

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

**BONNIE W. DAVID
VICE CHANCELLOR**

**COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DE 19947**

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RE: *Julius Lipp vs Mixedbread AI, Inc.*,
C.A. No. 2026-0493-DH (BWD)

Dear Counsel:

This letter opinion resolves exceptions (the “Exceptions”) to the Magistrate in Chancery’s August 10, 2026 report (the “Report”) in this advancement action. Magistrate’s Report [hereinafter Report], Dkt. 25.

The plaintiff, Julius Lipp (“Plaintiff”), was a co-founder of, and served as a director and the Chief Technology Officer (“CTO”) for, defendant Mixedbread AI, Inc. (the “Company”), a Delaware corporation. Report at 2. In June 2025, the Company terminated Plaintiff’s employment, purportedly for “cause.” *Id.* at 1, 5–6. Plaintiff sued the Company in the U.S. District Court for the Northern District of California, alleging claims that include breach of Plaintiff’s employment agreement. *Id.* at 4–5. The Company answered that complaint, asserting three counterclaims

and sixteen affirmative defenses. *Id.* at 5. The Company later voluntarily dismissed its counterclaims but retained its affirmative defenses. *Id.* at 5. One affirmative defense—the “Third Affirmative Defense”—is relevant on Exceptions. That defense asserts that the Company terminated Plaintiff for “cause” because he disparaged the Company’s Chief Executive Officer in front of officers, directors, employees, and investors; created a toxic work environment; and failed to fulfill his obligations as the Company’s CTO. *Id.* at 6.

In April 2026, Plaintiff initiated this action, seeking advancement of expenses under Section 6.3 of the Company’s bylaws, which states:

Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the indemnified party is not entitled to be indemnified as authorized in this Article VI.

Verified Petition For Advancement, Dkt. 1, Ex. A § 6.3. Section 6.1 of the bylaws provides in part:

The corporation shall, to the maximum extent and in the manner permitted by the Delaware General Corporation Law, indemnify each of its directors and officers against expenses (including attorneys’ fees), judgments, fines, settlements and other amounts actually and

reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation.

Id. § 6.1.

The action was assigned to a Magistrate in Chancery, who, on August 10, issued the Report, concluding that Plaintiff is entitled to advancement of expenses incurred in defending against the Third Affirmative Defense. Report at 23.

On August 12, the Company filed the Exceptions. Resp't Mixedbread AI, Inc.'s Notice Of Exceptions To The Final Report Of The Magistrate In Chancery, Dkt. 26. Briefing on the Exceptions concluded on September 25. Resp't Mixedbread AI, Inc.'s Opening Br. In Supp. Of Its Exceptions To The Final Report Of The Magistrate In Chancery [hereinafter DOB], Dkt. 31; Pet'r's Answer To Resp't's Exceptions To Magistrate's Report, Dkt. 32; Resp't Mixedbread AI, Inc.'s Reply Br. In Supp. Of Its Exceptions To The Final Report Of The Magistrate In Chancery, Dkt. 34. Oral argument is unnecessary.

I have reviewed the record and the Magistrate in Chancery's determinations *de novo*. See *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999). After close review of the Report, the briefing and record below, and the parties' submissions on Exceptions, I conclude that "[t]he M[agistrate]'s well-reasoned decision is supported by the factual record and h[is] conclusions of law are proper." *In re Est. of Erdman*, 2011 WL 2191680, at *1 (Del. Ch. May 26, 2011).

The Company raises two primary arguments on Exceptions, neither of which has merit. First, the Company argues that affirmative defenses cannot trigger advancement obligations because responding to affirmative defenses is not “defending.” DOB at 11–12. This Court has held that “the policies underlying advancement justify the payment of fees when an officer defends against affirmative defenses that implicate his performance as a corporate official, much in the same way the assertion of counterclaims by a corporation can require advancement.” *Mooney v. Echo Therapeutics, Inc.*, 2015 WL 3413272, at *10, *13 (Del. Ch. May 28, 2015) (concluding expenses incurred “in defending against” two affirmative defenses were advanceable).¹ The Magistrate in Chancery appropriately addressed

¹ See *Fillip v. Centerstone Linen Servs., LLC*, 2013 WL 6671663, at *12 (Del. Ch. Dec. 3, 2013), *as corrected* (Dec. 11, 2013) (awarding advancement of expenses incurred “[i]n resisting the affirmative defenses that accuse [the plaintiff] of egregious misconduct when serving as [the defendant-company’s] CEO”); see also, e.g., *Riker v. Teucrium Trading, LLC*, C.A. No. 2022-1030-LWW, at 18:18–21 (Del. Ch. June 13, 2023) (TRANSCRIPT) (“[I]n *Mooney v. Echo Therapeutics*, the court held that where an indemnitee initiated an action, the indemnitee’s litigation against affirmative defenses asserted by the indemnitor was advanceable.”); *Creelman v. Genalyte, Inc.*, C.A. No. 2020-0899-KSJM, at 62:19–22 (Del. Ch. Dec. 22, 2020) (TRANSCRIPT) (awarding advancement of expenses incurred in defending against affirmative defenses, noting that the parties “concede[d] that affirmative defenses generally can form the basis for an advancement demand” under *Mooney*); *Ferri v. Ferri*, C.A. No. 2017-0128-TMR, at 10:17–24 (Del. Ch. June 15, 2017) (TRANSCRIPT) (awarding advancement for the plaintiff’s “defense to the affirmative defenses” in a plenary lawsuit where “[t]he company ha[d] conceded” this was required).

this authority in the Report. *See* Report at 12–17. To the extent the Company argues *Mooney* was incorrectly decided,² I am disinclined to retread decade-old precedent.

Second, the Company asserts that expenses in connection with the Third Affirmative Defense are not advanceable because they are not incurred “by reason of the fact that [Plaintiff] is or was an agent of the corporation.” DOB at 27–29. Again, the Third Affirmative Defense asserts that the Company terminated Plaintiff for “cause” because he disparaged the Company’s CEO, created a toxic work environment, and failed to fulfill his obligations as CTO. Each of these theories “involve[s] a nexus between the alleged wrongdoing and [Plaintiff’s] official capacity” *Mooney*, 2015 WL 3413272, at *10. Plaintiff could make disparaging comments to officers, directors, employees, and investors because he had access to them as CTO, and he could influence the work environment because he was a high-ranking officer. *Id.* at *8–10; *Creelman*, C.A. No. 2020-0899-KSJM, Tr. at 61:16–62:16. The Report therefore properly concluded that expenses incurred in defending against the Third Affirmative Defense are advanceable.³

² DOB at 19–21.

³ The Company argues that an award of fees-on-fees should be adjusted if its other bases for Exceptions are sustained. DOB at 29. Because they are not, this basis for Exceptions is denied. In addition, the Company argues that advancement should be limited to fees “reasonably incurred.” *Id.* It is premature to decide this issue at the entitlement stage.

In sum, after *de novo* review, I am satisfied that the Exceptions should be denied, and that the Report must be adopted and affirmed.

Sincerely,

/s/ Bonnie W. David

Bonnie W. David
Vice Chancellor

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