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Re: *Alfred T. Giuliano, as Plan Administrator for VJGJ, Inc.*
v. Jason Grenfell-Gardner, et al.
C.A. No. 2021-0452-KSJM

Dear Counsel:

This letter resolves the June 2, 2026 request of defendants Jason Grenfell-Gardner, Steven Koehler, Bhaskar Chaudhuri, James C. Gale, and Stephen Richardson (collectively, “Defendants”) for leave to file a motion for summary judgment.¹

The court assumes most readers’ familiarity with the present action. This letter opinion provides only a brief background. A fuller recitation of facts and this case’s long procedural history can be found in the September 2, 2025 Memorandum Opinion.²

¹ C.A. No. 2021-0452-KSJM, Docket (“Dkt.”) 107 (“Defs.’ Request”).

² Unless otherwise noted, the facts presented as background here are drawn from the Memorandum Opinion. *Giuliano v. Grenfell-Gardner*, 2025 WL 2502176, at *1–5 (Del. Ch. Sept. 2, 2025).

Teligent was a New Jersey-based generic pharmaceutical company that manufactured and sold topical creams and injectable drugs in the United States. It was required to comply with federal Food and Drug Administration (“FDA”) regulations regarding manufacturing practices, laboratory controls, and testing.

Despite the mission-critical nature of FDA compliance to Teligent’s business, its Board of Directors never formed an oversight committee or instituted a compliance reporting system—even after it became aware of potential FDA violations. The Board had an Audit Committee, which exclusively focused on SEC compliance rather than FDA compliance. When concerns were raised regarding the Audit Committee’s limited scope, then-CFO Damian Finio did not act on the advice he received to adopt a more comprehensive committee charter.

Between 2016 and 2021, the FDA issued several letters, including warning letters, to Teligent regarding regulatory inspection issues. Even though Teligent hired two separate companies to advise on remediation efforts, it continued to struggle with FDA compliance. Teligent eventually filed for Chapter 11 bankruptcy on October 14, 2021. A plan administrator was appointed to oversee the process.

Though initially brought as a derivative suit by Gary Buchanan, this court realigned Teligent as the plaintiff to directly pursue the claims that were formerly brought derivatively on its behalf. The order also substituted the plan administrator for Teligent as the real party in interest.³

³ Dkt. 13.

The first four counts alleged in the Amended Complaint claim breach of fiduciary duties.⁴ Counts I and II assert *Caremark* reporting-system and red-flags claims, respectively.⁵ Count III asserts a broader loyalty claim arising from Defendants' alleged failure to fix the defects at issue in Counts I and II.⁶ Count IV asserts that Grenfell-Gardner and Richardson breached the duty of care as Officers by failing to inform the Board of facts needed for their decision-making."⁷

"There is no right to a summary judgment."⁸ "Even where the facts are not in dispute, a court may decline to grant summary judgment where a more thorough exploration of the facts is needed to properly apply the law to the circumstances."⁹

The court may "decline to decide the merits of the case in a summary adjudication where it is not reasonably certain that there is no triable issue."¹⁰ In

⁴ Dkt. 50 ¶¶ 507–52.

⁵ *Id.* ¶¶ 507–25.

⁶ *Id.* ¶¶ 526–36.

⁷ *Id.* ¶¶ 537–52.

⁸ *Stone & Paper Invs., LLC v. Blanch*, 2020 WL 6373167, at *1 (Del. Ch. Oct. 30, 2020) (internal quotation marks omitted) (quoting *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002)).

⁹ *In re Tri-Star Pictures, Inc., Litig.*, 1995 WL 106520, at *5 (Del. Ch. Mar. 9, 1995); *see also In re El Paso Pipeline P'rs, L.P. Deriv. Litig.*, 2014 WL 2768782, at *9 (Del. Ch. June 12, 2014) ("[T]he court may, in its discretion, deny summary judgment if it decides upon a preliminary examination of the facts presented that it is desirable to inquire into and develop the facts more thoroughly at trial in order to clarify the law or its application.").

¹⁰ *Unbound P'rs Ltd. P'ship v. Invoys Hldgs. Inc.*, 251 A.3d 1016, 1024 (Del. Super. 2021) (internal quotation marks omitted) (quoting *Parexel Int'l (IRL) Ltd. v. Xynomic*

cases where “an ultimate fact to be determined is one of motive, intention or other subjective matter, summary judgment is ordinarily inappropriate.”¹¹ Here, the facts are in dispute and there is sufficient evidence of triable issues of fact. Also, a motion for summary judgment would not promote judicial economy. Motions for summary judgment require a court to dive deeply into a paper record without the benefit of live witnesses explaining the significance of that record; they require a tremendous investment of judicial resources.

Defendants seek leave to move for summary judgment.¹² They contend that Plaintiff’s own documentary evidence demonstrates “that Defendants did not ‘utterly fail’ to implement a reporting system.”¹³ Defendants also argue that this action is partially time-barred and that Plaintiff “cannot avail himself of the relation back doctrine,” because the original and amended complaints have different gravamens.¹⁴

Defendants’ argument that Plaintiff’s claims are time-barred do not implicate material, disputed facts. Defendants are granted leave to move for summary judgment on that issue. Defendants’ other arguments rest on factually rife issues. I

Pharms., Inc., 2020 WL 5202083, at *4 (Del. Super. Sept. 1, 2020)) (interpreting a parallel rule of the Delaware Superior Court).

¹¹ *Kulak v. On*, 2026 WL 1122367, at *13 (Del. Ch. Apr. 24, 2026) (quoting *Cont’l Oil Co. v. Pauley Petroleum, Inc.*, 251 A.2d 824, 826 (Del. 1969).

¹² Defs.’ Request at 1.

¹³ *Id.*

¹⁴ *Id.* at 3–5.

am far from convinced that the issues are not triable. Defendants' request for leave to file for summary judgment is therefore granted in part and denied in part.

IT IS SO ORDERED.

Sincerely,

/s/ Kathaleen St. J. McCormick

Chancellor

cc: All counsel of record (by *File & ServeXpress*)