Id.* at 1159–60 (citation omitted).

[64] *SeaWorld Ent., Inc. v. Andrews*, 2023 WL 3563047 (Del. Ch. May 19, 2023) (quoting *E.I. du Pont de Nemours & Co. v. Allstate Ins. Co.*, 693 A.2d 1059, 1061 (Del. 1997)).

when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings."[65] An interpretation is unreasonable if that "interpretation produces an absurd result or one that no reasonable person would have accepted when entering the contract."[66]

Phillpott and the Company dispute the proper application of Section 2.2 of the SPA. Section 2.2 states that

> [a]t the Closing [Phillpott] shall deliver to the Company this Agreement, duly executed by [Phillpott]. As soon as practicable after the Closing, the Company shall pay to the [Phillpott] the Call Option Price, less any applicable withholding taxes, by wire transfer to the bank account designated by the [Phillpott] through the Shareworks platform as part of the electronic signature process for this Agreement. All of the foregoing deliveries will be deemed to be made simultaneously and none shall be deemed completed until all have been completed.
>
> [Phillpott] acknowledges and agrees that (a) the Closing and the transfer of Call Option Shares to the Company shall be deemed to occur on the Closing Date, (b) title to the Call Option Shares shall pass to the Company on the Closing Date, and (c) payment of the Call Option Price in accordance with this Section 2.2 of [the SPA] shall constitute full satisfaction of the Company's payment obligations under Section 14(c) of the [Incentive Plan].[67]

[65] *Rhone-Poulenc Basic Chemicals Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192 (Del. 1992) (citation omitted).

[66] *Osborn*, 991 A.2d at 1160 (citation omitted).

[67] SPA § 2.2 (paragraph break added).

Phillpott centers his interpretation on the third sentence, which states that the "foregoing deliveries" will not "be deemed completed until all have been completed."[68] Phillpott contends that "deemed completed" language means his shares did not transfer to the Company until he received confirmation of the wire transfer, less than an hour after he initiated this action.[69]

The Company argues that Phillpott ignores the language in the fourth sentence, where Phillpott expressly agreed, among other things, that his shares transferred to the Company on the Closing Date.[70] The Company contends that the word "foregoing" clearly applies to the deliveries alone and "does not impact the time of the Closing"[71] or the date the shares transferred.[72] Also, the Company states, the language obligating it to wire payment "as soon as practicable after the Closing" date supports its interpretation that what is "deemed completed" is exclusively the deliveries, not the transfer of stock ownership.[73] The Company's interpretation is correct.

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[68] Pl.'s AB at 9; SPA § 2.2.

[69] Pl.'s AB at 10.

[70] Def.'s OB at 10–13; Def.'s Reply at 4–6. The "Closing Date" is a defined term in § 2.1 of the SPA.

[71] In the SPA the "Closing" is defined as the consummation of the SPA. *See* SPA § 2.1; *Closing*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[72] Def.'s OB at 12; *see also* Def.'s Reply at 8.

[73] Def.'s OB at 10–13.

The language of Section 2.2 is clear and unambiguous. The word "foregoing" is an adjective defined as "involving what has just been mentioned or described."[74] The dictionary also defines a noun conjugation: "the foregoing," which refers to "what has just been mentioned or described."[75] As used in Section 2.2, "the foregoing deliveries" is a noun referring to the just-mentioned transmittal of the executed SPA and wire transfer of payment for the stock. Inserting these concepts into the sentence, Section 2.2 would convey that the delivery of the executed SPA and wire transfer will be deemed to be made simultaneously and neither the delivery of the SPA nor the wire transfer shall be deemed completed until both have been completed. Read plainly, Section 2.2 (1) obligated Phillpott to deliver the executed SPA to the Company by the Closing Date, (2) required the Company to wire payment "as soon as practicable after the Closing[,]" (3) deemed the first completed delivery to have occurred on the date of the second completed delivery and (4) provided that title to Phillpott's stock would transfer to the Company on the Closing Date, notwithstanding the actual date of payment.[76]

[74] Cambridge Dictionary, *Foregoing*, https://dictionary.cambridge.org/dictionary/english/foregoing.

[75] *Id.*

[76] SPA § 2.2.

Section 2.2 does not create a "concurrent condition"[77] to execution; it explicitly sets separate deadlines for Phillpott to deliver the executed SPA and for the Company to make payment.[78] Phillpott's reading would render the word "foregoing" and the subsequent clause, where Phillpott agreed that title to his shares would transfer on the Closing Date, meaningless. I find that the "deemed to be completed" language refers only to the delivery of the executed SPA and the wire transfer, and merely deems the parties' obligations under the SPA to be satisfied on the date the later delivery is completed. The word "foregoing" plainly and unambiguously prevents the third sentence from affecting the fourth sentence. Phillpott unambiguously acknowledged and agreed that the "title to [his shares would] pass to the Company on the Closing Date."[79] The "deemed completed" clause does not render superfluous the terms to which Phillpott plainly agreed.

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[77] Pl.'s AB at 11.

[78] *See* SPA § 2.2. At oral argument, Plaintiff suggested that this reading cannot be correct because separating the closing and payment dates would be improper. Plaintiff contends that the agreement can only be satisfied after "the parties exchange legal consideration." Draft Tr. 19:16–20:09. But it is a fundamental principle of contract law that "[i]t is the promise, and not the performance of the promise, that constitutes the consideration" and "the general rule [is] that exchange of performance for [a] promise is an enforceable bargain[.]" 17A Am. Jur. 2d Contracts § 123; Restatement (Second) of Contracts § 72 (1981).

[79] *Id.* "Parties have a right to enter into good and bad contracts, the law enforces both." *E.g.*, *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010).

Because I find the plain language to be unambiguous, I need not address the parties' arguments concerning canons of contract interpretation.

2. The Closing occurred on February 24, and ownership transferred on that date.

Phillpott argues in the alternative that "there is no evidence of when the Closing actually occurred."[80] He contends that because the SPA sets February 24 as a "[t]arget" closing date, the Company is asking the Court to "infer" that the Closing occurred on February 24, when "there is evidence that it did not" in the record.[81] That evidence, Phillpott says, is the fact that he received payment on February 27.[82] Phillpott points to the SPA's requirement that closing be completed in accordance with the Incentive Plan as support for his argument.[83] He maintains that because Section 14(c) of the Incentive Plan requires the Company to wire the consideration as "a condition precedent to Closing[,]" the date he received payment was the Closing Date, and the date when he was divested of his shares.[84]

The Company counters that the SPA expressly defined the Closing Date as February 24 and that the language allowing the Company to move the Closing Date

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[80] Pl.'s AB at 14.

[81] *Id.* at 15.

[82] *Id.*

[83] *See* SPA § 2.1 (stating the Closing will take place "in accordance with the terms of the" Incentive Plan).

[84] Pl.'s AB at 16.

does not, by itself, make the Closing Date indeterminable.[85] Instead, the Company argues that it had the authority to "affirmatively select[] a different [date]," but it did not do so.[86] The Company also contends that the Court should ignore the Incentive Plan language because the Incentive Plan in the record was not effective until February 28, four days after Phillpott executed the SPA. Because the Incentive Plan was enacted after the SPA, the Company argues, it cannot govern the terms of the consummated SPA.[87] Lastly, the Company argues that the SPA's integration clause forecloses any argument based on the Incentive Plan.[88] I agree with the Company's arguments.

First, Phillpott's allegation that the closing occurred when he received payment is unsupported by the plain language of the SPA. As explained above, Section 2.2 requires the Company to wire funds "[a]s soon as practicable *after* the Closing[.]"[89] The three-day gap between the Company's and Phillpott's proffered closing date does not support Phillpott's position. If anything, the plain language of the SPA refutes the very evidence he presents for his interpretation.

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[85] Def.'s Reply at 9.

[86] *Id.* At oral argument, Phillpott's counsel conceded that changing the Closing Date requires an affirmative act of the Company. Draft Tr. 26:06–26:18. The Complaint does not allege that the Company changed the Closing Date.

[87] Def.'s Reply at 10.

[88] *Id.* at 11.

[89] SPA § 2.2 (emphasis added).

Second, the SPA contains an integration clause. Section 5.2 states that the SPA "constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations, and warranties . . . between the parties[.]"[90] "Delaware recognizes that where a new, later contract between the parties covers the same subject matter as an earlier contract, the new contract supersedes and controls that issue, if the two agreements conflict."[91] The SPA was provided to Phillpott on February 9, 2026, and he executed the document on February 24.[92] Therefore, the SPA must be referring to the prior version of the Incentive Plan, in effect from February 6, 2025 to February 28 2026.[93] This is not the version of the Plan filed with the Court.

Under Delaware law, the provision in the SPA outlining when the Company was required to transfer funds to Phillpott controls, not the Incentive Plan the parties attached to their briefs, executed *after* the parties satisfied their obligations under the SPA.[94] Under the SPA, the date Phillpott received payment for his shares and the

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[90] *Id.* § 5.2.

[91] *Cabela's LLC v. Wellman*, 2018 WL 5309954, at *4 (Del. Ch. 2018) (collecting authorities); *see Focus Fin. P'rs, LLC v. Holsopple*, 241 A.3d 784, 823 ("When a 'subsequent agreement' contains a valid integration clause, it 'supersedes [the] terms]' of any prior agreement covering the same subject matter." (citation omitted)).

[92] Compl. Ex. A, Ex. 2 at 1; *see* SPA at 1.

[93] *See* Incentive Plan § 10 (stating effective date of amendments).

[94] *See id.* The parties did not submit the Incentive Plan in effect during the relevant period leading to this dispute. Even if the SPA was not a later-executed agreement, the Court could not evaluate Phillpott's interpretation of a contract that is not in the record.

Closing Date are separate and distinct. Phillpott's contention that payment is a "condition precedent" is not substantiated by the plain terms of the SPA.

Even if the Incentive Plan controlled, Phillpott would have imported the wrong provision into the SPA. The SPA states that the Closing Date is February 24, 2026, or another date set in accordance with the Incentive Plan. Section 14(b) of the Incentive Plan is the only provision that discusses closing dates. Section 14(b) defines the "Target Closing Date" as the date in the Call Notice—not the date of payment, as Phillpott contends.[95] The Incentive Plan put limitations on the Company's choice of Closing Date, requiring that it be not less than 20 days nor more than 60 days after the Call Notice date.[96] Section 2.1 of the SPA is consistent with those terms.[97] It would not be reasonable to interpret the next section of the SPA, which does not establish restrictions on the "date, time, or place"[98] of the closing, as governing the SPA's closing date. Phillpott received the Call Notice on February 4, and the Closing Date was February 24.[99] This timing is "in accordance

[95] *Contrast* Incentive Plan § 14(b) *with* Pl.'s AB at 15–16 (quoting Incentive Plan § 14(c)).

[96] Incentive Plan § 14(b).

[97] SPA § 2.1 (setting a closing date 20 days after delivery of the Call Notice).

[98] *Id. Contrast* Incentive Plan § 14(b) (outlining when "Target Call Option Closing Date" may be set), *with* Incentive Plan 14(c) (listing requirements that must be done to consummate the closing).

[99] Compl. Ex. A Ex. 1 ("The Target Call Option Closing Date for the purchase of your shares will be February 24, 2026.").

to the terms of" the Incentive Plan because the Closing Date is at least 20 days after the date of the Call Notice.[100]

Third, and finally, the SPA expressly fixes February 24 as the Closing Date and the date that title transfers. "Contractual interpretation operates under the assumption that the parties never include superfluous verbiage in their agreement, and that each word should be given meaning and effect by the [C]ourt."[101] The Court "will not rewrite a contract by reading words into it that the parties clearly did not intend."[102] There is no evidence in the SPA that the Closing Date was intended to be anything other than February 24. Likewise, there is nothing in the record that suggests that the Company changed the Closing Date. Phillpott did not even allege it in the Complaint.

I find that the Closing occurred on February 24, 2026, and, under the unambiguous terms of the SPA, Phillpott was divested of his stockholder status on that date.

IV. CONCLUSION

I conclude that the language of the SPA is clear and unambiguous, and that by the plain meaning of its terms, Phillpott lost his stockholder status before he filed

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[100] Incentive Plan § 14(b); Compl. ¶ 7; Compl. Ex. A Ex. 1.

[101] *Prokupek v. Consumer Cap. P'rs LLC*, 2014 WL 7452205, at *6 (Del. Ch. Dec. 30, 2014) (quoting *NAMA Hldgs., LLC v. World Mkt. Ctr. Venture, LLC*, 948 A.2d 411, 419 (Del. Ch. 2007), *aff'd*, 945 A.2d 594 (Del. 2008)).

[102] *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1011 (Del. Ch. 2007).

this action. Thus, Phillpott cannot bring claims under Section 220(c), and this action must be dismissed. I recommend that the Court enter judgment accordingly.

This is a Final Report. Under Court of Chancery Rule 144(d), any party taking exceptions must file a notice of exceptions by June 2, 2026.