

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

TIMOTHY J. FOX, JR.
MAGISTRATE IN CHANCERY

**LEONARD L. WILLIAMS JUSTICE CENTER
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September 28, 2026

Via File & ServeXpress

Melissa Brandao
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Charles J. Brown III, Esquire
Gellert Seitz Busenkell & Brown LLC
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Re: *Melissa Brandao v. HerdDogg, Inc.*,
C.A. No. 2026-0824-TJF

Dear Counsel & Parties:

This letter decision resolves the petitioner's motion to recuse myself as the presiding judicial officer. Petitioner has moved to seek my recusal under Rule 2.11 of the Delaware Judges' Code of Judicial Conduct following the letter decision denying a motion to disqualify respondent's counsel, and asserting petitioner's concerns that she is receiving different treatment than the respondent. Petitioner asserts such differential treatment is discernable when I have asked questions during the proceeding and resolved motions pending in the proceeding. Petitioner is a self-represented litigant and is involved in litigation in other forums simultaneously with this case.

I state unequivocally that none of the specific instances suggesting that disqualification would be appropriate are present in this case. I explain after

discussion of petitioner's concerns that I do not harbor any subjective prejudice to the petitioner. I further explain why an objective observer should find the same. The motions decided in this case and currently pending have different standards and burdens allocated to the parties. I have, and will continue, to apply those standards and burdens consistent with applicable law and the Code of Judicial Conduct. As this is not a final disposition of the case, any exceptions or appeal of this report are stayed consistent with Court of Chancery Rule 144.

I. BACKGROUND

This motion is one of several pending items submitted for consideration in this case commenced on June 23, 2026 by the filing of a Verified Petition for Appointment of Receiver Pursuant to 8 Del. C. § 291 (the "Petition").¹ Melissa Brandao ("Petitioner"), seeks a receiver asserting that HerdDogg, Inc. ("Respondent") is insolvent, and that the insolvency plus factors require an independent fiduciary to investigate numerous issues and act in creditors and stockholders best interests.² Petitioner is the Founder and a former officer and

¹ Docket ("Dkt.") 1.

² *Id.* ¶¶ 24 & 36-38.

director of the Respondent, who departed from Respondent's management in 2022.³

Petitioner is also a stockholder of Respondent.⁴

Respondent is a Delaware corporation and operates in the agricultural technology sector.⁵ No other individual or entity is a named respondent or defendant in the Petition.⁶ I held a hearing on July 20, 2026 to consider Petitioner's motion to expedite and motion for a temporary restraining order ("TRO").⁷ I denied those requests as stated on the record, and will be discussed further below.⁸ Respondent has moved to dismiss the Petition (the "Motion to Dismiss"), and that Motion to Dismiss is fully briefed.⁹ Oral argument on the Motion to Dismiss is set for October 15, 2026 by Zoom.¹⁰

In connection with the Petition, the Petitioner on August 5, 2026 filed her Motion for Disqualification of Respondent's Counsel and for Relief.¹¹ The Motion

³ Dkt. 1 ¶¶ 1 & 14 ("Following Petitioner's departure from the Company's management, the Controlling Shareholders assumed operational control. From and after 2022, the Controlling Shareholders have managed the Company . . .").

⁴ *Id.* ¶ 1.

⁵ *Id.* ¶ 2.

⁶ Dkt. 1.

⁷ *See* Dkts. 44 & 55.

⁸ *See* July 20, 2026 Hearing Tr. 50:14 - 70:13; *infra* Section A.2.

⁹ Dkts. 45, 88, & 121.

¹⁰ Dkt. 159.

¹¹ Dkt. 80 ("Motion for Disqualification").

for Disqualification was likewise fully briefed.¹² I issued a report deciding the Motion for Disqualification, taking the matter under advisement on the papers, denying the Petitioner's motion for the reasons set forth therein.¹³ That sequencing was a request made by the Petitioner.¹⁴

As of September 11, 2026, the Respondent's motion for sanctions against the Petitioner is also fully briefed (the "Motion for Sanctions").¹⁵

On September 16, 2026, the Petitioner filed the Motion to Recuse Magistrate Timothy J. Fox, Jr, (the "Motion to Recuse").¹⁶ The Motion to Recuse seeks: (a) my recusal; (b) a stay of further substantive proceedings pending determination of the motion, or if denied, a stay to permit Petitioner to seek review of the decision on the Motion to Recuse,¹⁷ before disposition of the Motion to Dismiss or Motion for

¹² Dkts. 82, 134, & 138. Dkt. 82 does not have pagination, so I cite to the pages reflected in the browser or PDF viewer for the document. Dkt. 138 is likewise unpaginated and cited in the same manner.

¹³ Dkt. 157.

¹⁴ Dkts. 122 & 123.

¹⁵ Dkts. 113, 136, & 155.

¹⁶ Dkts. 160-67. The Motion to Recuse was filed twice, as it appears that Dkt. 162 attached the same underlying document as Dkt. 161 rather than the exhibit that was intended. I will cite to Dkt. 164 and its exhibits to avoid confusion. For pincites I refer to the page reflected in the browser or PDF viewer, as Dkt. 164 does not have separate pagination.

¹⁷ As this decision is a report, but not a final report, I likewise recommend exceptions should be stayed until a final report is issued in this case. *See Luthra v. HIR Holdings LP*, 2026 WL 2296616, *1 (Del. Ch. Aug. 10, 2026) (in discussing Chancery Rule 144, "[t]he effect is to require in most instances that parties hold their exceptions until the

Sanctions; and (c) in the alternative, if recusal is not granted, then reassignment of the case to serve the administration of justice even in the absence of actual bias.¹⁸

A. Facts Relevant to the Motion to Recuse

1. Events and Related Information Leading Up to the July 20, 2026 Hearing

Prior to Chancellor McCormick's order assigning this action to me, on June 23, 2026,¹⁹ I had no awareness of Petitioner or Respondent. On June 26, 2026, I issued a letter to set a telephonic hearing on Petitioner's motion to expedite for July 20, 2026, subject to submission of an affidavit of giving notice.²⁰ On July 1, 2026, Petitioner filed her affidavit and an exhibit demonstrating notice.²¹ On July 7, 2026, Petitioner filed a motion for TRO.²² Annexed to the TRO was an exhibit, where the Respondent's then-CEO, Andrew Uden, wrote to Petitioner and to an employer of the Petitioner, regarding the Petitioner's obligations under confidentiality and invention assignment agreements.²³ On July 8, 2026, I sent a further letter,

conclusion of the action. The rule is designed to ensure that proceedings are staged in an efficient manner, not to preclude a party from filing exceptions.”).

¹⁸ Dkt. 164 at p. 16-17.

¹⁹ Dkt. 2.

²⁰ Dkt. 4.

²¹ Dkts. 6-7.

²² Dkt. 8.

²³ *Id.* Ex. A.

scheduling the TRO for consideration on July 20, 2026 as well, as Petitioner had attached an affidavit of mailing consistent with service of the motion to expedite.²⁴

On July 9, 2026, Petitioner submitted a “Notice of Supplemental Evidence Regarding Corporate Insolvency and Personnel Diversion”²⁵ (the “Supplemental Notice”). The Supplemental Notice attached another affidavit of mailing, but also included Exhibits that were not included with the Petition, the motion to expedite, or the TRO.²⁶ The Supplemental Notice set forth Petitioner’s contention that:

Taken all together, Exhibits A, B, and C demonstrate a calculated, bad-faith corporate strategy. The Defendants formally acknowledged HerdDogg’s insolvency months ago, held out unfulfilled revenue promises to stall accountability, and have now stripped HerdDogg of its remaining human infrastructure to launch an adjacent business that benefits new shareholders while diverting potential revenue away from HerdDogg’s original shareholders. Given the importance stated in the previous letter from Andrew Uden that the HerdDogg Inventions Agreement is taken very seriously, this adjacent business is not only in direct conflict with the Inventions Agreement, but the underlying technology and ideas themselves should legally be part of HerdDogg’s IP.

This behavior constitutes a textbook diversion of corporate opportunities designed to shield their unauthorized commercialization of Plaintiff’s contested intellectual property from this Court.²⁷

²⁴ Dkt. 9 (“The motion for a temporary restraining order will also be heard at this scheduled hearing, as an affidavit of mailing showing UPS transmission of the motion was attached to the filing.”).

²⁵ Dkt. 10.

²⁶ *Id.* Exs. A-C.

²⁷ *Id.* at p. 3.

Exhibit C of the Supplemental Notice attaching the communications that Petitioner characterized in the Supplemental Notice set forth in part:

I am writing to share a definitive turning point for HerdDogg. We have emerged from a period of significant uncertainty with a major legal victory and a clear catalyst for growth.

Lawsuit Update

The lawsuit against HerdDogg has been **dismissed with prejudice** by the trial judge. This means the claims brought against us have been dismissed by the judge overseeing the case and cannot be refiled. This resolved a significant uncertainty for the Company that was hindering our efforts to find additional financing for the Company.

Current Financial State

While the litigation was ongoing, the company operated under extreme financial constraints, forcing us to rely on limited “survival capital” from internal sources. As a result of these constraints, we had to significantly reduce our operations. Despite these constraints, we were able to negotiate and execute a significant **distribution agreement with Nutrien**, a leading global provider of crop inputs and services located in Australia.²⁸

On July 13, 2026, Respondent’s Delaware counsel, Charles J. Brown, III, Esq., of Gellert Seitz Busenkell & Brown LLC (“Gellert Seitz”) filed an entry of appearance for the Respondent.²⁹ Prior to joining the Court of Chancery, in my service as a Trial Attorney for the U.S. Department of Justice, the Office of the U.S. Trustee, Wilmington, Delaware, I appeared in numerous cases where Mr. Brown,

²⁸ *Id.* Ex. C. (emphasis in the original).

²⁹ Dkt. 11.

and his colleagues at Gellert Seitz were also involved. Additionally, as part of the Delaware Bankruptcy Inn of Court, I have worked alongside Mr. Brown's partners to put on programming for the Inn, and interacted with employees of the firm at events conducted by the Inn. I have never had any financial interest related to Gellert Seitz, nor interacted with its employees in any manner contrary to applicable ethics requirements for U.S. Department of Justice employees.³⁰ No member of my family or household has any interest in Gellert Seitz.

Also on July 13, 2026, Respondent filed its answering brief regarding the motion to expedite.³¹ Respondent's answering brief identified that Petitioner had previously initiated litigation against the Respondent, and others, in the United States District Court in the District of Colorado (the "Colorado Litigation").³² The Colorado Litigation was dismissed with prejudice.³³

On July 14, 2026, I entered an order granting Andrew P. Shelby, of Michael Best & Friedrich LLP ("Michael Best"), admission *pro hac vice* to represent Respondent.³⁴ To the best of my recollection, I have not previously worked on a

³⁰ See, e.g., 5 C.F.R. Part 2634; 5 C.F.R. Part 2635; 5 C.F.R. § 2635.101; 5 C.F.R. § 2635.501 - 503; & 28 C.F.R. Part 77.

³¹ Dkt. 12.

³² *Id.* at p. 3.

³³ *Id.* at p. 5 & Ex. 9.

³⁴ Dkt. 15 (granting order).

matter that involved Michael Best or Mr. Shelby. I have not interacted with any employees of Michael Best in any other capacity. Further, neither I nor any member of my family or household have any financial interest in Michael Best.

On July 15, 2026 Petitioner filed an emergency motion for shortened notice and expedited discovery regarding Docusign.³⁵ Also filed that day were a subpoena request for Cattlytx Inc. and Docusign, along with a motion for leave to serve a third-party subpoena on Cattlytx.³⁶ The proposed orders sought production within “five (5) business days” of entry of the order.³⁷

Respondent filed its answering brief regarding the TRO on July 16, 2026.³⁸ Attached as an exhibit was another item from the Colorado Litigation, where United States Magistrate Judge Neureiter entered an order on a motion for award of attorneys’ fees for a group of non-Respondent defendants in that litigation earlier that day.³⁹

Petitioner filed on July 16, 2026, a combined response to the Respondent’s answering briefs (the “Reply”), and a motion to strike those responses, styled “Pro

³⁵ Dkts. 16-19.

³⁶ Dkts. 20-26.

³⁷ Dkts. 17 ¶ 4 & 25 ¶ 4.

³⁸ Dkt. 29.

³⁹ *Id.* Ex. 1 (Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 58).

Se Plaintiff's Motion to Strike Defendant's Response for Total Failure of Service, Live Evidence Tampering, and Unlawful Commercial Interference Pursuant to Rules 5(a) and 6(b)" (the "Motion to Strike").⁴⁰ The Motion to Strike requested "an Order striking the responsive brief uploaded by Defendant HerdDogg, Inc., treating the factual record in Plaintiff's original applications as completely uncontradicted on the merits, and entering emergency injunctive relief to halt Defendant's and its institutional backers' ongoing extrajudicial commercial sabotage and spoliation of evidence."⁴¹ The Motion to Strike sought injunctive relief against numerous non-parties to the Petition.⁴² The Motion to Strike asserted the Petitioner "does not seek an extension of time or a continuance of these proceedings."⁴³ Petitioner instead requested the "Court immediately enjoin [Respondent's] ongoing out-of-court economic warfare, partner intimidation, and evidence tampering ahead of the July 20, 2026 expedited hearing."⁴⁴

⁴⁰ Dkts. 30-40.

⁴¹ Dkt. 39 at p.1.

⁴² *Id.* at p. 2-3 (seeking relief against Kevin O'Leary, O'Leary Ventures, Wonder Fund, Cattlytx, Inc., Andrew Uden, Jeff Mitchell, and wade.ag).

⁴³ *Id.* at p. 3.

⁴⁴ *Id.*

Attached to the Reply and Motion to Strike were a number of exhibits, one of which included an annotated version of Exhibit C to Docket 10,⁴⁵ with the others being submitted for the first time.⁴⁶ Exhibit A was the first time the Petitioner provided a capital table (a “Cap Table”), dated July 11, 2026, which included in the header, “Generated by Melissa Brandao” but without any further explanation of the sources or what “Carta” was.⁴⁷ The Cap Table contained only a total of cash raised, and no information on liabilities, beyond the face value of the convertible notes and secured notes that were included as events raising cash.⁴⁸

Exhibits B through F were all documents with date information indicating they were produced between October 1, 2024 and January 29, 2026.⁴⁹ Exhibits D, E, and F, included Petitioner’s communications and presentation seeking to work collaboratively with the Respondent, and Petitioner’s non-party venture, Rogue Livestock or Rogue Cattle Co.⁵⁰

Also included with the Motion to Strike was an item styled, “Pro Se Plaintiff’s Certificate of Service And Notice Of Historical Obligation Under Statutory Section

⁴⁵ See Dkt. 33.

⁴⁶ Dkts. 32 & 34-37.

⁴⁷ Dkt. 32.

⁴⁸ See *id.*

⁴⁹ See Dkts. 33-37.

⁵⁰ Dkts. 34-37.

220 Inspection Demands” (the “Certificate of Service and Notice”).⁵¹ The Certificate of Service and Notice identified demands under 8 *Del. C.* § 220 of October 31, 2024 and November 22, 2024, Respondent’s failure to provide items requested by Petitioner, and made assertions of fraud, fabricated emails, fraudulent DocuSign receipts, asset migration to Cattlytx and wade.ag, and active spoliation.⁵² The Certificate of Service and Notice made an additional request for relief, that while mirroring those in the Motion to Strike, also sought the “Court incorporate this Notice of non-compliance, document fabrication, and active digital records tampering into the record, disregard Defendant’s non-served filings, and grant her pending application for the immediate appointment of an independent receiver to seize the corporate books.”⁵³

2. Proceedings During the July 20, 2026 Hearing

As noted in the Letter Decision on the Motion for Disqualification,⁵⁴ I addressed the insufficient timing of the motion for shortened notice and expedited discovery on the record at the beginning of the July 20, 2026 hearing, explaining the motion was filed on July 15, 2026 by the Petitioner, sought Court action before July

⁵¹ Dkt. 38.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Dkt. 157 at p. 9-10.

20, 2026, and afforded the recipients of the subpoenas less than two business days to respond.⁵⁵ I further explained that the Petitioner's submission of items by mail as opposed to through File & Serve Delaware and File & ServeXpress, may be contributing to difficulties in submitting items with sufficient time for the Court to act on them and allow other parties an opportunity to respond.⁵⁶

Before hearing Petitioner's presentation, I requested the Petitioner refrain from discussing questions she had for Respondent's counsel on the record at the hearing, and instead present the motion to expedite and her requested TRO.⁵⁷

Petitioner's presentation began with a discussion of the secured financing obtained by Respondent, which was only first identified in the filings on July 16, 2026.⁵⁸ Petitioner also identified she made a Section 220 demand on July 11, 2026.⁵⁹ She then discussed the Cap Table, lodged at Docket 32, filed for the first time after the Respondent's opposition on the TRO, asserting her conclusions that the Series A-4 financing and Series A-5 financing along with a convertible note issued in 2024 were material financial events that raised questions about the accuracy of

⁵⁵ July 20, 2026 Hearing Tr. at 6:24 - 8:18.

⁵⁶ *Id.* Tr. at 7:21 - 8:18.

⁵⁷ *Id.* Tr. at 9:8-19.

⁵⁸ *See id.* Tr. at 10:2 -11:1; Dkts. 32-33.

⁵⁹ July 20, 2026 Hearing Tr. at 11:2-10.

Respondent's capitalization records.⁶⁰ Petitioner's last point in her initial remarks relayed concerns about how certain HerdDogg investors, non-parties in this case, may have misused or stolen taxpayer money.⁶¹

I questioned the Petitioner regarding six items related to her presentation, seeking to clarify: (1) the timing of when the Cap Table and transactions therein were first lodged in this case; (2) the timing of a demand under Section 220 after the Petition was filed; (3) the timing of prior 220 demands and the Colorado Litigation; (4) the scope of parties covered by Petitioner's use of "our" in her presentation; (5) the nature of Rogue Cattle Company; and (6) the status of Respondent's efforts to provide service copies of the opposition to the motion to expedite and TRO.⁶² Petitioner responded: (1) the Cap Table was in the docket entries filed on July 16, 2026; (2) the 220 demand was made after the Petition was filed; (3) the prior books and records request and demand were initiated "in October of 2025"⁶³ before discussing how Respondent's CEO "entirely ignored" "an ask to start a conversation around partnership";⁶⁴ (4) the use of "our" covered Petitioner, and her counsel John

⁶⁰ *See id.* Tr. 11:20 - 13:4.

⁶¹ *Id.* Tr. 13:5 - 14:22.

⁶² *Id.* Tr. 15:15 - 20:11.

⁶³ As the Colorado Litigation was filed July 22, 2025, and Dkts. 36-37 are dated October 2024, I understand this to be an inadvertent error in Petitioner's remarks.

⁶⁴ July 20, 2026 Hearing Tr. 16:19-24.

Oleske in the Colorado Litigation, who assisted with the books and records demands; (5) Rogue Cattle Company was another venture founded by Petitioner, which she hoped to integrate with Respondent; and (6) the Respondent only provided an email with the “motion” before actual paper copies of the brief arrived a couple days later.⁶⁵

After a colloquy about Petitioner’s then-lack of a File&ServeXpress account,⁶⁶ I invited the Respondent to present the opposition to the motion to expedite and TRO.⁶⁷ I reserved questions until hearing the opposition to both items.⁶⁸ I asked questions regarding: (1) the difference between creditor or stockholder standing; (2) the scope of the requested injunctive relief actually being sought and the opposition to appointment of a receiver during the current hearing; (3) the Respondent’s knowledge of the Cap Table, and whether it was produced to Petitioner by the Respondent; (4) the Respondent’s efforts to review what was included in the Cap Table; (5) the timing of the solicitation of the 2025 secured notes; and (6) the scope of the offering of the 2025 secured notes as litigation defense

⁶⁵ *Id.* Tr. 15:15 - 20:11.

⁶⁶ *Id.* Tr. 20:12 - 22:19.

⁶⁷ *Id.* Tr. 22:20-22.

⁶⁸ *Id.* Tr. 29:17-19.

funding.⁶⁹ My last question was framed with my understanding that a litigation adversary would not be offered participation in such secured notes.⁷⁰

In response, the Respondent answered: (1) that while creditor status was disputed given the end of the Colorado Litigation, that the Respondent was not challenging standing based on stockholder status being insufficient; (2) that a litigation hold to preserve records was implemented, that certain allegations in the Petition could be remedied with damages, and that the Respondent opposed any sort of granting of a receiver in connection with the TRO as discussed during the hearing; (3) that the Cap Table could be generated through a service called Carta, which provides stockholders with access to certain information; (4) that Respondent had not done a line-by-line comparison as to what was included in the Cap Table with its own records; (5) that the secured notes were solicited during the pendency of the Colorado Litigation to fund defense costs; and (6) that the secured notes were not made available to the public at large, and that Petitioner would not have had the opportunity to participate given the posture of the litigation at the time of the offering.⁷¹

⁶⁹ July 20, 2026 Hearing Tr. 32:10 - 37:17.

⁷⁰ *Id.* Tr. 37:1-7.

⁷¹ *Id.*

In Petitioner's rebuttal, she stressed that the Colorado Litigation was not a merits adjudication, as she abandoned prosecution of the complaint, in consultation with her attorney John Oleske, informed in part by her father's health issues.⁷² She asserted the Respondent and its then-CEO Andrew Uden, after receipt of the Petitioner's proposal, moved to work on a competing venture to infringe on Respondent's patents, and that the series A-5 preferred stock fundraising was some sort of fraudulent matter that the Petitioner felt "the Court should be the one that looks into this matter."⁷³

In her rebuttal, the Petitioner called into question the capabilities of the magistrate in Colorado remarking: "I'm here in the Chancery Court, where I have far better, more sophisticated corporate understanding, whereas the magistrate in Colorado couldn't even understand the difference between a fabricated, you know, self-generated DocuSign receipt and what DocuSign would be able to generate for us."⁷⁴ Petitioner also stressed the timing of the secured note in November of 2025 and filing of a UCC statement in December also illustrated that the financing was in some way a concession of inability to access the patents.⁷⁵ Petitioner also made the

⁷² *Id.* Tr. 38:6 - 46:4.

⁷³ *Id.*

⁷⁴ *Id.* Tr. 40:15-20.

⁷⁵ *Id.* Tr. 46:5-15.

assertion that Respondent and others had made millions from her patents, and that as those came from her mind, she “deserve[s] to have some credibility and absolutely creditor standing at the front of the line.”⁷⁶

Respondent’s response focused on legal effect of the Colorado Litigation dismissal, by which a dismissal other than for lack of jurisdiction, lack of venue, or lack of joinder of a necessary party, constitutes an adjudication on the merits.⁷⁷ Respondent also disputed Petitioner’s contentions that false and fabricated evidence was submitted to the Colorado court.⁷⁸ Respondent also raised concerns about the extent Petitioner was seeking to use actions of non-parties to inform the relief sought from the Court.⁷⁹

After a brief recess, I ruled on the motion to expedite and TRO, denying both as stated on the record.⁸⁰ In the ruling, I specifically discussed Petitioner’s omission in the Supplemental Notice, that the dismissal referenced in Exhibit C, was Petitioner’s initiated Colorado Litigation, and that the underlying complaint included allegations of self-dealing transactions, fraud, and the patent disputes,

⁷⁶ *Id.* Tr. 46:16-24.

⁷⁷ *Id.* Tr. 47:4-24.

⁷⁸ *Id.* Tr. 49:9-21.

⁷⁹ *Id.* Tr. 49:22 - 50:4.

⁸⁰ *Id.* Tr. 50:13 - 70:17.

along with the Section 220 demand in 2025, and relied on the same written materials from the third quarter of 2024.⁸¹ In discussing, *Banks v. Cristina Copper Mines, Inc.*,⁸² a case cited by the Petitioner,⁸³ I analyzed the Court's caution that a receiver cannot be appointed due to a stockholder's dissatisfaction with the manner in which business is being conducted.⁸⁴ In doing so I was informed by the materials supplied by the Petitioner regarding her seeking a partnership between her Rogue Cattle venture and Respondent.⁸⁵ I also cautioned the parties to abide their obligations under Court of Chancery Rule 11 and proceed with civility in written or oral rhetoric.⁸⁶

The Respondent identified its forthcoming Motion to Dismiss and requested guidance on scheduling, which I requested be an agreed schedule with the Petitioner, but would decide such disputes if necessary.⁸⁷ After a final comment from the Petitioner and questions about how she could continue, I acknowledged that I could

⁸¹ *Id.* Tr. 59:20 - 61:8.

⁸² 99 A.2d 504, 507 (Del. Ch. 1953).

⁸³ Dkt. 1 ¶ 37.

⁸⁴ *Banks*, 99 A.2d at 507.

⁸⁵ *See* July 20, 2026 Hearing Tr. 65:20 - 66:22; *Banks*, 99 A.2d at 507; Dkts. 35-37.

⁸⁶ July 20, 2026 Hearing Tr. 69:19 - 70:11 (citing *Durham v. Grapetree, LLC*, 2014 WL 1980335, at *6-7 (Del. Ch. May 16, 2014)).

⁸⁷ July 20, 2026 Hearing Tr. 70:22 - 71:12.

not provide any litigant legal advice, restated the motion to expedite and TRO had been denied, but that the Petition would go forward consistent with the applicable rules.⁸⁸ I further stated that if Petitioner could hire an attorney, they would be able to provide legal advice applicable to the Petitioner's individual situation.⁸⁹

3. Proceedings After the July 20, 2026 Hearing Leading Up to the Motion to Recuse

After the July 20, 2026 Hearing, the Respondent filed the Motion to Dismiss, and submitted a Stipulation and proposed briefing schedule.⁹⁰ Petitioner filed a letter to the Court on July 28, 2026 asserting that Respondent's Counsel, Michael Best, had a "serious conflict of interest" as a result of Michael Best overseeing and administering a secured note financing and receiving a financial instrument in the Respondent.⁹¹ On July 29, 2026, I entered a Minute Order confirming receipt of the letter and its exhibits, and notifying the Petitioner that if relief was being sought, it must be done so by motion, with an opportunity for other parties to respond.⁹² The Motion for Disqualification followed, and attached 21 lettered exhibits, along with

⁸⁸ *Id.* Tr. 71:13 - 72:15.

⁸⁹ *Id.* Tr. 72:16-24.

⁹⁰ Dkts. 45 & 48.

⁹¹ Dkt. 50.

⁹² Dkt. 54.

a declaration from Petitioner in support of the Motion.⁹³ After a stipulation and proposed order for briefing were filed, the Court granted that order on August 13, 2026.⁹⁴ The Respondent filed its Answering Brief on September 1, 2026.⁹⁵ Petitioner filed her reply on September 6, 2026.⁹⁶ I denied the Motion for Disqualification by letter on September 14, 2026.⁹⁷

As detailed in the letter denying the Motion for Disqualification, the Petitioner has engaged in multiple instances of third party discovery seeking subpoenas from the Register in Chancery.⁹⁸ On September 8 and 9, 2026, Petitioner filed two motions to compel compliance with her subpoenas with respect to two third parties.⁹⁹ The most recent new subpoena request was filed on September 11, 2026, through which Petitioner seeks discovery from her former counsel in the Colorado Litigation,

⁹³ See Dkts. 56-83.

⁹⁴ Dkts. 86 & 87.

⁹⁵ Dkt. 134.

⁹⁶ Dkt. 138.

⁹⁷ Dkt. 157.

⁹⁸ Dkts. 16, 20, 22, 24, 115, 118, & 151.

⁹⁹ Dkts. 140-45 (seeking compliance with a Subpoena issued before the hearing on the Motion to Expedite); Dkts. 146-48 (seeking compliance with a subpoena issued to Cooley LLP as former counsel to the Respondent). On September 24, 2026 the Petitioner filed a Notice to Withdraw the Motion to Compel as to Cooley. Dkt. 169.

John Oleske.¹⁰⁰ In reliance on information obtained through the third-party discovery, Petitioner sought to stay this case pending a criminal investigation.¹⁰¹

In parallel to this case, Petitioner has sought relief in the Colorado Litigation as to: (1) relief from judgment pursuant to Federal Rule of Civil Procedure 60(b);¹⁰² (2) lodging objection to Magistrate Neureiter's report and recommendation to the grant of fees to counsel for defendants other than the Respondent;¹⁰³ and (3) seeking a stay of rulings on items in the Colorado Litigation pending resolution of a criminal investigation.¹⁰⁴ The Motion to Recuse seeks another stay of this case pending its resolution, and then if denied, stay to pursue review of the denial.¹⁰⁵

On September 21, 2026, the Respondent filed a motion to seek stay of discovery.¹⁰⁶

¹⁰⁰ Dkts. 150-51 & 154.

¹⁰¹ See Dkts. 126-33. I denied that Motion to Stay on September 1, 2026 for the reasons appended to that order. Dkt. 135.

¹⁰² Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 65 (seeking the court to vacate its order of dismissal, Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49).

¹⁰³ Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 64.

¹⁰⁴ Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 75 (requesting a stay on any ruling on Dkts. 65 & 64 of the Colorado Litigation until the conclusion of a law enforcement investigation in Ashland, Oregon).

¹⁰⁵ Dkt. 164 at p. 16-17.

¹⁰⁶ Dkt. 168.

II. ANALYSIS

A. Standard of Review

“As a matter of due process, a litigant is entitled to neutrality on the part of the presiding judge but the standards governing disqualification also require the appearance of impartiality.”¹⁰⁷ The Delaware Code of Judicial Conduct provides that “[a] judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.”¹⁰⁸

Situations that may justify recusal include, “[t]he judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding,” or when “[t]he judge, or the judge’s spouse or domestic partner, or a person within the third degree of relationship, calculated according to the civil law system” is a “party to the proceeding, or an officer, director, or trustee of a party;” “is acting as a lawyer in the proceeding;” “is known by the judge to have an interest that could be substantially affected” or “is to the judge’s knowledge likely to be a material witness in the proceedings.”¹⁰⁹ Additionally, a judge should recuse himself or herself, where: “the judge knows that, [a member of the] judge’s household has an economic interest in the subject matter in controversy or in a party

¹⁰⁷ *Los v. Los*, 595 A.2d 381, 383 (Del. 1991).

¹⁰⁸ Del. Judges’ Code Jud. Conduct (the “Code”) Canon 2, Rule 2.11.

¹⁰⁹ *Id.*

to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.”¹¹⁰

The Court has long recognized that “[a] trial judge has a duty to hear cases assigned to him unless some reasonable factual basis to doubt his impartiality or fairness is shown by some kind of probative evidence.”¹¹¹

When faced with a potential conflict, the Court must engage in a two-part analysis.¹¹² “First, the judge must subjectively determine if he can hear the case free of bias.”¹¹³ “Second, even if the judge is satisfied and finds that there is no actual bias, there may be situations where, absent actual bias, the appearance of bias may cause doubt as to the judge’s impartiality.”¹¹⁴ “[T]he question to be answered is whether an objective observer would entertain reasonable questions about the judge’s impartiality, thus warranting recusal.”¹¹⁵

¹¹⁰ *Id.* at (A)(3).

¹¹¹ *Matter of Will of Stotlar*, 1985 WL 4782, at *2 (Del. Ch. Dec. 19, 1985); *see also* Code Rule 2.7(A). That rule, the “Responsibility to Decide,” states that “[a] judge shall hear and decide matters assigned, unless disqualified.” Code Rule 2.7(A).

¹¹² *Pazuniak L. Off., LLC v. Pi-Net Int’l, Inc.*, 2017 WL 656766, at *2 (Del. Super. Ct. Feb. 17, 2017) (citing *Los v. Los*, 595 A.2d 381, 384 (Del. 1991) (construing Canon 3 C(1) of the Delaware Code of Judicial Conduct in force in 1991)).

¹¹³ *Pazuniak*, 2017 WL at *2 (citing *Los*, 595 A.2d at 384-85).

¹¹⁴ *Id.*

¹¹⁵ *Id.* (citing *Gattis v. State*, 955 A.2d 1276, 1285 (Del. 2008)).

A recusal request directed to a Magistrate in Chancery is properly addressed by that Magistrate in the first instance.¹¹⁶

B. Petitioner Does Not Present Actual Bias and the Asserted Pattern of Conduct is Consistent with Petitioner's Presented Argument and Evidence

I start by briefly setting forth that prior to being assigned this action, I had no awareness of Petitioner or Respondent. Neither I nor any member of my household has any interest in the parties. Neither I nor any member of my household has any interest in counsel to the Respondent. At all times, I have tried to decide the matters before me consistent with the evidence presented and applicable law. I am aware of no facts that suggest disqualification under Rule 2.11 of the Code. Confident the foregoing satisfies Rule 2.11 of the Code, and my subjective determination that I have and can decide matters in this case free of bias, I turn to Petitioner's contentions that events in the case demonstrate reasonable questions to an objective observer about my impartiality.¹¹⁷

¹¹⁶ See *Rende v. Rende*, 2025 WL 658758 at *1-3 (Del. Ch. Feb. 28, 2025) (Order on Exceptions to Magistrate Judge's Decision) (Cook, Vice Chancellor).

¹¹⁷ *Pazuniak*, 2017 WL 656766, at *2 (citing *Gattis v. State*, 955 A.2d 1276, 1285 (Del. 2008)).

1. Petitioner’s Arguments that a Pattern Began in July of 2026, Before Any of the Motions Now at Issue

Petitioner argues that my disposition of the relief sought at the July 20, 2026 Hearing was the start of different treatment of the Petitioner as compared to the Respondent.¹¹⁸ Petitioner points to four issues, (1) characterizations of the Petitioner’s and Respondent’s previous conduct; (2) discussion of the Petitioner’s Section 220 Demand; (3) discussion of Respondent’s engagement with Petitioner; and (4) adoption of a position the Respondent advocated in deciding not to expedite the proceeding.¹¹⁹

The question of prior conduct was put at issue by Petitioner’s lack of candid disclosure as to the Colorado Litigation.¹²⁰ Petitioner voluntarily chose to hold out communication from the Respondent discussing dismissal of her prior litigation against the Respondent and others as “explicitly admit[ting] in writing that HerdDogg is structurally insolvent.”¹²¹ It instead said, “[w]hile the litigation was ongoing, the company operated under extreme financial constraints, forcing us to rely on limited ‘survival capital’ from internal sources. As a result of these

¹¹⁸ Dkt. 164 at p. 4-7.

¹¹⁹ *See id.*

¹²⁰ *See* Dkt. 10 Ex. C & Dkt. 12.

¹²¹ Dkt. 10 at p.2.

constraints, we had to significantly reduce our operations.”¹²² Petitioner likewise put forth for the first time with the Reply and Motion to Strike, exhibits, that with the exception of the Cap Table, could have all been submitted with earlier filings.¹²³ The Cap Table only discusses “Cash Raised” and omits any discussion of liabilities beyond what was initially recorded in raising cash, and does not discuss cash flow.¹²⁴

Petitioner’s Section 220 Demand discussion did not include any representation that the Petitioner had applied to the Court of Chancery to compel an inspection. Rather, Petitioner confirmed that she commenced the Colorado Litigation.¹²⁵ As discussed in the letter decision on the Motion for Disqualification, Petitioner’s arguments regarding failed compliance with 8 *Del. C.* § 220 ignore that she has twice chosen to commence a plenary or other action,¹²⁶ instead of seeking

¹²² *Id.* Ex. C.

¹²³ Compare Dkts. 1 & 8 (submitting Petition, Motion to Expedite, and TRO on June 23, 2026 and July 7, 2026), with Dkts. 30-40 (including Dkt. 32 Cap Table as of July 11, 2026, but Dkts. 33-37 ranging from October 2024 through January 26, 2026).

¹²⁴ Dkt. 32.

¹²⁵ See July 20, 2026 Hearing Tr. 16:13 - 17:16; 8 *Del. C.* § 220(c).

¹²⁶ See *Tang Cap. P’rs, LP v. Norton*, 2012 WL 3072347, at *2 (Del. Ch. July 27, 2012) (discussing a Section 291 claim as “summary” as opposed to plenary, “[Party’s] remaining claim for the appointment of a receiver, I found that the matter should be ‘expedited’ consistent with the summary nature of receivership actions brought under Section 291 of the DGCL. I suggested holding a hearing eight to ten weeks out, but left it to the parties to confer about scheduling.”).

the information she asserts entitlement to as a stockholder.¹²⁷ Filing of a plenary action acts as a certification a litigant has all of the information to state a claim.¹²⁸ “Delaware courts have recognized that a stockholder who files a plenary action asserting claims of mismanagement undercuts his alleged need to obtain documents under Section 220 to investigate the same alleged acts of mismanagement.”¹²⁹ Petitioner’s requests do not fall into the line of cases where refile after a dismissal without prejudice was permitted to collect materials to adequately plead demand futility.¹³⁰ Instead after having sought a receiver as a remedy in the Colorado Litigation, she seeks one in this case but did so without gathering more current information on Respondent’s financial condition.¹³¹

¹²⁷ Dkt. 82 at p. 11 (setting forth a Section 220 demand served October 31, 2024, and that during this case a second statutory demand on July 11, 2026); Dkt. 1 (filed June 23, 2026); Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt.1 (filed July 22, 2025); *see also* Dkt. 138 at p. 15–16.

¹²⁸ *See, e.g., Bizzari v. Suburban Waste Servs.*, 2016 WL 4540292, at *6 (Del. Ch. Aug. 30, 2016) (“By filing the Plenary Action, Mr. Bizzari effectively conceded that the books and records he seeks are not necessary or essential to his stated purpose of investigating mismanagement or wrongdoing with respect to the removal or asset sale issues. Mr. Bizzari and his counsel presumably concluded they possessed sufficient information under Rule 11 to file the complaint without first inspecting books and records.”).

¹²⁹ *Schnatter v. Papa John’s Int’l, Inc.*, 2019 WL 194634, at *11 (Del. Ch. Jan. 15, 2019), *abrogated in part on other grounds, Tiger v. Boast Apparel, Inc.*, 214 A.3d 933 (Del. 2019).

¹³⁰ *King v. VeriFone Hldgs., Inc.*, 12 A.3d 1140, 1146 (Del. 2011) (“Where those derivative suits were dismissed for failure to plead demand futility adequately, both this Court and the Court of Chancery permitted the stockholder-plaintiffs to utilize the Section 220 inspection process to gather new information and replead their derivative complaints.”).

¹³¹ Dkt. 1; *see also* Dkts. 10, 16-26, & 30-40.

Further, Petitioner's exhibits laid out that she had sought to partner with the Respondent, but later commenced litigation.¹³² Based on the presentation of those materials, an analogy to dissatisfaction with management's conduct of business as discussed in *Cristina Copper* seemed apt.¹³³ As between the Petition, the Supplemental Notice, and the Reply/Motion to Strike Exhibits, nothing presented by the Petitioner provided a concrete picture of the Respondent's financial health as of June 23, 2026.¹³⁴ Petitioner had already once sought a receiver, and only presented the Cap Table in her reply to show cash raised as of a date subsequent to the Petition.¹³⁵ The existence of debts does not on its own mean insolvency.¹³⁶

As discussed in the oral ruling denying the motion to expedite and TRO, Petitioner needed to establish a sufficiently colorable claim, and sufficient

¹³² See Dkts. 35-37.

¹³³ July 20, 2026 Hearing Tr. 65:6 - 66:17 (citing *Banks v. Cristina Copper Mines, Inc.*, 99 A.2d 504, 507 (Del. Ch. 1953)). The Petitioner's answering brief on the Motion to Dismiss later provided a similar characterization: "She has repeatedly sought the opportunity to negotiate directly with Respondent to commercialize technology she invented, on terms Respondent itself would set, rather than see it continue to sit unused, including through the direct outreach to the Company's own CEO and to prospective investors described above. Those efforts were rebuffed." Dkt. 88 at p. 43.

¹³⁴ See Dkts. 1, 10, & 30-40.

¹³⁵ Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶ 14.

¹³⁶ See *In re Geneius Biotechnology, Inc.*, 2017 WL 6209593, at *11 (Del. Ch. Dec. 8, 2017) ("Geneius appears to be making a bona fide effort to overcome its current financial difficulty, including the use of a survival budget, the significant cuts to payroll, the personal loans from Slanetz to the Company, and the investments in fundraising.").

possibility of irreparable injury, to impose the costs of an expedited proceeding.¹³⁷

In obfuscating the Colorado Litigation and presenting issues that substantially predated the Petition, the Petitioner failed to meet the test for an expedited proceeding.¹³⁸ Even in the absence of opposition from the Respondent, the Petitioner's submissions did not satisfy the standards for expedited relief.¹³⁹

The standard for the TRO builds on that for expediting proceedings, but adds a balancing of hardships.¹⁴⁰ "An injunction, being the 'strong arm of equity' should never be granted except in a clear case of irreparable injury, and with full conviction on the part of the court of its urgent necessity."¹⁴¹ Prior to the Supplemental Notice and the Reply/Motion to Strike, Petitioner's only support for the TRO was that she

¹³⁷ July 20, 2026 Hearing Tr. 53:1 - 54:21; *Silverberg v. Munshi*, 2022 WL 90608, at *2 (Del. Ch. Jan. 10, 2022); *Giammargo v. Snapple Beverage Corp.*, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994).

¹³⁸ See Dkts. 1, 8, 10, & 30-40; *Silverberg v. Munshi*, 2022 WL 90608, at *2 (Del. Ch. Jan. 10, 2022); *Giammargo v. Snapple Beverage Corp.*, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994).

¹³⁹ July 20, 2026 Hearing Tr. 57:18 - 59:19 (citing Dkt. 1 ¶¶ 19, 26, & 40-41; Dkt. 10).

¹⁴⁰ See *CBOT Hldgs., Inc. v. Chi. Bd. Options Exch., Inc.*, 2007 WL 2296356, at *3 (Del. Ch. Aug. 3, 2007) ("In assessing whether a temporary restraining order is warranted, the Court is generally guided by three factors: (i) the existence of a colorable claim, (ii) the irreparable harm that will be suffered if relief is not granted, and (iii) a balancing of hardships favoring the moving party."); *IMO Daniel Kloiber Dynasty Trust*, 98 A.3d 924, 937 (Del. Ch. 2014).

¹⁴¹ *Gimbel v. Signal Cos.*, 316 A.2d 599, 602 (Del. Ch. 1974).

was advised of her obligations under confidentiality and invention agreements.¹⁴² Even after the Supplemental Notice and the Reply/Motion to Strike, Petitioner had not presented why restraining the Respondent was necessary to avoid irreparable injury.¹⁴³ Petitioner's shifting request in the Reply/Motion to Strike seeking relief against non-parties to this case had even less support, and sought the immediate appointment of a receiver.¹⁴⁴

2. Petitioner's Assertion that the Capitalization Evidence's Treatment Shows the Same Asymmetry in a Different Form

Petitioner next takes issue with the need to understand if the Cap Table was a record produced by the Respondent.¹⁴⁵ The Cap Table at Docket 32, had a header "Generated by Melissa Brandao" and therefore was not "An Opposing Party's Statement" under Delaware Rule of Evidence 801, and excluded from being

¹⁴² See Dkt. 8 Ex. A.

¹⁴³ Petitioner argued that existence of the secured note, which was solicited in November of 2025, put Respondent's "assets at immediate risk, creating irreparable harm not only to HerdDogg, but also to me personally and to the future use and legacy of my own authored patents." July 20, 2026 Hearing Tr. 10:13-15. The situation in July was not appreciably different than it was in January when the Colorado Litigation was dismissed, except Respondent once again faced litigation brought by the Petitioner. See Dkt. 10 Ex. C.

¹⁴⁴ Dkts. 30, 38, & 39.

¹⁴⁵ Dkt. 164 at p. 6-7.

hearsay.¹⁴⁶ It was necessary to understand whether the Cap Table, which was first identified four days prior to the July 20, 2026 hearing was something that Respondent already acknowledged as accurately stating financial information of the Respondent, or if it was derived from other sources.

Petitioner's Motion to Recuse also asserts that I supplied a narrative regarding the exclusion of the Petitioner from the secured notes financing.¹⁴⁷ The secured notes were first disclosed on July 16, 2026, and prior to July 13, 2026, nothing in the record disclosed that Petitioner had previously sought a receiver in the Colorado Litigation.¹⁴⁸ Docket 34 on its face identified that the funding was meant to defend "against the Brandao lawsuit," and it is not a remarkable proposition that a litigant does not generally request that its adversary extend financing for it to fight against the claims brought by the adversary.¹⁴⁹ Other aspects of the Offer Notice simply set

¹⁴⁶ Compare Dkt. 32 (generating the Cap Table as of July 11, 2026), with D.R.E. 801(d)(2) (setting forth that a statement offered against an opposing party is not hearsay when one of the five applicable conditions exist).

¹⁴⁷ Dkt. 164 at p.7.

¹⁴⁸ See Dkts. 1, 8, 10, 13, & 30-40.

¹⁴⁹ Dkt. 34; James H.M. Sprayregen, Chad J. Husnick, & Elizabeth H. Jones, *The Effect of a Debtor's Stipulation on Deriv. Standing in Chapter 11 Cases*, 2022 Ann. Surv. of Bankr. Law 2 (2022) (discussing in the bankruptcy context: "debtors routinely agree as part of a consensual DIP and/or cash collateral order to stipulate to the validity of liens and claims and otherwise waive and release any potential claims against secured lenders, subject only to a period of time for parties other than the debtor, including official committees, to investigate and prosecute such claims. After the expiration of this

forth the standard priority that secured creditors enjoy by lending funds, “generally the first creditor to perfect its interest in the collateral has priority over other secured creditors.”¹⁵⁰

Petitioner next asserts that denial of her Motion to Stay followed the same pattern of accepting the Respondent’s position.¹⁵¹ As discussed in the Court’s Order denying the Motion to Stay, Petitioner’s request was for an indefinite stay while a nascent criminal investigation occurs based on a report that was filed last month, and while only the Respondent, a corporate entity, is a party to this case.¹⁵² Petitioner had previously put before the Court in Docket 10 Exhibit C, how dismissal of the Colorado Litigation was necessary for the Respondent to resume fundraising activities, and the ongoing litigation in this case, suggests similar challenges will remain until resolution of the Petitioner’s claims.¹⁵³

‘challenge period,’ the stipulations and waivers are binding on third parties, including a debtor’s successors.”). Lenders do not expect to fund litigation against themselves.

¹⁵⁰ Compare Dkt. 34 (setting forth “Equity Holders Should Expect Little to No Recovery in Any Liquidation or Bankruptcy”), with *Navient Sols., LLC v. BPG Off. P’rs XIII Iron Hill LLC*, 315 A.3d 1164, 1175 (Del. Super. Ct. 2024) (“Under Article 9, generally the first creditor to perfect its interest in the collateral has priority over other secured creditors.”).

¹⁵¹ Dkt. 164 at p. 7.

¹⁵² See Dkt. 135 (quoting *Md. v. Universal Elections, Inc.*, 729 F.3d 370, 379 (4th Cir. 2013) (“Stays generally are not granted before an indictment has issued.”)).

¹⁵³ Compare Dkt. 10 Ex. C. (asserting “This resolved a significant uncertainty for the Company that was hindering our efforts to find additional financing for the Company.”), with Dkt. 125 (“Respondent further notes that it is in a critical stage of attempting to raise

3. Petitioner's Assertion of Objectively Testable Documentary Contradictions is Not Connected to Any Matter the Court Has Acted On

Petitioner's next contention regarding grants of Respondent stock-options to employees associated with Cattlytx does not specify any consideration I ought to have given those documents in the matters that I have decided or that are currently pending before me.¹⁵⁴ To the extent they ought to be considered in connection with other matters pending, I will evaluate them consistent with applicable law. The Motion to Recuse does not specify which docket entries reflect these issues nor any failure to consider them in deciding the motion to expedite, TRO, Motion to Stay, or Motion for Disqualification.¹⁵⁵

4. Petitioner's Assertion I Have Already Resolved, Against Petitioner, Her Responsibility for Counsel's Action, Which Will Constrain Analysis of the Motion for Sanctions, Overstates the Breadth of the Letter Decision on Disqualification

Petitioner's next contention is that I have decided against her on a matter relating to counsel's responsibility for the Colorado Litigation as it relates to the

capital and any delay in allowing the Motion to Dismiss is extremely prejudicial to Respondent.").

¹⁵⁴ Dkt. 164 at p. 8.

¹⁵⁵ See *id.* at p. 8.

Motion for Sanctions.¹⁵⁶ Petitioner asserts that such analysis in my decision on the Motion for Disqualification would cause “[a]n objective observer, aware that the Magistrate has already applied Link and Levey against Petitioner’s counsel-abandonment position once, could reasonably question whether he can adjudicate the identical question fresh when Respondent’s pending Sanctions Motion presents it again.”¹⁵⁷ While the Motion for Disqualification presented an item that the Petitioner bore the burden of proof on by clear and convincing evidence,¹⁵⁸ the Respondent has the burden on the Motion for Sanctions,¹⁵⁹ and I will apply the law to the evidence introduced for that matter.

¹⁵⁶ *Id.* at p. 9-10.

¹⁵⁷ *Id.* at p. 10.

¹⁵⁸ *Appeal of Infotechnology, Inc.*, 582 A.2d 215, 221 (Del. 1990) (“We therefore place the burden on the non-client litigant to prove the existence of a conflict and to show by clear and convincing evidence exactly how that conflict will affect the ‘fair and efficient administration of justice.’ Any abuses for mere tactical gain should, and must, be addressed by the trial court. It has full power to employ the substantive and procedural remedies available to properly control the parties and counsel before it, and to ensure the fairness of the proceedings.”).

¹⁵⁹ *Crumplar v. Super. ex rel. New Castle Cty.*, 56 A.3d 1000, 1008 (Del. 2012) (“Judges in all Delaware trial courts should determine whether [a participant subject to Rule 11] should be sanctioned under Rule 11 under an objective standard.”).

5. The Disqualification Letter Decision Applies the Law on Non-Client Disqualification and Sets Forth Facts Illustrating Petitioner's Litigation Conduct

It is not lost on me that in deciding the Motion for Disqualification before the Motion to Dismiss as requested by the Petitioner, that I am now addressing a Motion to Recuse that includes, in substantial part, additional requests for stay of this action.¹⁶⁰ Petitioner's contentions that the decision on the Motion for Disqualification is "built" upon the record in the Colorado Litigation, ignores the section of the decision discussing the absence of rule violations,¹⁶¹ and downplays Petitioner's conduct in seeking stay after stay of dispositive items both in this case and Colorado.¹⁶²

6. Petitioner's Litigation Choices Have Created This Procedural Posture

Petitioner voluntarily commenced this case on June 23, 2026.¹⁶³ Petitioner could have instead sought to collect the additional information through her rights under Section 220, or some other mechanism, but instead opted to proceed with the

¹⁶⁰ Dkts. 122-24, 126 & 164.

¹⁶¹ Dkt. 157 at p. 13-18.

¹⁶² See Dkt 164 at p. 11 & 16-17; Dkt. 157 (finding insufficient evidence of rule violations to support non-client enforcement of the DLRPC); and Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 75 (requesting a stay on any ruling on Dkts. 65 & 64 of the Colorado Litigation until the conclusion of a law enforcement investigation in Ashland, Oregon).

¹⁶³ Dkt. 1.

information available as of that date. In doing so, Petitioner’s own choices are responsible for the “troubling procedural position” she cites as being an objective example of bias.¹⁶⁴ Petitioner filed with the information on hand that was available when she prosecuted the Colorado Litigation and its aftermath, and Respondent has moved to dismiss, this time also arguing the preclusive effects of the prior dismissal.¹⁶⁵

When considering a motion to dismiss under Court of Chancery Rule 12(b)(6), the Court accepts all well pleaded facts as true, accepts vague allegations as well pleaded if they give the opposing party notice of the claim, and draws all reasonable inferences in the non-moving party’s favor.¹⁶⁶ A claim will be dismissed only if there is no “reasonably conceivable” set of circumstances under which the alleged facts may support it.¹⁶⁷ “While the nonmoving party is entitled to ‘all reasonable inferences that logically flow from the face of the complaint,’ the

¹⁶⁴ Dkt. 164 at p. 12.

¹⁶⁵ See Dkt. 164 at p. 12-13; Dkt. 45 Opening Brief at p. 9-26.

¹⁶⁶ *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011); see also *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

¹⁶⁷ *Id.*

‘[C]ourt is not ... required to accept as true conclusory allegations “without specific supporting factual allegations.”’¹⁶⁸

Unless the party moving for dismissal under Rule 12(b)(6) submits matters outside of the pleadings, no extrinsic evidence is necessary to evaluate a motion to dismiss, and considering outside matters requires conversion of the motion to one for summary judgment under Rule 56.¹⁶⁹ The Court may take judicial notice of facts “*not* subject to reasonable dispute” without converting the Rule 12(b)(6) motion to dismiss to one for summary judgment.¹⁷⁰

Until the Court can decide the fully briefed Motion to Dismiss, post-Petition evidence gathered by the Petitioner cannot be evaluated as to the merits of her claim in the Petition.

¹⁶⁸ *In re Seneca Invs. LLC*, 970 A.2d 259, 262 (Del. Ch. 2008) (quoting *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001) & *In re Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 168 (Del.2006) (citation omitted)) (footnotes omitted).

¹⁶⁹ *See Mann v. Oppenheimer & Co.*, 517 A.2d 1056, 1059-60 (Del. 1986) (“When a party moves to dismiss for failure to state a claim pursuant to Rule 12(b), and submits matters outside the pleadings, the motion will be treated as one for summary judgment under Rule 56.”) (citing Del. Ch. Ct. Rule 12(b); *Danby v. Osteopathic Hosp. Ass’n of Del.*, 101 A.2d 308, 315 (Del. Ch. 1953), *aff’d*, 104 A.2d 903 (Del. 1954).

¹⁷⁰ *See In re Gen’l Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 169-70 (Del. 2006) (quoting D.R.E. 201 with emphasis added).

7. Reassignment Is Not Necessary to Protect the Administration of Justice In the Absence of Actual Bias

In recognition of the lack of actual bias, the Petitioner seeks in the alternative reassignment of the case.¹⁷¹ Petitioner attaches a motion to recuse filed by other litigants and Chancellor McCormick's decision to reassign related cases in those matters.¹⁷² Reassignment of this case is not necessary to serve the administration of justice as discussed throughout, and the likely result appears to be delay of the proceeding.¹⁷³

8. The Cumulative Record Illustrates Fair and Meaningful Engagement With Petitioner's Motions

The Petition reflects a straightforward request, that Respondent is insolvent, and under the facts and circumstances alleged an independent receiver should be appointed to manage affairs of the company.¹⁷⁴ Respondent disputes that those facts exist, but moves to dismiss, which means Petitioner's well-pled facts are accepted as true for purposes of evaluating that motion.¹⁷⁵ Petitioner has requested that

¹⁷¹ Dkt. 164 at p. 13-14.

¹⁷² Dkts. 165-66.

¹⁷³ Dkt. 164 at p. 16-17; *see also* Dkt. 159 (setting a hearing on the Motion to Dismiss for October 15, 2026).

¹⁷⁴ Dkt. 1 ¶¶ 35-43.

¹⁷⁵ *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011); *see also Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

Respondent's counsel be disqualified.¹⁷⁶ Petitioner has likewise requested the entire case be stayed pending a criminal investigation.¹⁷⁷ After I resolved certain of those matters against the Petitioner, providing my analysis to reach those respective conclusions, Petitioner now requests that I recuse myself and proceedings be stayed until I decide recusal.¹⁷⁸

A fair reading of the denial of the Motion to Stay and the Motion for Disqualification demonstrate commitment to reviewing the relief requested in connection with applicable law, and providing reasoning for denying the requests.¹⁷⁹ The same was true of the motion to expedite and TRO on July 20, 2026.¹⁸⁰ While the Motion to Recuse acknowledges that disagreement with prior rulings is not the basis for the recusal,¹⁸¹ Petitioner nonetheless believes that either a different judicial officer would reach different conclusions, or that her litigation conduct may be perceived differently. Allowing a litigant to obtain recusal under these

¹⁷⁶ Dkts. 56-83.

¹⁷⁷ See Dkts. 126-33. Petitioner provided no applicable law for the request, and I promptly evaluated relevant case law, and applied the facts contained in the record accordingly. Dkt. 135.

¹⁷⁸ Dkt. 164 at p. 16-17.

¹⁷⁹ See *Matter of Will of Stotlar*, 1985 WL 4782, at *1 (Del. Ch. Dec. 19, 1985) (noting a litigant's disagreement with the Vice Chancellor's assessment was not grounds to disqualify him in a subsequent proceeding).

¹⁸⁰ July 20, 2026 Hearing Tr. 50:14 - 70:17.

¹⁸¹ Dkt. 164 at p. 2.

circumstances would contribute to additional motion practice seeking to disqualify a judge in the hopes of obtaining one more likely to rule in their favor.¹⁸²

9. No Stay is Appropriate Under Rule 144 After Issuance of this Letter Decision

“The Delaware Supreme Court has held that a Magistrate in Chancery’s legal and factual rulings are subject to *de novo* review by the Chancellor or a Vice Chancellor.”¹⁸³ A Magistrate in Chancery is appointed by the Chancellor, his or her “rulings, findings of fact, conclusions of law, and recommended disposition” are subject to review by a constitutional officer of the Court.¹⁸⁴ The Delaware Supreme Court commented that standard of review does not diminish “the important assistance that [Magistrates in Chancery] provide,” nor does it “suggest that their decisions are less thoughtful or worthy than those of a trial judge.”¹⁸⁵ In evaluating a matter before him on exceptions, Vice Chancellor Glasscock remarked, “[t]his Court could not maintain its current case load absent the service of the [Magistrates]

¹⁸² See *Matter of Will of Stotlar*, 1985 WL 4782, at *1 (Del. Ch. Dec. 19, 1985) (“It would also likely lead other litigants to file meritless motions for disqualification in order to forum shop for a judge who they perceive would be more likely to rule in their favor.”).

¹⁸³ *Luthra v. HIR Hldgs. LP*, 2026 WL 2296616, *1 (Del. Ch. Aug. 10, 2026) (citing *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999)).

¹⁸⁴ *DiGiacobbe v. Sestak*, 743 A.2d 180, 182-83 (Del. 1999).

¹⁸⁵ *Id.* at 184.

in Chancery; they are essential to the proper functioning and reputation of the Court.”¹⁸⁶

“Consistent with *DiGiacobbe*, Court of Chancery Rule 144 contemplates that a party may take exception to any decision issued by a Magistrate in Chancery. Rule 144(c)(2)(A) dictates only when exceptions may be filed.”¹⁸⁷ Rule 144(c)(2)(A) provides that “[a] party may take exceptions to *any Report* only after entry of the Final Report.”¹⁸⁸ A “Report” is “[a]ny ruling, order, or decision by a Magistrate in Chancery” and a “Final Report” is “[a] Report that concludes a referred action or dispute.”¹⁸⁹ “The effect is to require in most instances that parties hold their exceptions until the conclusion of the action. The rule is designed to ensure that proceedings are staged in an efficient manner, not to preclude a party from filing exceptions.”¹⁹⁰

Petitioner may lodge exceptions to this decision, which constitutes another report, and not a final one, and on the Motion for Disqualification which was also a

¹⁸⁶ *Kablaoui v. Gerar Place Condo. Ass'n*, 2022 WL 17827089, at *1 (Del. Ch. Dec. 21, 2022), *aff'd*, 303 A.3d 1219 (Del. 2023).

¹⁸⁷ *Luthra v. HIR Hldgs. LP*, 2026 WL 2296616, *1 (Del. Ch. Aug. 10, 2026).

¹⁸⁸ Ct. Ch. R. 144(c)(2)(A) (emphasis added); *Luthra*, 2026 WL 2296616, at *1.

¹⁸⁹ Ct. Ch. R. 144(b)(1)-(2).

¹⁹⁰ *Luthra*, 2026 WL 2296616, at *1.

report. But in this Civil Action, those reports may only be the subject of exceptions, once this case has concluded.¹⁹¹

III. CONCLUSION

The Motion to Recuse should be denied, as the Petitioner does not allege or demonstrate grounds for disqualification under Rule 2.11. I have no personal bias for or against the parties in this matter, and have, and will continue to, apply the law to the facts that are presented. For the above reasons, the Motion to Recuse should not be granted. This is not a final report in this case, and exceptions are stayed under Rule 144 until a final report is entered.

Respectfully submitted,

/s/ Timothy J. Fox

Magistrate Timothy J. Fox, Jr.

¹⁹¹ *See id.*