

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

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MAGISTRATE IN CHANCERY

COURT OF CHANCERY COURTHOUSE
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October 1, 2026

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RE: *Lawrence E. Pinczower v. Nissim Black and Hava Nation Corp.*
C.A. No. 2025-1011-DH

Dear Counsel:

This letter decision resolves Defendants’ Nissim Black’s and Hava Nation Corp.’s motion to dismiss Plaintiff Lawrence Pinczower’s Complaint. Pinczower asserts eleven direct and derivative claims arising from his involvement with Hava Nation. For the reasons explained below, I recommend that the motion be denied as to Counts V and VI and granted as to all other counts.

I. FACTUAL BACKGROUND¹

¹ I draw the following facts from Plaintiff’s Verified Complaint (“Compl.”), Docket Item (“D.I.”) 1, as well as the Employment Agreement (“Emp. Agrmt.”), attached as Exhibit N thereto; Defendant Nissim Black’s Waiver (“Waiver”), attached as Exhibits K and K2 thereto; Plaintiff Lawrence Pinczower’s Indemnity Agreement (“Indem. Agrmt.”), attached as Exhibit L thereto; and non-party Neil Shaw’s Email (“Shaw Email”), attached as Exhibit M thereto. I take all adequately alleged facts as true for the purpose of this Motion to Dismiss. I refer to the parties’ briefing as follows: Defendants Nissim Black’s and Hava Nation Corp.’s Opening Brief in Support of their Motion to Dismiss Plaintiff’s

Hava Nation Corp. (“Hava Nation” or the “Company”) is a Delaware corporation formed to develop and market a whiskey brand called “Hava.”² The origins of the Hava brand date to 2021, when Nissim Black conducted a small-batch test run of the product after producing a music video titled “The Hava Song.”³

Before Plaintiff Lawrence Pinczower’s involvement with Hava Nation, four individuals played key roles in the Company: Black; Neil Shaw, Hava Nation’s seed investor and former co-director; Yehoshua Werth, its operations manager and blend master; and then-General Counsel Steven Sabel.⁴ Black, Werth, and Sabel worked together to develop the business plan for Hava Nation.⁵ The plan contemplated an initial launch of 20,000 triple-blend whiskey bottles and the importation of approximately 5,000 bottles of selected Scottish whiskey.⁶

Verified Complaint (“DOB”), D.I. 19; Plaintiff’s Answering Brief in Opposition to Defendants’ Motion to Dismiss (“PAB”), D.I. 21; Defendants Nissim Black’s and Hava Nation Corp.’s Reply Brief in Support of their Motion to Dismiss Plaintiff’s Verified Complaint (“DRB”), D.I. 22; and Defendants’ Motion to Dismiss Transcript (“MTD Tr.”), D.I. 28.

² Compl. ¶¶ 11, 17, 29.

³ *Id.* ¶ 30.

⁴ *Id.* ¶¶ 27–28; DOB p. 3.

⁵ Compl. ¶ 28.

⁶ *Id.* ¶ 29.

Before March 12, 2025, Black and Shaw requested that Pinczower prepare various legal documents for Shaw’s review, including a memorandum of understanding (the “MOU”), a founder’s agreement, employment agreements for Black, Sabel, and Werth, and an employee stock option plan (the “ESOP”).⁷ Shaw approved these documents.⁸

On March 14, Shaw invested \$1.2 million in Hava Nation.⁹ Soon thereafter, between late March and late April, Black made twenty separate withdrawals or transfers from the Company’s account.¹⁰ Shaw estimated the transactions at approximately \$150,000, although the Complaint elsewhere alleges an amount between approximately \$128,000 and \$150,000.¹¹ Once discovered, Shaw proposed reducing Black’s holdings by 5,000 shares to offset the amount Shaw believed Black had withdrawn.¹² Instead, on April 24, Black executed a \$100,000 loan agreement

⁷ *Id.* ¶ 26.

⁸ *Id.* ¶ 31.

⁹ *Id.* ¶ 31.

¹⁰ *Id.* ¶¶ 2, 21, 32.

¹¹ *Id.*

¹² *Id.* ¶ 33.

with Hava Nation that required ten equal monthly payments beginning in June 2025.¹³

Around this time, Shaw sought to terminate Sabel and contacted Pinczower to assist with Sabel's termination.¹⁴ Shaw simultaneously invited Pinczower to replace Sabel as Hava Nation's general counsel, and Black approved Pinczower's appointment.¹⁵ Pinczower advised Shaw that he would wait to formally join Hava Nation until Sabel's employment ended to avoid overlap between the two General Counsel positions.¹⁶ Pinczower also requested documentation from Black and Shaw confirming their consent to his representation and eventual onboarding.¹⁷

On May 9, 2025, Black executed a waiver and consent letter permitting Pinczower to assist Shaw with Sabel's termination and afterward join Hava Nation.¹⁸ Five days later, Shaw introduced Pinczower during a Company meeting and informally welcomed him to Hava Nation.¹⁹ By May 19 Pinczower had provided

¹³ *Id.* ¶ 34.

¹⁴ *Id.* ¶ 35.

¹⁵ *Id.* ¶ 35.

¹⁶ *Id.* ¶ 36.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 37.

¹⁹ *Id.* ¶ 41.

Shaw with a draft employment agreement (the “Employment Agreement”), to which Shaw replied: “Thanks. Works for me, including 4a. I suggest dating the PDF Monday, May 19 and I’ll sign on that date.”²⁰ But Shaw did not sign it. Pinczower alleges that his employment therefore became effective on May 19.²¹ On May 23, Shaw executed an indemnification letter in Pinczower’s favor concerning Sabel’s termination and Pinczower’s onboarding.²²

Under the Employment Agreement, Pinczower was to receive, among other things, a \$100,000 annual net salary, \$15,300 in Social Security tax payments, 5,000 immediately vested common shares, 5,000 stock options, up to \$7,000 in benefits, severance rights, and a \$6,250 signing bonus for his prior legal services.²³ For what the Complaint describes as a “ministerial convenience,” Pinczower initially directed that his shares be registered in the name of his Delaware holding company, NPH LLC.²⁴

²⁰ *Id.* ¶¶ 42; Ex. M.

²¹ *Id.* ¶¶ 39, 42.

²² *Id.* ¶ 38.

²³ *Id.* ¶¶ 43–44.

²⁴ *Id.* ¶ 9.

On May 29, 2025, Sabel’s offboarding concluded through a General Release Agreement between Sabel and Shaw on behalf of Hava Nation.²⁵ During this period, Pinczower performed various general counsel duties, including attending Company meetings, preparing minutes, negotiating contracts, conducting legal research, communicating with outside counsel, and acting as a liaison among Shaw, Black, and Werth.²⁶ Pinczower notified the Company of the trademark on May 21 and discussed it at a Company meeting later that day.²⁷ To address the potential trademark issue, Pinczower proposed an alternative brand, “Seven Shepherds,” vetted the name, and reserved relevant domain names.²⁸

On June 4, 2025, Shaw sought to replace Black with Pinczower as Hava Nation’s Chief Executive Officer (“CEO”) and invited Pinczower to join the Company’s board of directors.²⁹ Shaw verbally offered Pinczower an additional 9,700 shares, equal to 10% of the then-issued 97,000 shares, and additional cash

²⁵ *Id.* ¶ 42.

²⁶ *Id.* ¶¶ 45–49.

²⁷ *Id.*

²⁸ *Id.* ¶ 51.

²⁹ *Id.* ¶ 53.

compensation in an undetermined amount.³⁰ By June 5, Pinczower had begun acting in the CEO role.³¹

On June 9, 2025, Shaw wrote to Black and Pinczower confirming his desire for Pinczower to replace Black as CEO, the award of an additional 9,700 shares to Pinczower, and anticipated additional cash compensation.³² During a recorded Company meeting later that day, Pinczower was formally introduced as Hava Nation's new CEO.³³ Black did not object to the change or the additional equity and, according to Pinczower, later expressed approval of the transition because it would allow Black to focus on the Company's branding and marketing efforts.³⁴

Two days later, Shaw attempted to terminate Pinczower.³⁵ Pinczower alleges that Shaw attempted to do so in retaliation for Shaw's unsuccessful effort to obtain shareholder control of Hava Nation.³⁶ Shaw also informed Black that he intended to withdraw the approximately \$960,000 remaining from his original investment,

³⁰ *Id.* ¶ 54.

³¹ *Id.* ¶ 55.

³² *Id.* ¶ 56.

³³ *Id.* ¶¶ 46, 57.

³⁴ *Id.* ¶ 57.

³⁵ *Id.*

³⁶ *Id.*

purportedly because he and Pinczower could not agree on the full scope of Pinczower's compensation as CEO.³⁷ Black later told Pinczower, both orally and in writing, that Shaw had acted unilaterally, and that Black had not consented to Pinczower's termination.³⁸

Pinczower thereafter made several demands for payment.³⁹ On June 12, 2025, he sent Shaw a \$50,000 invoice for legal services rendered in connection with Sabel's termination.⁴⁰ On June 15, Pinczower sent Shaw an initial demand for amounts due under the Employment Agreement.⁴¹ On June 17, he expanded that demand to seek the full amount allegedly due under his Employment Agreement.⁴² Also on June 17, Pinczower purported to impose an equitable lien on Sabel's 5,000 stock options based on unpaid legal fees arising from Sabel's termination.⁴³ On June 22, Pinczower sent Shaw another demand letter asserting that Shaw's 40,000 shares

³⁷ *Id.*

³⁸ *Id.* ¶ 61.

³⁹ *Id.* ¶ 60

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

would be subject to an equitable lien for unpaid legal fees and amounts allegedly due under Pinczower's Employment Agreement.⁴⁴

Meanwhile, Black failed to make the payments required under his April 24 loan agreement.⁴⁵ Pinczower alleges that the loan went into default in June 2025, accelerating the outstanding balance.⁴⁶

On June 24, 2025, approximately \$960,000 was transferred out of Hava Nation accounts without first satisfying the amounts Pinczower claimed were owed to him for legal fees, salary, bonus, severance, expenses, and other obligations.⁴⁷ Pinczower alleges that Black participated in or acquiesced in the transfer and personally received an undisclosed portion of the funds.⁴⁸ Shaw thereafter exited the Company.⁴⁹

Following Shaw's exit, Pinczower resubmitted to Black the payment demands he had previously made to Shaw and demanded that Black update Hava Nation's

⁴⁴ *Id.*

⁴⁵ *Id.* ¶ 34.

⁴⁶ *Id.*

⁴⁷ *Id.* ¶ 59.

⁴⁸ *Id.* ¶¶ 2, 69–70.

⁴⁹ *Id.* ¶¶ 15, 62.

capitalization records to recognize Pinczower's claimed equity interests.⁵⁰ Pinczower contends that through the enforcement of his asserted equitable liens against Shaw's shares and stock obtained from the Employment Agreement, he became Hava Nation's majority shareholder as of June 24.⁵¹

On June 26, 2025, Pinczower filed a petition with the United States Patent and Trademark Office ("USPTO") seeking cancellation of the pre-existing Hava trademark registration.⁵² Pinczower alleges that this work fell outside the scope of the services contemplated by his Employment Agreement.⁵³ On July 25, the USPTO cancelled the pre-existing Hava registration, and Pinczower later sought \$24,525 from Hava Nation for those services, alleging that the Company benefited from the cancellation.⁵⁴

Pinczower continued to assert rights concerning payment, equity, and capitalization tables against Hava Nation and Black.⁵⁵ His asserted liens ultimately

⁵⁰ *Id.* ¶ 62.

⁵¹ *Id.* ¶¶ 18, 80.

⁵² *Id.* ¶ 66.

⁵³ *Id.* ¶ 66.

⁵⁴ *Id.* ¶¶ 67–68.

⁵⁵ *Id.* ¶¶ 52, 59–65.

encompassed Sabel's 5,000 options, Shaw's 40,000 shares, and Black's shares.⁵⁶ On July 19, 2025, Pinczower served Black with a demand letter.⁵⁷ Five days later, Pinczower issued Black a final notice of lien and termination warning, providing Black with what Pinczower characterized as a final 24-hour opportunity to cure.⁵⁸

On July 25, 2025, claiming authority as Hava Nation's majority shareholder, Pinczower purported to terminate Black's employment, remove him from the board of directors, dismiss him as an officer, impose a lien on Black's shares, and invoke share-forfeiture provisions.⁵⁹ Pinczower thereafter updated the Company's capitalization tables to reflect Black's termination, the asserted lien against Black's shares, and the equity interests Pinczower claims should be registered in his personal name.⁶⁰

Despite his purported termination, Black continued to hold himself out as Hava Nation's CEO, director, and majority stockholder.⁶¹ Pinczower further alleges that Black engaged with the Company's Scottish whiskey supplier in violation of the

⁵⁶ *Id.* ¶ 52, 65, 81.

⁵⁷ *Id.* ¶ 63.

⁵⁸ *Id.* ¶¶ 19, 64.

⁵⁹ *Id.* ¶¶ 19–21, 65.

⁶⁰ *Id.* ¶¶ 65, 80–82.

⁶¹ *Id.* ¶ 23.

twelve-month non-compete provision in Black's employment agreement.⁶²

Although Pinczower contends that Black's termination became effective at 5:01 p.m. on July 25, written confirmation of the termination was sent to Black on August 4, 2025.⁶³ Black continued to dispute Pinczower's claimed share ownership and corporate authority, while Pinczower maintained that he was Hava Nation's sole lawful director.⁶⁴

Pinczower brings eleven direct and derivative claims against Black and Hava Nation.⁶⁵ Pinczower premises his derivative claims against Black on Black's alleged misuse of Company funds, participation in the June 24 defunding, failure to repay the \$100,000 Loan Agreement, and violation of his post-termination non-compete.⁶⁶ Pinczower claims that this conduct constitutes breach of fiduciary duty, an unlawful distribution under 8 *Del. C.* § 174, and breach of the loan agreement, and warrants imposing a constructive trust or equitable lien over the allegedly diverted funds.⁶⁷

⁶² *Id.*

⁶³ *Id.* ¶ 21.

⁶⁴ *Id.* ¶¶ 22–24, 83.

⁶⁵ *Id.* ¶¶ 69–88.

⁶⁶ *Id.* ¶¶ 69–70, 76–78.

⁶⁷ *Id.* ¶¶ 69–70, 76–77.

Pinczower premises his direct claims against Hava Nation principally on the alleged validity and breach of his Employment Agreement.⁶⁸ He claims that Hava Nation assented to and ratified the Employment Agreement through the parties' writings and conduct, but later breached the agreement by failing to pay his compensation, issue his shares and options, and properly terminate his employment.⁶⁹ In the alternative, Pinczower seeks recovery under theories of promissory estoppel and quantum meruit for the benefits Hava Nation allegedly received from his services.⁷⁰ He also seeks declaratory and injunctive relief recognizing his claimed equity interests and corporate positions.⁷¹

Counts I and II assert derivative claims against Black arising from his alleged misuse and diversion of Company funds.⁷² Counts III and IV seek a declaration that the Employment Agreement is valid and enforceable and assert breach of that agreement, respectively.⁷³ Counts V and VI plead promissory estoppel and quantum

⁶⁸ *Id.* ¶¶ 72–73.

⁶⁹ *Id.* ¶¶ 72–73.

⁷⁰ *Id.* ¶¶ 74–75.

⁷¹ *Id.* ¶¶ 72, 79–88.

⁷² *Id.* ¶¶ 69–70.

⁷³ *Id.* ¶¶ 72–73.

meruit in the alternative.⁷⁴ Counts VII through IX assert derivative claims seeking a constructive trust or equitable lien over allegedly diverted Company assets, enforcement of Black's loan agreement with Hava Nation, and enforcement of the non-compete provision in Black's employment agreement, respectively.⁷⁵ Finally, Counts X and XI seek declaratory and injunctive relief concerning Pinczower's claimed equity interests and rights as a Hava Nation stockholder, officer, and director.⁷⁶

Defendants moved to dismiss the Complaint in its entirety.⁷⁷ They contend that Pinczower's derivative claims fail because he did not initially comply with Rule 23.1, lacks stockholder standing, and independently fails to plead those claims adequately.⁷⁸ They separately seek dismissal of the direct claims premised on the Employment Agreement and contend that, if the remaining claims are dismissed, the Court lacks subject matter jurisdiction over Counts V and VI.⁷⁹

⁷⁴ *Id.* ¶¶ 74–75.

⁷⁵ *Id.* ¶¶ 76–78.

⁷⁶ *Id.* ¶¶ 79–88.

⁷⁷ D.I. 13.

⁷⁸ DOB pp. 20–24; 33–48; DRB pp. 1–3.

⁷⁹ DOB pp. 24–30, 48–51; DRB p. 30.

II. ANALYSIS

A. Pinczower Properly Cured the Rule 23.1 Procedural Defects.

When Pinczower sued, he did so *pro se* and without the affidavit required by Court of Chancery Rule 23.1. After oral argument, however, Pinczower was given 20 days to obtain Delaware counsel for his derivative claims and file the Rule 23.1 affidavit.⁸⁰ Pinczower cured these procedural defects when he filed a Rule 23.1(b) affidavit on July 2, and his counsel entered an appearance on July 6.⁸¹

B. Pinczower Failed to Effect Proper Service on Black.

Pinczower made four attempts to serve Black, who was then in Israel: in person, by email, through WhatsApp, and by registered mail. None effected service.

“In considering a 12(b)(2) motion, the court employs a two-step analysis: the court must first determine that service of process is authorized by statute and then must determine that the exercise of jurisdiction over the nonresident defendant comports with traditional due process notions of fair play and substantial justice.” *Sustainability Partners LLC v. Jacobs*, 2020 WL 3119034, at *5 (Del. Ch. Jun. 11, 2020) (citation modified). “When a defendant moves to dismiss a complaint pursuant to Court of Chancery Rule 12(b)(2), the plaintiff bears the burden of

⁸⁰ MTD Tr. 50:13–22.

⁸¹ D.I. 26; 27.

showing a basis for the court’s exercise of jurisdiction over the defendant.” *Ryan v. Gifford*, 935 A.2d 258, 285 (Del. Ch. 2007) (citing *Werner v. Miller Tech. Mgmt., L.P.*, 831 A.2d 318 (Del. Ch. 2003)). In ruling on a Rule 12(b)(2) motion where no evidentiary hearing has yet occurred, “plaintiffs need only make a *prima facie* showing of personal jurisdiction and the record is construed in the light most favorable to the plaintiff.” *Ryan v. Gifford*, 935 A.2d 258, 285 (Del. Ch. 2007) (citation modified).

Similarly, Court of Chancery Rule 12(b)(5) requires that personal jurisdiction be acquired through proper service of process. *Shurr v. Mun. City of Newark, Del.*, 2004 WL 332508, at *1 (D. Del. Jan. 28, 2004). Actual notice by a defendant without service of process will not suffice. *Id.* Thus, under Court of Chancery Rules 12(b)(2) and (5), “where a plaintiff has failed to obtain personal jurisdiction over each of the defendants through proper service of process, the case must be dismissed.” *Id.* at *2.

When service of process requires the transmission of judicial documents abroad, the Hague Service Convention applies. *Daskin v. Knowles*, 193 A.3d 717, 723 (Del. 2018). Article 5 of the Hague Service Convention (“Article 5”) provides for service through the destination state’s Central Authority, which serves the documents or arranges for their service by a method prescribed by the destination

state's internal law or, unless incompatible with that law, by a particular method requested by the applicant. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, art. 5, Nov. 15, 1965, 20 U.S.T. 361 [hereinafter Hague Service Convention].

Article 10 of the Hague Service Convention (“Article 10”) provides additional channels of transmission where the destination state does not object, including transmission through postal channels under Article 10(a) and certain forms of direct service through judicial officers, officials, or other competent persons under Articles 10(b) and (c). *Id.* at art. 10. Israel has declared that, for purposes of Articles 10(b) and (c), it will effect service only through its Directorate of Courts and only upon an application emanating from a judicial authority or the diplomatic or consular representation of a Contracting State. *See Israel – Declarations and Reservations*, Hague Service Conference on Private International Law, <https://www.hcch.net/en/notifications/?csid=405&disp=resdn> (last visited Oct. 1, 2026).

Delaware law separately governs the permissible methods of service. Court of Chancery Rule 4(d) permits personal service on an individual by delivering process personally, leaving process at the individual's dwelling with an appropriate resident, delivering process to an authorized agent, or serving process pursuant to a

Court order directing another or additional mode of service. 10 *Del. C.* § 3104(d) similarly provides that extraterritorial service, when reasonably calculated to give actual notice, may be made:

(1) By personal delivery in the manner prescribed for service within [Delaware]. (2) In the manner provided or prescribed by the law of the [destination state]. . . . (3) By any form of mail addressed to the person to be served and requiring a signed receipt. (4) As directed by a court.

10 *Del. C.* § 3104(d).

Pinczower attempts to serve Black by email and WhatsApp did not comply with these requirements. Neither method is authorized by Section 3104(d) absent a court order permitting an alternative mode of service, and Pinczower never sought or obtained such an order. Accordingly, Pinczower’s unilateral electronic transmissions did not effect service of process.⁸²

Pinczower’s attempted in-person service was likewise insufficient. Court of Chancery Rule 4(c)(1) provides that “[s]ervice of process means service of both the

⁸² In Plaintiff’s Answering Brief, Plaintiff relies on three cases to support his assertion that service was effectuated via email and WhatsApp: *FTC v. PCCare247, Inc.*, 2013 WL 841037, at *4–5 (S.D.N.Y. Mar. 7, 2013); *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1015–18 (9th Cir. 2002); and *Kumar v. Alhunaif*, 2023 WL 8527671, at *4–5 (S.D.N.Y. Dec. 8, 2023). Those cases do not support Plaintiff’s position. In each, the party seeking to effectuate service first sought leave to employ an alternative method of service – a step Plaintiff did not take here. Indeed, *Rio* explained that “a plaintiff may not generally resort to email service on [their] own initiative,” and distinguished itself from *WAWA, Inc. v. Christensen*, 1999 WL 557936, at *1 (E.D.Pa. July 29, 1999), where the plaintiff attempted service by email without first obtaining a court order. *Rio*, 284 F.3d at 1018.

summons and the complaint” and requires that “[t]he summons and complaint . . . be served together.” Ct. Ch. R. 4(c)(1). When Pinczower delivered the Complaint to Black on September 8, 2025, no summons had been issued. Pinczower acknowledges as much in his PAB and does not characterize the September 8 delivery as formal completion of service.⁸³ Thus, regardless of whether personal delivery otherwise complied with the Hague Convention or Section 3104, the September 8 delivery did not effect service because Pinczower did not serve Black with a summons.

Pinczower also attempted service by registered mail. Article 10(a) permits service through postal channels where the destination state has not objected and the otherwise-applicable law authorizes service by mail. *See Water Splash, Inc. v. Menon*, 581 U.S. 271, 284 (2017) (holding that Article 10(a) encompasses service by mail when the receiving state has not objected and service by mail is authorized under otherwise-applicable law). Israel has objected to Article 10(a) only with respect to documents addressed to the State of Israel, its political subdivisions, agencies, authorities, and instrumentalities, as well as certain government officials or agents. *See Israel – Declarations and Reservations*, Hague Service Conference

⁸³ PAB p. 34.

on Private International Law,
<https://www.hcch.net/en/notifications/?csid=405&disp=resdn> (last visited Oct. 1, 2026). Because Black is a private individual, Israel’s limited objection does not preclude service through postal channels in this case.

Delaware law permits extraterritorial service “[b]y any form of mail addressed to the person to be served and requiring a signed receipt.” 10 *Del. C.* § 3104(d)(3). Pinczower represents that he sent the summons and Complaint to Black by registered mail, and return receipt requested.⁸⁴ But he has produced no return receipt, proof of delivery, or other evidence that the mailing arrived. *Cf. VanGorder v. VanGorder*, 2026 WL 1758693, at *4 (Del. June 17, 2026) (reversing dismissal for insufficient service where certified mail was delivered and signed for by an agent and the trial court nevertheless required proof that the defendant personally received the mailing). Unlike *VanGorder*, the record here contains no evidence that Pinczower’s mailing was ever delivered. Accordingly, Pinczower has not established that his attempt at service by registered mail effectuated service on Black.

Pinczower separately argues that service on Hava Nation’s registered agent constituted valid statutory service on Black under 10 *Del. C.* § 3114.⁸⁵ Pinczower’s

⁸⁴ *Id.*

⁸⁵ *Id.* pp. 33–34.

reliance on Section 3114, however, is misplaced. Section 3114(a) provides that a nonresident who accepts directorship or serves as a director of a Delaware corporation is deemed to have consented to the corporation's registered agent acting as the director's agent for service of process. 10 *Del. C.* § 3114(a). That consent extends to actions involving the corporation in which the director is a necessary or proper party and actions against the director for violations of duties owed in that capacity. *Id.* To effect service under Section 3114, however, process must be served on the corporation's registered agent, and the Register in Chancery must then mail copies of the process to the corporation's principal place of business and the director's or officer's residence or last-known address. *See* 10 *Del. C.* § 3114(c); *ATO Enterprises of Delaware, LLC v. Cabrera*, 2022 WL 2678613, at *4 n.45 (Del. Ch. July 12, 2022).

Although Pinczower properly served Hava Nation through its registered agent, he did so under Section 3104.⁸⁶ Service on Hava Nation as a corporate defendant under Section 3104 does not, without more, constitute service on Black through Hava Nation's registered agent under Section 3114. Indeed, Sections 3104 and 3114 are "so different insofar as their function and purpose" that they cannot be

⁸⁶ *See* D.I. 9; D.I. 14 p. 3 (requesting that service be effectuated "pursuant to 9 [sic] Del. C. sec. 3104").

read as pertaining to the same subject matter. *Tabas v. Crosby*, 444 A.2d 250, 255 (Del. Ch. 1982). Here, the record does not reflect compliance with the procedure prescribed by Section 3114(c), including the required mailing by the Register in Chancery. Accordingly, Pinczower cannot rely on his service of Hava Nation under Section 3104 to establish service on Black under Section 3114, and the claims against Black are dismissed for insufficient service of process. But setting aside Pinczower’s procedural failings, his arguments fail on the merits of the Motion to Dismiss.

C. The Employment Agreement Did Not Become Binding.

It is well settled that under Court of Chancery Rule 12(b)(6) the complaint will be dismissed where the plaintiff would not be entitled to recovery “under any reasonably conceivable set of circumstances . . . susceptible of proof.” *Cent. Mort. Co. v. Morgan Stanley Mortg. Cap. Hldgs.*, 27 A.3d 531, 535-36 (Del. 2011). While the Court must accept all well-pleaded allegations as true, *id.*, it need not “accept conclusory allegations unsupported by specific facts . . . or draw unreasonable inferences in favor of the non-moving party.” *Price v. E.I. DuPont de Nemours & Co., Inc.*, 26 A.3d 162, 166 (Del. 2011), *overruled on other grounds by Ramsey v. Ga. S. Univ. Advanced Dev. Ctr.*, 189 A.3d 1255, 1277 (Del. 2018). The Court need

not “accept every strained interpretation of the allegations proposed by the plaintiff.”

Malpiede v. Townson, 780 A.2d 1075, 1083 (Del. 2001).

Taken together, Section 327 of Title 8 of the Delaware Code and Court of Chancery Rule 23.1 prescribe the two minimal requirements that must be met by a plaintiff seeking to initiate a derivative action: (1) that the plaintiff be a stockholder of the corporation at the time he commences the suit and (2) that the plaintiff continue to maintain their status as shareholder throughout litigation. *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 954 A.2d 911, 935 (Del. Ch. 2008) (internal citations omitted).

Pinczower claims that he is a Hava Nation stockholder through his Employment Agreement,⁸⁷ under which he was set to receive 5,000 shares of Hava Nation common stock, to be vested immediately upon execution of the agreement, and options to purchase an additional 5,000 shares.⁸⁸ As a preliminary matter of

⁸⁷ Compl. ¶¶ 9, 18, 43, 60, 80–82. The Complaint also appears to premise Pinczower’s stockholder status on purported equitable liens against shares held by Shaw, Black, and Sabel. See Compl. ¶ 80 (alleging that Pinczower became the “majority shareholder (by way of equitable lien against Shaw’s shares)”). Defendants challenged that theory in their Opening Brief. DOB pp. 30–33. In response, Pinczower clarifies that his invocation of equitable liens “concerns the remedy available after liability is established.” PAB p. 32. I therefore do not consider the purported liens as an independent basis for Pinczower’s stockholder status.

⁸⁸ Emp. Agrmt. § 4(a).

timing, even if the Employment Agreement had become binding on May 19, 2025, as Pinczower alleges, Black's March-April withdrawals precede that date.⁸⁹ Pinczower therefore lacks standing under Section 327 to pursue a derivative claim based on those withdrawals. Accordingly, Pinczower's standing to pursue derivative claims based on later conduct turns on whether the Employment Agreement became binding.

1. Texas Law Governs the Formation Issue for Purposes of the Motion.

The Employment Agreement provides that it “shall be governed and interpreted in accordance with Texas law.”⁹⁰ Because the existence of an enforceable Employment Agreement is itself disputed, however, I do not rely on that provision to determine the law governing contract formation. Instead, because Pinczower applies Texas law and Defendants, while reserving the choice-of-law issue, assume for purposes of the Motion to Dismiss that Texas law applies, I assume without deciding that Texas law governs Pinczower's contract claims.⁹¹

Under Texas law, a valid contract requires “(1) an offer; (2) acceptance in strict compliance with the terms of the offer; (3) a meeting of the minds; (4) each

⁸⁹ Compl. ¶¶ 31, 42–43.

⁹⁰ Emp. Agrmt. § 19.

⁹¹ PAB p. 25; DOB p. 24 n.2.

party's consent to the terms; and (5) execution and delivery of the contract with the intent that it be mutual and binding.” *Levetz v. Sutton*, 404 S.W.3d 798, 803 (Tex. App. 2013) (citing *Cessna Aircraft Co. v. Aircraft Network, L.L.C.*, 213 S.W.3d 455, 465 (Tex. App. 2006)). And “where an offer prescribes the time and manner of acceptance, those terms must ordinarily be complied with to create a contract.” *Padilla v. LaFrance*, 907 S.W.2d 454, 460 (Tex. 1995).

Mostly, mutual assent to a written contract is evidenced by the parties' signatures and delivery with the intent to bind, but neither is essential to contract formation. *Baylor Univ. v. Sonnichsen*, 221 S.W.3d 632, 635 (Tex. 2007); *Phillips v. Carlton Energy Grp., LLC*, 475 S.W.3d 265, 277 (Tex. 2015). Thus, “[a] contract need not be signed to be ‘executed’ unless the parties explicitly require signatures as a condition of mutual assent.” *Mid-Continent Cas. Co. v. Global Enercom Mgmt. Inc.*, 323 S.W.3d 151, 157 (Tex. 2010) (citations omitted). Whether a signature is required therefore turns on the parties' intent. If the parties unconditionally assent to the terms of an agreement, the absence of a signature does not prevent contract formation; but if they intend that the agreement be signed before becoming binding, no contract arises until that condition occurs. *Simmons & Simmons Constr. Co. v. Rea*, 286 S.W.2d 415, 418 (Tex. 1955). Whether the parties intended formal execution as a prerequisite to contract formation is ordinarily a question of fact,

although in appropriate circumstances that issue may be resolved as a matter of law.

Foreca, S.A. v. GRD Dev. Co., Inc., 758 S.W.2d 744, 746 (Tex. 1988); *Scaife v. Associated Air Ctr., Inc.*, 100 F.3d 406, 410–11 (5th Cir. 1996).

In determining whether the parties intended a written agreement to be binding before formal execution, the Texas Supreme Court has looked at the circumstances identified in Section 27 of the Restatement (Second) of Contracts. *Foreca, S.A. v. GRD Dev. Co., Inc.*, 758 S.W.2d 744, 746 n.2 (Tex. 1988). Those circumstances include:

the extent to which express agreement has been reached on all the terms to be included; whether the contract is of a type usually put in writing; whether it needs a formal writing for its full expression; whether it has few or many details; whether the amount involved is large or small; whether it is a common or unusual contract; whether a standard form of contract is widely used in similar transactions; and whether either party takes any action in preparation for performance during the negotiations.

Restatement (Second) Of Contracts § 27 cmt. c (A.L.I. 1981).

a. The /s/ Notation Does Not Establish Execution of the Employment Agreement.

Pinczower first argues that the Employment Agreement was executed because its signature page contains typed /s/ notations above the signature line for both

Pinczower and Shaw.⁹² Below is an image of the Employment Agreement’s signature page.⁹³ Pinczower alleges that this represents the signed version:

IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date and year first above written.

Hava Nation Corp.

By: /s/

Neil Shaw,

Director and Seed Investor

Executive:

/s/

Eliyahu (Larry) Pinczower

Notably, the Employment Agreement expressly calls for execution by “actual or facsimile signature.”⁹⁴ Pinczower claims that the /s/ notation constitutes an electronic signature under the Texas Uniform Electronic Transactions Act and that an electronic signature satisfies the Employment Agreement’s requirement of an

⁹² PAB pp. 14 n.16, 25.

⁹³ Compl. Ex. N at 16.

⁹⁴ Emp. Agrmt. § 17.

“actual or facsimile signature.”⁹⁵ I need not decide whether an electronic signature constitutes an “actual” signature under the Employment Agreement because Pinczower’s argument fails at an earlier step.

Texas defines an “electronic signature” as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” TEX. BUS. & COM. CODE § 322.002(8). Thus, the mere presence of an electronic symbol on a document does not establish that it is the identified person’s electronic signature. Instead, the symbol must have been executed or adopted by that person with the intent to sign the record. Section 322.009 similarly provides that an electronic signature is attributable to a person “if it was the act of the person,” which may be shown in any manner. *Id.* § 322.009(a). The effect of an attributed signature is determined from “the context and surrounding circumstances at the time of its creation, execution, or adoption.” *Id.* § 322.009(b).

Pinczower concedes that he was the one who placed the /s/ notation above Shaw’s signature block.⁹⁶ Shaw therefore did not place the notation himself.

⁹⁵ PAB pp. 14 n.18, 25; Emp. Agrmt. § 17.

⁹⁶ MTD Tr. 42:17–21 (“With regards to Your Honor’s specific question as to the existence of the /s/ for the signatures, that was typed in by plaintiff on both the plaintiff’s side as well as the company’s side and was ratified, once again, by Mr. Shaw.”).

Pinczower nevertheless contends that Shaw subsequently “ratified” the notation.⁹⁷

To the extent Pinczower contends that Shaw adopted the /s/ notation as his electronic signature, Texas law requires that Shaw have done so “with the intent to sign the record.” *Id.* § 322.002(8). The surrounding circumstances do not support such a conclusion. After Pinczower supplied Shaw with a redlined draft of the Employment Agreement, Shaw replied: “Thanks. Works for me, including 4a. I suggest dating the PDF Monday, May 19 and I’ll sign on that date.”⁹⁸ Shaw’s statement that he would sign the Employment Agreement on May 19 contemplates a future act of signing rather than the adoption of the /s/ notation already placed there by Pinczower. Accordingly, the /s/ notation does not establish that Shaw electronically signed the Employment Agreement.

b. The Parties Contemplated Execution as the Means of Manifesting Assent.

Having concluded that the typed notations do not establish execution of the Employment Agreement, I turn to whether the parties nevertheless intended to be bound in the absence of their signatures. The Fifth Circuit confronted a similar question in *Scaife v. Associated Air Ctr., Inc.*, 100 F.3d 406 (5th Cir. 1996).

⁹⁷ PAB pp. 14–15, 25–26.

⁹⁸ Shaw Email.

In *Scaife*, the Fifth Circuit considered whether parties negotiating the renovation of an aircraft intended to be bound before formal execution of their written agreement. 100 F.3d at 406–08. The negotiations began when Scaife began soliciting bids for the renovation, and Associated Air Center (“AAC”) sent Scaife’s chief pilot a proposal accompanied by a letter requesting that he execute the agreement and “return one fully executed copy.” *Id.* at 407.

Negotiations ensued, and the proposed agreement underwent several revisions. *Id.* at 407–08. Although the anticipated execution date passed without an executed agreement, Scaife deposited \$800,000 into his bank account in anticipation of the first installment, prepared a check payable to AAC, arranged three months of lodging for his chief pilot, and informed two competing bidders that he had selected AAC for the renovation. *Id.* at 411.

When Scaife’s counsel eventually asked why AAC had not sent the agreement for execution, AAC disclosed that concerns had arisen regarding the scope of the proposed work and asked whether Scaife would consider changes to reduce AAC’s costs. *Id.* at 408. Scaife declined and insisted that AAC honor the negotiated, but unsigned, agreement. *Id.* No version of the agreement was ultimately delivered and signed by both parties, and Scaife sued after AAC refused to perform. *Id.* at 408, 411.

The Fifth Circuit held that the evidence offered established “that the parties intended to manifest their assent through a formal written contract signed by both parties.” *Id.* at 411. Several features of the proposed agreement informed that conclusion. The proposal contained signature blocks and provided:

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative at Dallas, Texas, on the date first above written.

Id. The agreement also made one-third of the contract price due upon signing and prohibited modification except by a writing signed by both parties. *Id.* at 410. And the parties’ communications continued to contemplate future execution of the agreement. *Id.* at 410–11. Taken together, these circumstances demonstrated that the parties intended formal execution, rather than agreement on the negotiated terms alone, to manifest their assent. *Id.* at 411.

The court arrived at this conclusion notwithstanding Scaife’s conduct in anticipation of performance. Although Scaife had deposited funds, prepared a check, arranged lodging, and rejected other bidders, those actions did not demonstrate that AAC intended to be bound absent execution. Instead, the Fifth Circuit reasoned that “[n]o evidence show[ed] that AAC began work on the aircraft or acted in any affirmative manner to assent to the agreement notwithstanding the lack of delivery and formal execution of the contract.” *Id.* at 411.

Here, unlike in *Scaife*, Pinczower alleges that he performed under the Employment Agreement and that Hava Nation accepted his performance.⁹⁹ That said, Pinczower's performance and Hava's acceptance of his services still must be considered alongside the evidence of how the parties intended to manifest assent to the Employment Agreement. Several features of the Employment Agreement resemble those in *Scaife*.

The Employment Agreement contained signature blocks.¹⁰⁰ The signature page contains the following clause:

IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date and year first above written.¹⁰¹

The Employment Agreement included a \$6,250 signing bonus due within 48 hours of signing.¹⁰² The Employment Agreement contemplated that any discharge, modification, waiver, or termination be evidenced by a signed writing.¹⁰³ Further, the Employment Agreement states that "[t]he execution of [the Employment Agreement] may be by actual or facsimile signature."¹⁰⁴ These provisions are much

⁹⁹ Compl. ¶¶ 45–49, 72; PAB pp. 22–23.

¹⁰⁰ Emp. Agrmt. p. 16.

¹⁰¹ *Id.*

¹⁰² *Id.* § 23.

¹⁰³ *Id.* § 20.

¹⁰⁴ *Id.* § 17.

like the evidence of intent relied upon in *Scaife*. Like the agreement there, the Employment Agreement contained signature blocks and execution language, tied a payment obligation to signing, and required certain future changes to be memorialized in a signed writing. Taken together, these provisions establish that the parties contemplated signing as the means by which they would manifest assent.

The parties' contemporaneous communications further support that conclusion. As discussed above, after receiving the final draft, Shaw responded: "Thanks. Works for me, including 4a. I suggest dating the PDF Monday, May 19 and I'll sign on that date."¹⁰⁵ Pinczower characterizes "Works for me" as Shaw's acceptance of the Employment Agreement.¹⁰⁶ But Shaw's response distinguishes between agreement on the terms and the contemplated act of execution. His statement that the terms "[w]ork[] for me" was immediately followed by his statement that "I'll sign on that date." As in *Scaife*, the Shaw's response, therefore contemplated signature as the means of manifesting assent, notwithstanding their agreement on the terms.

¹⁰⁵ Shaw Email.

¹⁰⁶ PAB pp. 13–14, 25–26.

That conclusion does not end the inquiry. Pinczower relies on the parties' conduct both before and after May 19 as evidence that Hava assented to the Employment Agreement notwithstanding the contemplated execution.¹⁰⁷

c. The Waiver and Indemnification Agreement Do Not Establish Assent to the Employment Agreement.

On May 8, 2025, Pinczower and Black executed a waiver and consent letter (the "Waiver").¹⁰⁸ In the Waiver, Pinczower disclosed potential conflicts arising from his prior representation of Black and sought Black's informed consent to Pinczower representing Hava Nation or Shaw.¹⁰⁹ Black signed the Waiver, thereby acknowledging his consent to Pinczower joining Hava Nation as legal counsel and waiving potential conflicts arising from Pinczower's prior representation of Black.¹¹⁰ Pinczower nevertheless relies on the Waiver as evidence that Hava Nation assented to the Employment Agreement because Black and Shaw then constituted Hava Nation's board.¹¹¹

¹⁰⁷ PAB pp. 14–18, 25–26.

¹⁰⁸ Waiver; Compl. ¶ 37.

¹⁰⁹ Waiver.

¹¹⁰ Waiver; Compl. ¶ 37.

¹¹¹ PAB pp. 14–15, 25–26.

The Waiver does not support that inference. It does not purport to execute or approve the Employment Agreement, nor does it reference the Employment Agreement or its compensation and equity terms. Instead, Black consented to Pinczower joining Hava Nation as legal counsel for purposes of addressing the potential conflicts identified in the Waiver.¹¹² And the Employment Agreement called for execution by Shaw and Pinczower—not Black. Black’s execution of the Waiver therefore does not satisfy the contemplated execution of the Employment Agreement.

The timing of the Waiver further undermines Pinczower’s reliance on it as evidence of assent to the Employment Agreement. Black executed the Waiver on May 8, before Shaw’s May 19 email stating, “Works for me, including 4a. I suggest dating the PDF Monday, May 19 and I’ll sign on that date.”¹¹³ That communication indicates that the parties were addressing the terms of the Employment Agreement after Black executed the Waiver. Thus, even assuming Black’s execution of the Waiver could evidence assent to the Employment Agreement, it does not establish

¹¹² Waiver; *see also* Compl. ¶ 37. Black was giving his informed consent to a conflict of interest, not executing the Employment Agreement.

¹¹³ Waiver; Shaw Email; *see* Compl. ¶¶ 37, 52.

his assent to the terms of the Employment Agreement subsequently presented to Shaw for execution.

Pinczower also points to a May 23 indemnification agreement (the “Indemnification Agreement”), which he drafted, as evidence that Shaw had already assented to the Employment Agreement and subsequently ratified it.¹¹⁴ The Indemnification Agreement provides Pinczower with additional protection related to his assistance in Sabel’s termination and potential resulting litigation.¹¹⁵ It also memorializes Shaw’s invitation for Pinczower to join Hava Nation as legal counsel and contemplates responsibilities Pinczower would undertake in that role.¹¹⁶

The Indemnification Agreement was executed four days after Shaw’s May 19 email and therefore provides some evidence that Shaw continued to contemplate Pinczower joining Hava Nation as legal counsel.¹¹⁷ It confirms Shaw’s invitation for Pinczower to replace Sabel as general counsel and describes responsibilities that overlap with the Employment Agreement’s job description.¹¹⁸ Pinczower argues

¹¹⁴ Indem. Agrmt.; Compl. ¶¶ 38–40; PAB pp. 14–15, 25–26.

¹¹⁵ Indem. Agrmt.; Compl. ¶ 38.

¹¹⁶ Indem. Agrmt.; Compl. ¶ 38.

¹¹⁷ Indem. Agrmt.; Shaw Email; Compl. ¶¶ 38, 42.

¹¹⁸ Indem. Agrmt.; Emp. Agrmt.

that these similarities, together with the timing of the Indemnification Agreement, evidence Shaw’s ratification of the Employment Agreement.¹¹⁹

But the Indemnification Agreement does not reference or incorporate the Employment Agreement, state that the Employment Agreement had been executed or become effective, or expressly adopt its terms.¹²⁰ Instead, it states, “You confirm that at this time you initiated to me a *formal invitation* to join the Company as legal counsel and liaison”¹²¹ Pinczower acknowledges the Indemnification Agreement’s prospective language but attributes it to the parties executing several documents in a different sequence than originally contemplated.¹²² Even accepting that explanation, the Indemnification Agreement objectively confirms Shaw’s invitation for Pinczower to serve as Hava Nation’s legal counsel; it does not connect that relationship to the terms of the Employment Agreement. Nor does it suggest that Shaw intended his execution of the Indemnification Agreement to substitute for his contemplated execution of the Employment Agreement.

¹¹⁹ PAB pp. 14–15.

¹²⁰ Indem. Agrmt.

¹²¹ *Id.*; see also Compl. ¶ 38.

¹²² PAB p. 15 n.20.

d. Hava Nation’s Subsequent Conduct Does Not Establish Assent to the Employment Agreement.

Pinczower further argues that Hava Nation’s subsequent conduct ratified the Employment Agreement.¹²³ It does not. As the Texas Supreme Court has explained, “[i]t is the undoubted rule that where the contract contemplates the execution of it by signing either party has the right to insist upon the condition, and mere acts of performance upon the part of one who has not signed will not validate the contract.” *Simmons & Simmons Const. Co. v. Rea*, 286 S.W.2d 415, 418 (Tex. 1955) (quoting 1 *Williston on Contracts*, p. 59, s 28.28a). Where signing is a condition of assent, the relevant inquiry is whether the party’s subsequent “acts, words or conduct” reasonably give rise to an inference that the party nevertheless intended to assent to the agreement in the absence of the contemplated signature or “intended to waive signing as a condition of such assent.” *Id.* at 419.

Simmons illustrates this principle. There, a general contractor and subcontractor agreed on the essential terms of a subcontract, which the general contractor reduced to a formal written agreement. *Id.* at 416. The agreement provided for signatures by both parties and required the subcontractor to furnish a performance bond “after signing.” *Id.* The general contractor instructed the subcontractor to obtain the bond,

¹²³ *Id.* pp. 15–18, 26.

sign the agreement, and return it for the general contractor's signature. *Id.* Although the subcontractor complied, the general contractor declined to sign the agreement. *Id.* The Texas Supreme Court held that the circumstances demonstrated that the general contractor intended signing to be a condition of its assent. *Id.* at 418-19. In reaching that conclusion, the court reasoned that nothing in the general contractor's "acts, words or conduct" reasonably gave rise to an inference that it "intended to assent to the instrument in the absence of the signatures of the parties or that [it] intended to waive signing as a condition of such assent." *Id.* at 419.

The same reasoning applies here. As explained above, the parties contemplated signatures as a condition of assent to the Employment Agreement. Pinczower nevertheless points to his subsequent performance and Hava Nation's acceptance of his services, including his performance of general counsel duties, Hava Nation's identification of him as its legal counsel in dealings with outside counsel, and his later promotion to CEO.¹²⁴ Those allegations reasonably support an inference that Hava Nation authorized Pinczower to perform services on its behalf and accepted those services. But they do not reasonably support the further inference that Hava Nation intended to assent to the Employment Agreement notwithstanding

¹²⁴ *Id.*

the absence of the contemplated signatures or intended to waive signing as a condition of that assent. *See Simmons*, 286 S.W.2d at 419.

Most importantly, the alleged conduct does not objectively connect Pinczower's performance to the Employment Agreement. In *Simmons*, the Texas Supreme Court distinguished *Girard Life Insurance, Annuity & Tr. Co. v. Cooper*, where the parties had agreed upon the terms of a construction contract and the contractor was expressly directed to proceed with the work. 162 U.S. 529, 543 (1896). The contractor then completed the work in accordance with the agreed-upon plans and specifications. *Id.* at 540, 543. Under those circumstances, the Supreme Court concluded that the parties had reached an agreement before performance began and that "the preparation and signing of a formal writing would only have called into existence additional evidence of the fact." *Id.* at 543; *see Simmons*, 286 S.W.2d at 418-19 (distinguishing *Girard*).

Here, by contrast, Pinczower does not allege that Hava Nation directed him to perform under an already-completed agreement or subsequently represented that the Employment Agreement had become effective. Although Hava Nation's conduct may demonstrate that Pinczower performed services for the Company and that the Company accepted those services, it does not, without more, reasonably support an

inference that Hava Nation thereby dispensed with the contemplated execution and assented to the terms of the Employment Agreement.

Pinczower claims that his performance of general counsel duties, Hava Nation's acceptance of those services, the Company's dealings with outside counsel through Pinczower, and his subsequent promotion to CEO and invitation to join the Board evidence assent to the Employment Agreement.¹²⁵ These actions, taken together, do not reasonably support an inference that Hava Nation intended to assent to the Employment Agreement notwithstanding the absence of the contemplated signatures or intended to waive signing as a condition of that assent. None of that conduct references the Employment Agreement, represents that it had become effective, or otherwise objectively connects Hava Nation's acceptance of Pinczower's services to the terms of the Employment Agreement.

Because the Employment Agreement never became binding, Pinczower cannot obtain a declaration that the Employment Agreement is valid and enforceable or maintain a claim for breach of that argument. Counts III and IV are therefore dismissed.

D. Pinczower Cured His Rule 23.1 Procedural Defects but Lacks Derivative Standing.

¹²⁵ *Id.*

A more fundamental defect remains: Pinczower is not a Hava Nation stockholder. “Section 327 is clear that stock ownership at the time of challenged conduct is a prerequisite to maintaining a derivative action” *Desimone v. Barrows*, 924 A.2d 908, 927 (Del. Ch. 2007).

Pinczower’s remaining claim to stockholder status rests on the Employment Agreement, which provided for 5,000 shares to vest immediately upon execution.¹²⁶ Still, the Employment Agreement never became binding because the parties did not execute it in the manner they contemplated. Because the Employment Agreement never became binding, it did not confer the shares on which Pinczower bases his stockholder status. He therefore lacks standing to pursue his derivative claims, and Counts I, II, VII, VIII, and IX are dismissed.

E. Counts X and XI Fail Because Pinczower Has No Enforceable Right to the Equity Interests or Corporate Positions He Claims.

Counts X and XI rest on Pinczower’s asserted ownership of Hava Nation equity and his purported status as a Hava Nation officer and director.¹²⁷ Count X seeks declarations confirming Pinczower’s ownership of the shares, stock options, liens, and equity interests reflected in his capitalization-table updates.¹²⁸ Count XI,

¹²⁶ Emp. Agrmt. § 4(a); Compl. ¶¶ 9, 43(B).

¹²⁷ Compl. ¶¶ 79–88.

¹²⁸ *Id.* ¶¶ 80–84.

in turn, seeks injunctive relief preventing Defendants from interfering with his asserted rights as a stockholder, officer, and director, as well as enforcement of a non-compete provision.¹²⁹ To the extent Counts X and XI depend on equity promised under the Employment Agreement, they fail for the reasons already explained: the agreement never became binding and thus conferred no shares or options to Pinczower.

Pinczower also claims ownership of Hava Nation equity through “equitable liens” that he purported to impose on shares and options held by Sabel, Shaw, and Black.¹³⁰ Title 8 Section 324 provides a statutory procedure for attaching shares of stock to satisfy a debt or other demand. When a debtor appears on a corporation’s books as holding or owning shares, options, or an interest therein, those interests may be attached under § 324. 8 *Del. C.* § 324(a). The attachment process is served on an officer, director, or registered agent of the corporation, after which the corporation must certify the interests its books reflect as belonging to the debtor. *Id.* § 324(b). Any eventual sale requires a court order, and no order of sale may issue until entry of a final judgment. *Id.* § 324(a). Only after the resulting sale is completed and confirmed does the purchaser become entitled to the shares or other

¹²⁹ Compl. ¶¶ 86–88.

¹³⁰ *Id.* ¶¶ 18, 52, 60, 65, 80–81.

interests sold. *Id.* § 324(c). And a valid equitable lien does not grant the lienholder the ability to vote the shares.

Pinczower followed none of these procedures. Instead, he purported to impose “equitable liens” unilaterally on Sabel’s, Shaw’s, and Black’s equity interests and afterward treated those liens as conferring ownership upon himself. Even assuming Pinczower possessed a debt or other demand that could support attachment of those interests, nothing in § 324 permits a creditor to obtain ownership of another person’s shares merely by declaring a lien against them.

Nor do the allegations support Pinczower’s claimed status as a Hava Nation officer or director. Although Shaw invited Pinczower to join the Board and sought to replace Black with Pinczower as CEO, the Complaint does not allege that Pinczower was elected to the Board as required by Hava Nation’s bylaws.¹³¹ Likewise, the bylaws provide that Hava Nation’s executive officers “shall be chosen by the Board of Directors” and require the primary terms of an officer’s employment to be set forth in an employment agreement between the officer and the Company. The Complaint does not allege that the Board took formal action to appoint

¹³¹ *Id.* ¶¶ 53–57; *see also* Compl. Ex. I.

Pinczower as CEO, and, as explained above, Pinczower never entered into a binding Employment Agreement with Hava Nation.

Thus, the predicates underlying Counts X and XI fail. Pinczower did not acquire the shares or options contemplated by the Employment Agreement, his purported liens did not confer ownership of the shares held by others, and he was neither elected a Hava Nation director nor appointed CEO in accordance with the Company's bylaws. Counts X and XI are therefore dismissed.

F. The Court Retains Subject-Matter Jurisdiction Over Pinczower's Promissory Estoppel and Quantum Meruit Claims.

In Counts V and VI, Pinczower pleads promissory estoppel and quantum meruit in the alternative and seeks compensation for services he allegedly provided to Hava Nation.¹³² Defendants do not seek dismissal of Counts V and VI on the merits, but argue that if the Court dismisses Pinczower's other claims, Counts V and VI should be dismissed for lack of subject-matter jurisdiction because they seek purely legal relief.¹³³ The dismissal of those claims, however, would not necessarily deprive the Court of jurisdiction over Counts V and VI.

¹³² Compl. ¶¶ 74–75.

¹³³ DRB p. 30.

A Court of Chancery Rule 12(b)(1) motion to dismiss will be granted “if it appears from the record that the Court does not have jurisdiction over the claim.” *Duff v. Innovative Discovery LLC*, 2012 WL 6096586, at *4 (Del. Ch. Dec. 7, 2012) (citation modified). The Court of Chancery can acquire subject matter jurisdiction over a case in three ways: “(1) the invocation of an equitable right; (2) a request for an equitable remedy when there is no adequate remedy at law; or (3) a statutory delegation of subject matter jurisdiction.” *Israel Disc. Bank of N.Y. v. First State Depository Co.*, 2012 WL 4459802, at *4 (Del. Ch. Sep. 7, 2012) (citing *ASDC Hldgs., LLC v. Richard J. Malouf 2008 All Smiles Grantor Annuity Trust*, 2011 WL 4552508, at *4 (Del. Ch. Sep. 14, 2011)). The plaintiff bears the burden of establishing jurisdiction. *Israel Disc. Bank of N.Y. v. First State Depository Co.*, 2012 WL 4459802, at *4 (Del. Ch. Sep. 7, 2012).

Once the court has subject matter jurisdiction over at least one claim, it may exercise jurisdiction over related legal claims under the cleanup doctrine. *Darby Emerging Markets Fund, L.P. v. Ryan*, 2013 WL 6401131, at *8 (Del. Ch. Nov. 27, 2013). The cleanup doctrine “provides the Court of Chancery with jurisdiction to resolve purely legal causes of action that are before it as part of the same controversy over which the Court originally had subject matter jurisdiction in order to avoid piecemeal litigation.” *Kraft v. WisdomTree Investments, Inc.*, 145 A.3d 969, 974

(Del. Ch. 2016). The cleanup doctrine may be invoked for a variety of reasons, including avoiding multiplicity of suits, promoting judicial efficiency, and affording complete relief in one action. *Darby Emerging Markets Fund, L.P.*, 2013 WL 640113, at *8.

Wal-Mart Stores, Inc. v. AIG Ins. Co. is particularly informative. 2006 WL 3742596 (Del. Ch. Dec. 12, 2006). There, the Court of Chancery considered whether it retained jurisdiction over Wal-Mart's sole remaining legal claim after the Delaware Supreme Court affirmed the dismissal of Wal-Mart's equitable claims. *Id.* at *2–3. The Court retained jurisdiction for reasons of “efficiency and judicial economy,” reasoning that its jurisdiction over a controversy is generally determined at the time the complaint is filed and remains unaffected by post-complaint developments. *Id.* at *3 (quoting *Giordano v. Marta*, 1999 WL 350493, at *2 (Del. Ch. Apr. 28, 1999)). *Wal-Mart* thus illustrates that the subsequent dismissal or mootness of equitable claims does not automatically divest the Court of jurisdiction over remaining legal claims.

While Defendants are correct that Counts V and VI seek purely legal relief, the Court should nevertheless retain jurisdiction over those claims for reasons of judicial efficiency under the cleanup doctrine. At the time the Complaint was filed, Pinczower asserted eleven distinct causes of action, several of which directly invoke

the Court's equitable jurisdiction.¹³⁴ Count I asserts a claim for breach of fiduciary duty; Count VII seeks to impose a constructive trust; Count IX seeks injunctive relief for violation of a non-compete provision; and Count XI, seeks injunctive relief enforcing Pinczower's alleged share-ownership rights and the non-compete provision.¹³⁵ Because the Complaint invoked equitable jurisdiction when filed, the subsequent dismissal of those claims does not automatically require dismissal of the related legal claims in Counts V and VI. The Court will therefore exercise its discretion under the cleanup doctrine to retain them in the interest of judicial efficiency.

III. CONCLUSION

For the reasons explained above, I recommend that Counts V and VI not be dismissed and that the remaining counts be dismissed. This is a report pursuant to Court of Chancery Rule 144.

Sincerely,

/s/ David Hume, IV

David Hume, IV
Magistrate in Chancery

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

¹³⁴ Compl. ¶¶ 69–88.

¹³⁵ *Id.* ¶¶ 69, 76, 78, 85–88.