

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

DANIELLE GIBBS
MAGISTRATE IN CHANCERY

LEONARD L. WILLIAMS JUSTICE CENTER
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

October 13, 2026

Jenisha S. Likansis
803 Fairview Lane
Cliffside Park, NJ 07010

Lauren E.M. Russell, Esquire
Andrew M. Moshos, Esquire
Potter Anderson & Corroon LLP
1313 N. Market St.
Wilmington, DE 19801

Re: *Jenisha S. Likansis v. Walmart Inc., et al.*,
C.A. No. 2025-1455-DG

Dear Ms. Likansis and Counsel:

I write regarding the parties' cross-motions for summary judgment on the issue of Plaintiff's entitlement to mandatory advancement by Defendant Walmart Inc. ("Walmart") under its Bylaws. For the reasons discussed below, I deny Plaintiff's motion and grant Walmart's.

I. BACKGROUND

Plaintiff began working for Walmart Connect in or around April 2022.¹ Walmart Connect is a division of Walmart.² Plaintiff's offer letter describes

¹ Compl. ¶ 15, Dkt. 1.

² Def.'s Answering Br. in Opp'n to Pl.'s Mot. for Summ. J. & Opening Br. in Supp. of Def.'s Cross-Mot. for Summ. J. ("DAB") 21, Dkt. 20; *see also* Pl.'s Opening Br. in Supp. of Mot. for Summ. J. ("POB") 18, Dkt. 16 ("Walmart Connect is not a

her employer as “Wal-Mart.com USA, LLC.”³ Wal-Mart.com USA, LLC (“Walmart LLC”) is an independent entity with its own governing agreement.⁴

Plaintiff’s initial job title was Director, Business Operations – Business Management.⁵ Effective January 26, 2023, Plaintiff assumed an additional title and additional duties: “Chief of Staff to Rich [Lehrfeld]” (“Mr. Lehrfeld”).⁶ Plaintiff alleges that she was appointed to the chief-of-staff role by Mr. Lehrfeld, whom Plaintiff contends was at all relevant times the

separate Delaware entity and instead is part of Walmart’s broader operating structure.”) (citing Def.’s Answer 1 n.1, Dkt. 12). There is no evidence in the record suggesting that Walmart Connect has independent interest holders, appointed or elected officers or directors, or a separate governing agreement.

³ POB Exs., at 63, Dkt. 18 (“We are pleased to confirm our offer to you for the position of Director, Business Operations – Business Management with Wal-Mart.Com Usa, Llc[.]”); Def.’s Reply Br. in Supp. of Def.’s Cross-Mot. for Summ. J. (“DRB”) 12, Dkt. 25.

⁴ *See generally* Moshos Decl. Ex. B (“Operating Agreement”), Dkt. 32. The Operating Agreement became part of the record when Defendants submitted it, after trial, in response to a question raised by the Court. *See* Dkt. 32; *see also* Oral Arg. Tr. 26:9–27:17, Dkt. 35.

⁵ POB Exs., at 63. Plaintiff alleges that her “Director” title at Walmart Connect was an “executive employment designation” and clarifies that her advancement rights arise out of “her capacity as an officer-level member of Walmart Connect[] . . . , not as a Board director.” Compl. ¶ 20.

⁶ POB Exs., at 67. The parties dispute whether this was a “promotion.” *Contrast* Compl. ¶ 16 *with* DAB 17, 23.

“CEO/General Manager” of Walmart Connect.⁷ She alleges that her new duties were “officer-like.”⁸ There is no evidence that Plaintiff’s employing entity changed in connection with the new title and duties. In or around July 2024, Plaintiff was laid off as part of a reduction-in-force.⁹

In July 2025, a former Walmart employee filed a lawsuit in the Superior Court of New Jersey, Hudson County, against Walmart Connect, Walmart, Plaintiff and other parties, alleging workplace discrimination (the “Underlying Action”).¹⁰ Plaintiff initially sought advancement of her legal fees and expenses in the Underlying Action through a cross-claim against

⁷ See Oral Arg. Tr. 34:11–12; *see also* Compl. ¶ 16. In briefing, Plaintiff began referring to Mr. Lehrfeld simply as “the CEO.” But for purposes of mandatory advancement under the Bylaws, the relevant CEO is the CEO of Walmart. Defendants have established that Mr. Lehrfeld is not the CEO of Walmart. DAB 16 (relying on Walmart’s SEC filings); *see* DAB Moshos Aff. Exs. B–D, Dkt. 20.

⁸ POB 8. Plaintiff contends that Walmart’s answer in the underlying action admits that Plaintiff “served in a supervisory capacity and had supervisory and managerial authority over” the plaintiff of the underlying action. POB 9 (referencing the language from the amended complaint in the underlying action); POB Exs., at 51. The Court does not read the language that way. Defendants denied such allegation as a legal conclusion but admitted that Plaintiff was a “Walmart supervisor” to the extent that the allegation is factual in nature. POB Exs., at 58. In any event, the Court must first determine what the Bylaws recognize as an officer covered by the mandatory advancement provision.

⁹ POB 10.

¹⁰ Compl. ¶ 22; *see generally* Compl. Ex. D, Dkt. 1. Plaintiff contends that Defendants concealed the litigation and deprived her of “the opportunity to timely secure counsel and prepare her defense.” POB 10.

Walmart.¹¹ Walmart did not advance those amounts but instead offered to provide Plaintiff with defense counsel on multiple occasions.¹² Plaintiff declined the offer because she believed that counsel paid by Walmart was “conflicted” and would not serve her best interests; Plaintiff thus wished to choose her own counsel.¹³

On December 15, Plaintiff filed a Verified Complaint for Advancement in this Court.¹⁴ On March 10, 2026, Plaintiff filed a motion for summary judgment seeking an order of entitlement to mandatory advancement of fees and expenses.¹⁵ Defendants filed a cross-motion for summary judgment two weeks later.¹⁶

¹¹ Compl. ¶ 37. Plaintiff withdrew her request after Walmart argued that the claim needed to proceed in Delaware. Compl. ¶¶ 38–40.

¹² See POB Exs., at 33, 44, 46–47. Walmart concedes that Plaintiff is eligible for permissive advancement and argues that the conditions of permissive advancement are within Walmart’s sole discretion. DAB 24, 27.

¹³ See Compl. ¶¶ 34–36. Plaintiff misconstrues Walmart-recommended counsel’s explanation that he has been retained in cases involving “an actual or alleged conflict between Walmart and one of its former employees, where both Walmart and the employee are named as defendants[.]” See POB Exs., at 44. Plaintiff’s belief that conflicted counsel will be “under Walmart’s control” stems from a misunderstanding of attorneys’ ethical rules. See POB 12. Lawyers owe duties to their client regardless of who pays for the lawyers’ services.

¹⁴ Dkt. 1.

¹⁵ See Dkts. 15–19.

¹⁶ See Dkt. 20.

On April 16, the Court held oral argument on the parties' motions and took the matter under advisement.¹⁷ At the oral argument, the Court asked Walmart's counsel about an incomplete exhibit and requested a post-argument representation or submission answering the Court's questions.¹⁸ Defendants and Plaintiff each filed a post-argument letter on April 17 and April 19, respectively.¹⁹ Defendants' letter was accompanied by a sworn declaration and documents that included the complete Walmart LLC Operating Agreement and written consents identifying the managers and officers of Walmart LLC from 2022 to 2025.²⁰ On June 30, Defendants notified the

¹⁷ See Dkt. 34.

¹⁸ See Oral Arg. Tr. 26:9–27:17.

¹⁹ Dkts. 32–33.

²⁰ See Moshos Decl. Exs. A–J. Plaintiff objects to this submission as “go[ing] beyond the Court’s request for document production.” Dkt. 33 at 1. Plaintiff argues that the submission is improper because it “includes counsel’s additional factual characterizations and assertions not apparent on the face of the documents themselves, while still omitting portions of the underlying record referenced in those materials.” Dkt. 33 at 1. Plaintiff’s objection is not well-founded. The materials counsel submitted were responsive to the Court’s questions.

The Operating Agreement states that, to be an officer of Walmart LLC, one must be appointed by “the Manager” of the entity. Operating Agreement ¶ 3.8(a). The Court’s initial copy of the Operating Agreement appeared to be missing an “Exhibit 2,” which purportedly contained the names of the current officers appointed by the current manager. DRB Moshos Aff. Ex. A ¶ 3.8(a), Dkt. 25. Whether Mr. Lehrfeld’s name was on the apparently missing exhibit was of interest to the Court, and it asked Defendants’ counsel to find the answer. Oral Arg. Tr. 26:13–14, 26:22–27:7. Counsel certified in his declaration that, to the best of his knowledge, the reference to “Exhibit 2” was a holdover from an earlier version of the agreement

Court that Plaintiff was dismissed with prejudice from the Underlying Action on June 23.²¹

To date, the parties' positions are as follows. Plaintiff seeks mandatory advancement from Walmart in connection with her defense in the Underlying Action.²² She argues that her employment as Chief of Staff to Mr. Lehrfeld entitles her to mandatory advancement under Walmart's Bylaws based on one of three theories:²³ (1) she was an officer of Walmart;²⁴ (2) she was an officer

that should have been removed. Moshos Decl. 2. In other words, "Exhibit 2" was not "missing" and could not be provided to the Court. Instead, counsel submitted a sworn declaration that answered the Court's underlying question and attached supporting documents. The Court accepts counsel's sworn representations and has given the documents the weight and credibility it finds they deserve. *See* D.R.E. 403. The Court has also considered Plaintiff's response to counsel's submission.

²¹ *See* Dkt. 37 Ex. A. On July 1, Plaintiff responded that she "filed a motion in the Superior Court of New Jersey . . . , seeking reconsideration and vacatur of the June 23, 2026 order[.]" and, alternatively, "amendment or clarification of that order[.]" Dkt. 38 at 2.

²² POB 6.

²³ Plaintiff also purports to assert mandatory advancement rights under Section 145 of the Delaware General Corporation Law ("DGCL"). *See, e.g.*, POB 30. However, advancement under Section 145 is "purely permissive." *Gilbert v. Unisys Corp.*, 2024 WL 3789952, at *9 (Del. Ch. Aug. 13, 2024) (citing *Holley v. Nipro Diagnostics, Inc.*, 2014 WL 7336411, at *7 (Del. Ch. Dec. 23, 2014)). Hence, the Court considers only Plaintiff's potential contractual mandatory advancement rights, not any statutory rights.

²⁴ Although Plaintiff never expressly argues that she was an "officer of Walmart," her briefs appear to advance that theory. She consistently references Bylaws as the source of her advancement rights, which extend mandatory advancement to an officer of the Corporation—Walmart. *See* Compl. ¶¶ 45–50. And in response to Defendants' characterization of Walmart Connect as Walmart's division, Plaintiff

of Walmart Connect serving at Walmart’s request;²⁵ or (3) she was an officer of Walmart LLC serving at Walmart’s request.²⁶

On the contrary, Defendants contend that Plaintiff is not entitled to summary judgment because Plaintiff was not an officer of any of the three entities discussed in this action. Defendants claim to have proved that Plaintiff was at no time “elected or chosen by the Board to serve as an officer in the manner contemplated by Walmart’s Bylaws,” nor was she “promoted or assigned a role by the CEO of Walmart, Carl Douglas McMillon.”²⁷ As to Walmart Connect, Defendants argue that Plaintiff was not an officer because Walmart Connect is not an entity and does not have its own officers.²⁸ As to Walmart LLC, Defendants argue that Plaintiff was not an officer because she

suggests that her service at Walmart Connect renders her an officer of Walmart because Walmart Connect would fall within Walmart’s “own enterprise structure.” *See* Pl.’s Reply Br. in Further Supp. of Her Mot. for Summ. J. & Opp’n to Defs.’ Cross-Mot. for Summ. J. (“PRB”) 10–11, Dkt. 22.

²⁵ *See* POB 18.

²⁶ *See* POB 18; *see also* PRB 11. Plaintiff never argues expressly that she was an “officer of Walmart LLC.” The Court infers that this is the argument she intended to make by relying on the “at the request” language in the Bylaws.

²⁷ DAB 3; *see also* DAB Moshos Aff. Ex. D, at 13.

²⁸ DAB 21.

was not elected or appointed to serve in the manner required by Walmart LLC's Operating Agreement.²⁹

II. ANALYSIS

The parties have filed cross-motions for summary judgment. “Summary judgment is an appropriate way to resolve advancement disputes because ‘the relevant question turns on the applications of the terms of the corporate instruments setting forth the purported right to advancement and the pleadings in the proceedings for which advancement is sought.’”³⁰ “The existence of cross-motions does not necessarily make summary judgment for either party inappropriate, nor does it change the standard for summary

²⁹ DRB 10–11. As an initial matter, Defendants argue that Plaintiff waived this argument because she did not raise it in her Opening Brief. DRB 9–10. Plaintiff's Opening Brief references Walmart LLC, as the entity that presented her employment offer, to support the argument that she served another enterprise at Walmart's request. POB 18. The Court acknowledges that, at best, Plaintiff did not raise her purported officer status at Walmart LLC as a basis for mandatory advancement until she filed her Reply Brief. PRB 11. The Court notes, however, that Plaintiff only obtained a copy of the Walmart LLC Operating Agreement when Defendants filed their Reply Brief. The Court thus declines to find a waiver and elects to address the argument. The Court addresses Defendants' alternative argument that Plaintiff was not an officer of Walmart LLC on the merits in this report.

³⁰ *Senior Tour Players 207 Mgmt. Co. LLC v. Golftown 207 Hldg. Co., LLC*, 853 A.2d 124, 126–27 (Del. Ch. 2004) (quoting *Weinstock v. Lazard Debt Recovery GP, LLC*, 2003 WL 21843254, at *2 (Del. Ch. Aug. 8, 2003)).

judgment.”³¹ “Rather, the [C]ourt examines each motion separately, and ‘if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, then summary judgment is appropriate.’”³²

Defendants bear the burden on their own motion for summary judgment.³³ They also bear the burden on Plaintiff’s motion, because the Bylaws require Defendants to prove that Plaintiff is not entitled to mandatory advancement.³⁴ In either case, Defendants must do more than point out lapses in Plaintiff’s arguments. Where Plaintiff raises arguments, it is critical for

³¹ *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1007 (Del. Ch. 2007) (citations omitted).

³² *Id.* (citations omitted).

³³ “To prevail on summary judgment, the moving party must ‘demonstrate that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law.’” *Id.* (quoting *Levy v. HLI Operating Co., Inc.*, 924 A.2d 210, 219 (Del. Ch. 2007)).

³⁴ *See* DAB Moshos Aff. Ex. A (“Bylaws”) art. VI, § 5(d). To be clear, with respect to Plaintiff’s third theory of entitlement to mandatory advancement—her service as an officer of Walmart LLC at Walmart’s request—the Court must assess whether Plaintiff was an officer of Walmart LLC. To do so, the Court looks to the provisions of Walmart LLC’s Operating Agreement. The ultimate question, however, is still whether Plaintiff is entitled to mandatory advancement *under Walmart’s Bylaws* by virtue of her service as Walmart LLC’s officer. The Court therefore assumes that Defendants bear the burden on this issue.

Defendants to show that Plaintiff has not created a genuine issue of material fact.

A. Relevant Contract Provisions

Walmart's advancement provisions are set forth in Article VI of the Bylaws. The provision governing mandatory advancement is Section 2(a), which states:

[W]ith respect to any person made or threatened to be made a party to any threatened, pending, or completed proceeding, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another enterprise, the Corporation shall pay the expenses (including attorneys' fees) incurred by such person in defending any such proceeding in advance of its final disposition (an "advancement of expenses") [.]³⁵

³⁵ Bylaws art. VI, § 2(a). Walmart's permissive advancement provisions are found in Section 2(b).

Plaintiff contends that she is entitled to mandatory advancement because she was an officer of Walmart, or because she served at Walmart's request as either an officer of Walmart Connect or Walmart LLC.

Walmart's officers are listed in Section 1 of Article IV. They

shall consist of a President, a Chief Financial Officer, a Secretary and a Treasurer, and such other officers as the Board may appoint, including but not limited to a Chairman of the Board, a Chief Executive Officer, a Chief Operating Officer, one or more Executive Vice Presidents, one or more Senior Vice Presidents, one or more Vice Presidents, one or more Assistant Secretaries, and one or more Assistant Treasurers.³⁶

Section 1 of Article IV also allows Walmart's CEO to make appointments to selected officer-level positions, including certain Vice Presidents below that level of Senior Vice President, Assistant Secretaries, and Assistant Treasurers.³⁷ To summarize, Walmart has four named officer positions. The Board may appoint additional officers, with no apparent limitation on the titles of those positions, and the CEO may appoint officers in a limited number of

³⁶ Bylaws art. IV, § 1.

³⁷ Bylaws art. IV, § 1.

identified categories. The term of a Walmart officer begins upon “the election of that officer by the Board or the [CEO][.]”³⁸

Walmart Connect is a division of Walmart. It has no independent governing agreement. Neither does it have officers in the sense contemplated by Delaware’s entity statutes.³⁹ Assuming, *arguendo*, that Plaintiff could be an officer of Walmart Connect, she could qualify for mandatory advancement under the Bylaws only if she met the requirements of Section 1 of Article IV.

For purposes of assessing whether Plaintiff was an officer of Walmart LLC, the Court must examine the entity’s LLC Agreement. The relevant provision is Section 3.8 of Article III, which states, in relevant part:

The officers shall be a Chief Executive Officer, a Chief Operating Officer, a Treasurer and a Secretary **and the Manager may also elect** one or more Vice Presidents, one or more Assistant Secretaries and **such other officers and agents as it shall deem appropriate** (collectively, the “Officers”).⁴⁰

³⁸ Bylaws art. IV, § 2.

³⁹ *See, e.g.*, 8 *Del. C.* § 142(a) (“Every corporation organized under this [DGCL] shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws[.]”); 6 *Del. C.* § 18-402 (“The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement.”).

⁴⁰ Operating Agreement § 3.8(a) (emphasis added).

The question before the Court is whether Defendants are entitled to a summary judgment dismissing the action or whether Plaintiff has succeeded in raising one or more genuine disputes or material fact that preclude such relief.

B. Plaintiff Is Not Entitled to Mandatory Advancement

There are two ways that Plaintiff could qualify for mandatory advancement under the Bylaws: if she were an officer of Walmart or if she “serv[ed] at the request of [Walmart] as a director or officer of another enterprise.”⁴¹ Plaintiff’s arguments evolved over the course of this action. By the close of briefing, Plaintiff had asserted the following arguments, in the alternative: (1) she was an officer of Walmart, (2) she served, at the request of Walmart, as an officer of Walmart Connect, and (3) she served, at the request of Walmart, as an officer of Walmart LLC. Defendants contend they have proved that Plaintiff was not an officer of Walmart, Walmart Connect or Walmart LLC, and, therefore, Plaintiff cannot be entitled to mandatory advancement under the Bylaws.⁴² I agree with Defendants.

⁴¹ Bylaws art. VI, § 2(a). Plaintiff concedes that she is not a director of Walmart. *See* Compl. ¶ 20.

⁴² *See* DAB 13–18, 21; DRB 5–9 & n.2; Defs.’ Sur-Reply (“DSR”) 2–5, Dkt. 31.

I address the parties' arguments in the following order: First, whether Plaintiff was an officer of Walmart;⁴³ second, whether Plaintiff was an officer of Walmart Connect, serving at the request of Walmart;⁴⁴ and third, whether Plaintiff was an officer of Walmart LLC, serving at the request of Walmart.⁴⁵ The Court concludes that Defendants have established that Plaintiff was not an officer of any of the entities. Because Plaintiff was not an officer of Walmart Connect or Walmart LLC, the Court does not reach the issue of whether Plaintiff served either enterprise "at the request of Walmart."

1. Plaintiff was not an officer of Walmart.

Plaintiff's first theory is that she is entitled to mandatory advancement because she was an officer of Walmart. Plaintiff is not one of Walmart's four named officers, but she argues that Article IV, Section 1 of the Bylaws permits the Board to appoint officers, "including but not limited to" the four named

⁴³ See POB 14–18; *see also* PRB 8–9 ("Walmart's Bylaws also contain the open-ended 'such other officers' formulation that makes Walmart's reading far less categorical than its brief suggests. That is sufficient to prevent Walmart from converting its preferred interpretation into dispositive judgment on the present record.").

⁴⁴ See POB 18 ("Plaintiff served in the Chief of Staff role for Walmart Connect at the direction of Walmart Inc.'s leadership and within Walmart Inc.'s corporate hierarchy.").

⁴⁵ See POB 18–19; PRB 11; Pl.'s Sur-Reply ("PSR") 3, Dkt. 29 ("The fact that Plaintiff's offer letter reflected employment through the LLC was precisely what made the 'other enterprise' route relevant.").

officers.⁴⁶ Plaintiff claims that this makes the Bylaws “ambiguous” as to whether her chief-of-staff role is an officer role and, thus, that the Court should resolve the purported ambiguity in her favor.⁴⁷ The Court disagrees.

The Bylaws are not ambiguous. There is no dispute that the Board may appoint officers beyond the four named in Section 1. Plaintiff spends a fair amount of time arguing about the characteristics of her role, how the role was described in emails and her responsibilities.⁴⁸ But when assessing advancement rights, the critical issue is the language of the advancement provisions themselves.⁴⁹ The plain language of the Bylaws provides that Walmart officers must be appointed by the Board or the CEO of Walmart.⁵⁰ Plaintiff also does not dispute that she was not appointed by the Board or the CEO of Walmart; she instead affirmatively argues that she was put into her

⁴⁶ POB 14; PRB 8.

⁴⁷ *See* POB 14–15.

⁴⁸ *See* POB 15–17.

⁴⁹ *Tafeen v. Homestore, Inc.*, 2004 WL 556733, at *8 (Del. Ch. Mar. 22, 2004) (“Unambiguous bylaws are construed as they are written, and this Court gives ‘language which is clear, simple, and unambiguous the force and effect required.’”).

⁵⁰ *See* Bylaws art. IV, § 1.

position by Mr. Lehrfeld.⁵¹ Defendants have established that Mr. Lehrfeld was not Walmart's CEO.⁵² And Mr. Lehrfeld is clearly not "the Board."

In an effort to prevent Defendants from obtaining summary judgment, Plaintiff speculates for the first time in her Reply Brief that Mr. Lehrfeld *could have* exercised appointment authority delegated to him by Walmart's Board or CEO.⁵³ The Court finds that Plaintiff waived this delegation-of-authority argument by failing to raise it in her Opening Brief.⁵⁴

Article IV, Section 11 of the Bylaws provides that "[t]he Board may delegate the power or duties of any officer to any other officer[(s)] . . . or agent[(s)] *notwithstanding* any provision of these Bylaws."⁵⁵ In other words,

⁵¹ See PSR 4 ("Plaintiff acknowledged that she was not appointed by the Board of Directors or the CEO of Walmart . . . Plaintiff's position has been consistent: she was formally placed into the Chief of Staff role by Rich Lehrfeld, the CEO/General Manager of Walmart Connect[.]").

⁵² No Walmart Form 10-K filed with the SEC during the relevant period lists Mr. Lehrfeld as one of its executive officers. See DAB Moshos Aff. Exs. B–D.

⁵³ See PRB 6–7 ("There is no evidence of how the CEO's appointment authority under Article IV was exercised in practice, *or whether it was delegated.*"); see also PRB 10. Nowhere in her Opening Brief did Plaintiff reference "delegation."

⁵⁴ See, e.g., *Jung v. El Tinieblo Int'l, Inc.*, 2022 WL 16557663, at *9 (Del. Ch. Oct. 31, 2022) ("Generally, the failure to raise an argument in one's opening brief constitutes a waiver of that argument.") (citing *Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999)).

⁵⁵ Bylaws art. IV, § 11 (emphasis added). Neither party specifically cited Section 11 in addressing the delegation issue. Defendants appear to have been mistaken

despite Section 1 of Article IV's requirement that officers be appointed by the Board or CEO, Section 11 arguably permits the Board to delegate the CEO's appointment authority to Mr. Lehrfeld, assuming he qualifies as an officer or agent of Walmart. On this basis, Plaintiff argues that Mr. Lehrfeld might have exercised delegated authority in appointing her to an officer-like position and that Defendants have failed to meet their burden on summary judgment by offering no evidence that establishes Mr. Lehrfeld's lack of such authority.⁵⁶

Waiver is a matter of discretion and fairness.⁵⁷ "Presenting an argument in [the] opening brief does not entitle a party to argue a new and alternative argument in reply."⁵⁸ Plaintiff's Opening Brief appears to have relied solely on Article IV, Section 1 of the Bylaws,⁵⁹ which prompted

when they stated that "the Bylaws provide no mechanism for the delegation of the authority to appoint officers." DRB 12.

⁵⁶ PRB 10 ("Plaintiff does not assert as a proven fact that Mr. Lehrfeld held delegated appointment authority. Plaintiff's point is that Walmart has offered no evidence on the question either way.").

⁵⁷ *Jung*, 2022 WL 16557663, at *9 ("[T]he belated presentation of an argument can deprive the opposing party of notice and the opportunity to respond.").

⁵⁸ *Id.* at *10; *see also Franklin Balance Sheet Inv. Fund v. Crowley*, 2006 WL 3095952, at *4 (Del. Ch. Oct. 19, 2006) ("[A] party is obliged in its motion and opening brief to set forth all of the grounds, authorities and arguments supporting its motion.").

⁵⁹ The argument made in the Opening Brief was that the enumerated officer titles in the Bylaws are nonexclusive and can include Plaintiff's Chief of Staff position,

Defendants to submit corresponding affidavits to show that Mr. Lehrfeld was not Walmart’s CEO and thus did not possess authority to appoint officers under the provision.⁶⁰ Plaintiff’s “new and alternative” delegation-of-authority grounds in her Reply Brief differs “substantively and materially” from her initial argument and invokes a different provision of the Bylaws.⁶¹ Plaintiff had access to the Bylaws from the outset of this action and could have raised the delegation argument in her Opening Brief.⁶²

For the foregoing reasons, the Court holds that fairness warrants treating the delegation-of-authority argument as waived. With that argument

which Plaintiff claims to be functionally equivalent to those enumerated officer roles. *See* POB 14–17.

⁶⁰ *See* DAB Moshos Aff. Exs. B–D.

⁶¹ *Cf. Jung*, 2022 WL 16557663, at *10 (holding that an argument based on a contractual venue provision in the reply brief “differ[s] substantively and materially” from a statutory venue provision in the opening brief).

⁶² The same fairness considerations lead to a different result with respect to Plaintiff’s other argument concerning Walmart LLC. *See supra* note 29. Walmart LLC’s Operating Agreement was not available to Plaintiff until Defendants submitted it with their Reply Brief. *See* Dkt. 25; *see also* Dkt. 28 (allowing the parties to file sur-replies because “the Court finds that Plaintiff will be prejudiced without an opportunity to respond to the[] new materials.”).

The Court also notes that Plaintiff alleged in her Complaint that Defendants denied her a copy of the Bylaws, *see* Compl. ¶ 28, but she cited them all throughout the Complaint. This suggests that the Bylaws were publicly available or Plaintiff obtained access in some other way.

set aside, it stands that Plaintiff has failed to establish that she was an officer of Walmart under the clear language of the Bylaws.

2. Plaintiff was not an officer of Walmart Connect.

Plaintiff's second argument is that she served at the request of Walmart as an officer of Walmart Connect. To qualify for mandatory advancement under this theory, Plaintiff would have to prove three elements: (1) Walmart Connect constitutes "another enterprise" under the Bylaws,⁶³ (2) Plaintiff was an officer of Walmart Connect,⁶⁴ and (3) Plaintiff served Walmart Connect at the request of Walmart.⁶⁵

⁶³ POB 18–19; PRB 11.

⁶⁴ POB 18.

⁶⁵ POB 18–19; PRB 11. With respect to the third element, Plaintiff presented no evidence that she served "at the request of Walmart." She argued that "she served ... at the direction of Walmart, Inc.'s leadership and within [its] corporate hierarchy." POB 18. However, the statement that she was appointed by "leadership" is conclusory and is too vague to entitle Plaintiff to judgment as a matter of law. *See, e.g., McLaughlin v. Dover Downs, Inc.*, 974 A.2d 858, 2009 WL 1474707, at *2 (Del. 2009) (TABLE) (explaining that "conclusory assertions" without sufficient probative value do not raise genuine issues of material fact). Plaintiff has at best argued that she served at Mr. Lehrfeld's request, and the Court has no basis to conclude that Mr. Lehrfeld, as the "CEO/General Manager" of Walmart Connect, constitutes "Walmart." In any event, the Court concludes that Plaintiff was not an officer of Walmart Connect.

As to the first element, Plaintiff and Defendants agree that Walmart Connect is not an independent entity, but an internal division of Walmart.⁶⁶ That does not necessarily prevent Walmart Connect from constituting “another enterprise” for purposes of mandatory advancement under the Bylaws.⁶⁷ Thus, I assume, *arguendo*, that Walmart Connect is “another enterprise.”

However, Plaintiff fails to establish the second element.⁶⁸ Defendants have proved that Plaintiff was not an officer that would meet the qualifications for mandatory advancement under the Bylaws. Since Walmart Connect is an internal division of Walmart, the rules governing mandatory advancement for an officer of Walmart Connect are the same rules applicable to that of Walmart. That is, an officer must have been appointed by Walmart’s CEO or Board.

⁶⁶ See DAB 21 (“Walmart Connect is a division of Walmart, Inc. It is not a wholly owned subsidiary with its own board of directors or officers.”); PRB 11 (“Plaintiff does not contend that Walmart Connect itself is a separate Delaware corporation.”).

⁶⁷ See *Gilbert v. Unisys Corp.*, 2024 WL 3789952, at *22 (Del. Ch. Aug. 13, 2024) (finding it possible for “another enterprise” to lack “a formal legal existence, employees, payroll, ‘revenue of any sort,’ or the ability to convey an officer title”) (citing *Sassano v. CIBC World Mkts. Corp.*, 948 A.2d 453, 464–65, 470 (Del. Ch. 2008)).

⁶⁸ The Court assumes that Walmart Connect has officers for purposes of this argument.

Defendant is entitled to summary judgment because Plaintiff was not appointed to an officer role in the manner envisioned in the Bylaws. The Bylaws vests this appointment power in Walmart’s Board and, to a limited degree, its CEO.⁶⁹ As previously noted, Plaintiff concedes that she was not appointed to her position by the Board or the CEO but affirmatively argues that she was placed in her role by Mr. Lehrfeld.⁷⁰ He is neither “the Board” nor the CEO of Walmart.⁷¹ Furthermore, for the same reasons explained above, Plaintiff’s argument that she was an officer of Walmart Connect because Mr. Lehrfeld *could have been* delegated authority to appoint certain officers is waived.

3. Plaintiff was not an officer of Walmart LLC.

Finally, Plaintiff argues that she is entitled to mandatory advancement because she was an officer of Walmart LLC, serving at Walmart’s request.⁷² Defendants are entitled to summary judgment on this argument because they

⁶⁹ See Bylaws art. IV, § 1.

⁷⁰ See PSR 4–5.

⁷¹ See DAB Moshos Aff. Exs. B–D.

⁷² See POB 18; *see also* PRB 11. To repeat, the Court rejects Defendants’ contention that Plaintiff waived this argument by failing to raise it in her Opening Brief. *See supra* note 29.

have established that Plaintiff was not an officer of Walmart LLC.⁷³ Plaintiff's position, Chief of Staff to Mr. Lehrfeld, is not listed by name in Walmart LLC's Operating Agreement.⁷⁴ For Plaintiff to have been an officer of Walmart LLC under the catchall "other officers and agents," she must have been elected by "the Manager" of the entity.⁷⁵ "Manager" is a defined term.⁷⁶

Plaintiff never alleged or attempted to establish that she was elected to her position by "the Manager," or "a manager," of Walmart LLC. To the contrary, she expressly alleged that she was appointed by Mr. Lehrfeld, acting as the "CEO/General Manager of Walmart Connect."⁷⁷ Defendants, on the other hand, have established that Mr. Lehrfeld was not "the Manager," or "a

⁷³ To qualify for mandatory advancement under this theory, Plaintiff would have to prove three elements: (1) Walmart LLC constitutes "another enterprise" under the Bylaws, (2) Plaintiff was an officer of Walmart LLC, and (3) Plaintiff served Walmart LLC at the request of Walmart. The first element is satisfied because Walmart LLC is undisputedly a separate entity from Walmart.

⁷⁴ See Operating Agreement § 3.8(a).

⁷⁵ See Operating Agreement § 3.8(a).

⁷⁶ Operating Agreement at 1 ("The Member intends that the Company will be managed by a certain individual (the 'Manager')"); Operating Agreement § 3.1 ("The current Manager . . . shall be Fernando Madeira.").

⁷⁷ PSR 4 ("Plaintiff's position has been consistent: she was formally placed into the Chief of Staff role by Rich Lehrfeld, the CEO/General Manager of Walmart Connect[.]").

manager,” of Walmart LLC at any time relevant to this action.⁷⁸ Because Defendant established that Plaintiff was not an officer of Walmart LLC, the Court does not address whether Plaintiff was serving “at the request” of Walmart.

Plaintiff next argues that Section 3.7 of the Operating Agreement prevents the Court from granting summary judgment to Defendants.⁷⁹ Section 3.7 is *Walmart LLC’s* advancement provision. It states that Walmart LLC “shall indemnify, defend and hold harmless the Managers, Members, officers, employees and agents to the same and fullest extent permitted under Section 17704.08 of the Act.”⁸⁰ Plaintiff does not argue that she is entitled to summary

⁷⁸ See Moshos Decl. Exs. C–J. In their Reply Brief, Defendants argued that “the record clearly demonstrates that Plaintiff was not serving as a valid officer of [Walmart LLC] because she was not appointed as an officer by a manager.” DRB 11. Defendants also stated that “[n]either Ms. Bolles nor Mr. Lehrfeld were managers of [Walmart LLC].” DRB 11; *see also* DRB Moshos Aff. Exs. B–C (identifying Walmart LLC’s manager(s) or member(s) by reference to the Statement of Information filed with California Secretary of State). The Court attempted to confirm with Defendants’ counsel that neither Mr. Lehrfeld nor Ms. Bolles was “the Manager” and that Plaintiff’s Chief of Staff role was not among “the current Officers appointed by the Current Manager . . . as set forth on Exhibit 2[.]” See Oral Arg. Tr. 26:19–27:7; Operating Agreement § 3.1. Counsel certified them through his sworn declarations after oral argument. *See generally* Dkt. 32.

⁷⁹ See PSR 1–2.

⁸⁰ Operating Agreement §3.7. The “Act” referred to is the California Corporations Code. Operating Agreement at 1.

judgment under Section 3.7, only that its terms prevent the Court from awarding summary judgment to Defendants.⁸¹ The Court disagrees.

Plaintiff focuses on the words “shall” and “employees,” but she ignores the phrase “to the same and fullest extent permitted by.” Section 17704.08 of the California Corporations Code provides that Walmart LLC must indemnify members and managers of the LLC.⁸² As to officers, employees, and agents, however, the California statute provides for permissive indemnification.⁸³ This provision does nothing to create a genuine dispute of fact regarding Plaintiff’s entitlement to mandatory advancement under the Bylaws or to prevent the Court from awarding summary judgment to Defendants.

III. CONCLUSION

⁸¹ See PSR 1–2.

⁸² See Cal. Corp. Code § 17704.08(a) (“A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed limited liability company or the manager of a manager-managed limited liability company in the course of the member’s or manager’s activities on behalf of the limited liability company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Section 17704.09.”); *see also* DSR 2.

⁸³ See Cal. Corp. Code § 17704.08(b) (“Except as provided in subdivision (g) of Section 17701.10, a limited liability company *may* reimburse for any payment made and may indemnify for any debt, obligation, or other liability incurred by a person not identified in subdivision (a), including, without limitation, any officer, employee, or agent of the limited liability company, in the course of that person’s activities on behalf of the limited liability company.”) (emphasis added).

For the foregoing reasons, I conclude that there are no genuine disputes of fact that prevent a grant of summary judgment in favor of Defendants. Defendants have proved that Plaintiff is not entitled to mandatory advancement under the Bylaws. The Court denies Plaintiff's motion for summary judgment and grants Defendants' motion for summary judgment.

By stipulation, the parties have agreed to accept this report as an opinion subject to the same appellate process and review as an opinion issued by the constitutional officers of this Court.⁸⁴

Very truly yours,

/s/ *Danielle Gibbs*

Magistrate in Chancery

⁸⁴ The parties agreed in their Case Scheduling Order to submit this action to Voluntary Final Adjudication Before a Magistrate in Chancery pursuant to 10 *Del. C.* § 350. Dkt. 14. They also stipulated that they “do not waive their right to seek trial-level review through exceptions under [C]ourt of Chancery Rule 144(c).” The Court presumes that the latter stipulation was intended to preserve their right to take exception to a Draft Report should the Court issue one.