IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MELISSA BRANDAO,	)	
Petitioner,	)	
v.	)	C.A. No. 2026-0824-TJF
HERDDOGG, INC.,	)	
Respondent.	)	

MAGISTRATE'S FINAL REPORT DISMISSING CASE AND DENYING SANCTIONS

Date Submitted: October 15, 2026
Date Issued: November 6, 2026*

Melissa Brandao, Belgrade, Montana, *Pro Se Petitioner*.

Charles J. Brown, III, GELLERT SEITZ BUSENKELL & BROWN LLC, Wilmington, Delaware; Andrew P. Shelby, MICHAEL BEST & FRIEDRICH LLP, Chicago, Illinois; *Attorneys for Respondent*.

FOX, M.

*An earlier version of this Final Report was issued on November 5, 2026, with an incorrect title and some formatting errors. This version corrects those errors but makes no substantive changes to the contents of the Final Report. The time to take exceptions under Court of Chancery Rule 144 runs from the date of this Final Report.

This final report resolves the respondent's pending motion to dismiss, along with the motion for sanctions pursuant to Court of Chancery Rule 11 the respondent seeks against the petitioner. Respondent argues dismissal is appropriate as: (1) res judicata and collateral estoppel bar the petition; (2) laches bars the petition; and (3) the petitioner fails to plead required elements to support the appointment of a receiver. Petitioner seeks to inject additional facts not alleged in the petition, and has chosen to defend the petition instead of seeking to amend it.

For the reasons further explained below, the Court finds the petition fails to state a claim for appointment of a receiver, is barred by res judicata and collateral estoppel, and due to the unusual conditions presented here, is also barred by laches. The petition's other allegations are not sufficient in the absence of insolvency to grant the relief the petitioner has requested.

The respondent's motion for sanctions is denied. While the petitioner's conduct has at times troubled the Court, the facts and circumstances here and the case law cited by the respondent do not require additional sanction beyond dismissal of this case with prejudice.

This is a final report, and exceptions may be taken consistent with Rule 144.

I. BACKGROUND

The motion seeks dismissal of this case commenced on June 23, 2026 by the filing of a Verified Petition for Appointment of Receiver Pursuant to 8 *Del. C.* § 291

(the "Petition").[1] Melissa Brandao ("Petitioner"), seeks a receiver asserting that HerdDogg, Inc. ("Respondent") is insolvent, and that the insolvency plus factors require an independent fiduciary to investigate numerous issues and act in creditors and stockholders best interests.[2] Petitioner is the Founder and a former officer and director of the Respondent, who departed from Respondent's management in 2022.[3] Petitioner is also a stockholder of Respondent.[4]

Respondent is a Delaware corporation and operates in the agricultural technology sector.[5] No other individual or entity is a named respondent or defendant in the Petition.[6] The Court held a hearing on July 20, 2026 (the "July 20, 2026 Hearing") to consider Petitioner's motion to expedite and motion for a temporary restraining order ("TRO").[7] The Court denied those requests as stated on the record.[8] Respondent has moved to dismiss the Petition (the "Motion to Dismiss"), and that

[1] Docket ("Dkt.") 1.

[2] *Id.* ¶¶ 24 & 36-38.

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

[4] *Id.* ¶ 1.

[5] *Id.* ¶ 2.

[6] Dkt. 1.

[7] *See* Dkts. 44 & 55.

[8] *See* July 20, 2026 Hearing Transcript ("Tr.") 50:14 - 70:13.

Motion to Dismiss is fully briefed.[9] Oral argument on the Motion to Dismiss was held on October 15, 2026 by Zoom.[10]

In connection with the Petition, the Petitioner on August 5, 2026 filed her Motion for Disqualification of Respondent's Counsel and for Relief.[11] The Motion for Disqualification was likewise fully briefed.[12] The Court issued a report deciding the Motion for Disqualification, taking the matter under advisement on the papers, denying the Petitioner's motion for the reasons set forth therein.[13] That sequencing was a request made by the Petitioner.[14]

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

On September 16, 2026, the Petitioner filed the Motion to Recuse Magistrate Timothy J. Fox, Jr, (the "Motion to Recuse").[16] The Court issued a letter decision

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[9] Dkts. 45, 88, & 121.

[10] Dkt. 159.

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

[12] Dkts. 82, 134, & 138. Dkt. 82 does not have pagination, so I cite to the pages reflected in the browser or PDF viewer for the document. I proceed likewise whenever discussing an unpaginated submission from the Petitioner.

[13] Dkt. 157.

[14] Dkts. 122 & 123.

[15] Dkts. 113, 136, & 155.

[16] Dkts. 160-67.

denying the relief sought in the Motion to Recuse on September 28, 2026.[17] Petitioner filed a motion seeking reargument or clarification on the Motion to Recuse, and the Court denied that motion the same day on September 30, 2026, for the reasons appended to that order.[18]

A. Facts Pleaded in the Petition

Petitioner asserts in addition to her standing as stockholder, she is a potential creditor as a result of claims and disputes as to the ownership of intellectual property and patents (the "Patent Disputes"), that were allegedly misrepresented to other investors in securities offerings.[19] Petitioner alleges the Respondent and its other stockholders are engaged in self-dealing transactions, resulting in misappropriation of investment proceeds.[20] Petitioner asserts that the assets resulting from those transactions are of nominal value, unusable/unsellable, and have generated additional liabilities while the company's cash has been consumed.[21] Annexed to the Petition was an undated printout of LinkedIn results for Respondent's then-CEO, Andrew Uden, and then-chief technology officer, Jeff Mitchel, indicating

[17] Dkt. 170.

[18] *See* Dkts. 172-176.

[19] Dkt. 1 ¶ 9.

[20] *Id.* ¶¶ 17-20.

[21] *Id.* ¶¶ 19 & 40.

overlapping full time employment at Respondent and Cattyltx, Inc., a competing venture on Petitioner's information and belief.[22]

The Petition asserts that a third quarter 2024 financial disclosure and unheeded capital calls to address past-due obligations, and the absence of evidence demonstrating intervening improvement established equity insolvency.[23] The Petition did not attach the disclosure from 2024 that it relied on. The Petitioner asserts that between 2024 and the Petition date, Respondent intermittently announced partnerships with three separate small private companies, but that such announcements lacked additional detail to stockholders and publicly available commercial activity could not be found to substantiate them.[24] The Petitioner asserts on information and belief, such announcements "were made for the purpose of creating a misleading impression of commercial activity and progress where none exists."[25]

[22] *Id.* ¶ 7 & Ex. A.

[23] Dkt. 1 ¶ 41.

[24] *Id.* ¶ 26.

[25] *Id.*

1. The Patent Disputes

The Petitioner asserts rights to patents and intellectual property of the Respondent.[26] The Petition specifically states "[t]he Patents are central to the Company's purported business model."[27] Paragraph 1 identifies Petitioner as the inventor of all patents "presently held by or *purportedly assigned to the Company*."[28] Petitioner, in addition to stockholder standing, asserts creditor standing:

> as a potential creditor of the Company by virtue of (a) claims arising from the Company's unauthorized use of Petitioner's intellectual property and the Company's fraudulent misrepresentation in multiple securities offerings that it possessed an executed general release from the petitioner, which it does not; and (b) Petitioner's status as sole inventor of patents the Company claims to own, the assignment of which is at least colorably disputed.[29]

The Petitioner contends, despite assigning one or more patents to the Respondent, the Respondent's "conduct—including its fraudulent misrepresentation to investors that it holds an executed general release from Petitioner—has given rise to claims by Petitioner regarding the status and enforceability of any such assignment, and regarding her entitlement to compensation and other relief."[30] Further characterizing

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[26] *Id.* ¶¶ 1, 9, 11, 12, 13, 27-30, & 31-33. Please note that there are two sets of numbered paragraphs ranging from 31 through 33. The second set of those paragraphs raise issues with overlapping roles at the Respondent and Cattlytx. *See* Dkt. 1 at p. 15-16.

[27] *Id.* ¶ 12.

[28] *Id.* ¶ 1 (emphasis added).

[29] *Id.* ¶ 9.

[30] *Id.* ¶ 13.

the status of claims, Petitioner asserts retained claims, "relating to, among other things, the status of the patent assignments, the unauthorized use and exploitation of Petitioner's intellectual property, and the Company's misrepresentations in connection with securities offerings."[31]

2. Related Claims to Demonstrate Insolvency "Plus"

The Petition also asserts facts relating to inadequate disclosure, potential breach of fiduciary duties, diversion of corporate opportunities, and how those facts inform the insolvency "plus" analysis.[32] The Petition alleges that Mr. Uden's acceptance of a new role at Cattlytx was not adequately disclosed to stockholders.[33] That new role is further alleged to be "potentially competitive with the Company's stated business."[34] The Petitioner further asserts, "[o]n information and belief," that other stockholders hold interests or exercise influence over Cattlytx.[35]

The Petition frames this item as "rais[ing] serious questions" regarding diversion of "corporate opportunities or intellectual property"; exploitation of the Company's Patents "without authorization or compensation"; and prioritizing the

[31] *Id.* ¶ 30.

[32] *See id.* ¶¶ 31-34 at p. 15-16.

[33] *Id.*

[34] *Id.* ¶ 31 at p. 15.

[35] *Id.* ¶ 33 at p. 16.

success of the new venture, while the Respondent "is allowed to fail."[36] While styling the "complete absence of any disclosure regarding CEO's dual role"[37] as "a material breach of the fiduciary duties owed to the Company's minority [stockholders] and a further demonstration of the total failure of corporate governance,"[38] the Petition includes no facts to establish the identity of the Respondent's directors beyond a purported control group,[39] whether any demands were made upon them to address the dual role related issues, or any action to correct or address the corporate governance complaints lodged by the Petitioner.[40] The Petition's prayer for relief is entirely focused on a receiver's appointment, directing the receiver's conduct, and requiring other parties to act in concert with the receiver.[41]

B. Petitioner's Prior Litigation

On July 13, 2026, Respondent filed its answering brief regarding the motion to expedite.[42] Respondent's answering brief identified that Petitioner had previously

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[36] *Id.*

[37] *Id.* ¶ 34.

[38] *Id.*

[39] *Id.* ¶ 3 (setting forth "Controlling Shareholders" but not specifying the composition of the Respondent's Board of Directors, or any information relating to the certificate of incorporation or bylaws).

[40] *See id.* ¶ 34.

[41] *Id.* at p. 22-24 (Prayer for Relief).

[42] Dkt. 12.

initiated litigation against the Respondent, and others, in the United States District Court in the District of Colorado (the "Colorado Litigation").[43]

The Petitioner's complaint in the Colorado Litigation (where she is referred to as "Plaintiff") set forth:

> - Beginning in or around 2019, other officers and directors of HerdDogg initiated a series of actions designed to seize control of the company's core patents and deprive Plaintiff of her ownership stake and corporate rights. These actions included the forgery of patent assignments submitted to the United States Patent and Trademark Office, fraudulent misrepresentations to private investors, and efforts to prevent Plaintiff from participating in shareholder governance or obtaining redress through corporate processes;[44]
> - The real business of HerdDogg, as orchestrated by the insiders and investors who have corrupted it, is fraud. And the targets of the Defendants' ongoing racketeering scheme have expanded far beyond just Plaintiff and the other shareholders in the company—as it stands now, every counterparty to a transaction with Herddogg, whether it be a new employee, vendor, customer, private investor, or government funding agency like the North Dakota Development Fund, is really just another victim being unwittingly fleeced by the conspirators;[45]
> - Plaintiff brings this action to halt the ongoing injury caused by Defendants' fraudulent enterprise, to vindicate her rights as founder, shareholder, and inventor, and to expose and remedy the broader RICO/COCCA conspiracy now implicating state and federal funds and a continuing pattern of deceptive conduct;[46]

[43] *Id.* at p. 3; Colorado Litigation Case No. 25-cv-02254-GPG-NRN.

[44] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶ 3.

[45] *Id.* ¶ 8.

[46] *Id.* ¶ 9.

- On May 26, 2021, Plaintiff was awarded U.S. Design Patent No. D1020130 (the "'130 Patent") as sole inventor. Plaintiff did not intend or agree to assign the '130 Patent to HerdDogg;[47]

- However, unbeknownst to Plaintiff, on that same day [May 26, 2021], while she was travelling on business for the Company in Nashville, Tennessee, Defendant Faust directed Defendant Moyes, Hammar, and/or other co-conspirators to unlawfully gain unauthorized access to Plaintiff's email account, and thereby, her DocuSign electronic signature account, and to use that unauthorized access to forge Plaintiff's electronic signature on a patent assignment document purporting to assign the '130 Patent from Plaintiff to HerdDogg, which patent assignment document was then fraudulently submitted to the U.S. Patent and Trademark Office in Plaintiff's name;[48]

- On December 7, 2021, Plaintiff was awarded U.S. Utility Patent No. 11191626 (the "'626 Patent") as sole inventor. Plaintiff did not intend or agree to assign the '626 Patent to HerdDogg;[49]

- However, unbeknownst to Plaintiff, five days later, on December 12, 2021, while she was again travelling on business for the Company, this time to a trade show in Casper, Wyoming, Defendant Faust directed Defendants Moyes, Hammar, and/or other co-conspirators to unlawfully gain unauthorized access to Plaintiff's email account, and thereby, her DocuSign electronic signature account, and to use that unauthorized access to forge Plaintiff's electronic signature on a patent assignment document purporting to assign the '626 Patent from Plaintiff to HerdDogg, which patent assignment document was then fraudulently submitted to the U.S. Patent and Trademark Office in Plaintiff's name;[50]

- Together, the '130 Patent and the '626 Patent, and all rights and intellectual property therein, are hereinafter collectively referred to as the "Stolen Inventions.";[51]

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[47] *Id.* ¶ 59.

[48] *Id.* ¶ 60.

[49] *Id.* ¶ 67.

[50] *Id.* ¶ 68.

[51] *Id.* ¶ 69.

- On July 8, 2022, Plaintiff received an email attaching a purported proposal, which was in fact not an actual firm offer of any kind, but rather an aspirational intention to eventually pay her something when the Company had escaped from its insolvent and non-revenue-generating condition;[52]

- On August 2, 2022, Plaintiff had a phone conversation with two members of the board, Defendants Ed Hamburg and Rob Schultz. During this call, Hamburg and Shultz told Plaintiff that the Company was broke and could not pay her anything at all in severance;[53]

- Defendants have dissipated all of those fundraising proceeds on their own salaries, fraudulent purchases of bulk, unsalable raw materials, and fraudulent manufacturing arrangements that have left the Company with a stockpile of unsold and unmarketable finished goods;[54]

- Based on the limited financial information the Company has disclosed to Plaintiff, and other information Plaintiff has been able to obtain without the benefit of discovery, Plaintiff reasonably infers that the Company's current operations are a sham meant to perpetrate a fraud on the U.S. Treasury and the State of North Dakota, by creating a false impression that HerdDogg is manufacturing products and employing productive workers in North Dakota in order to falsely certify compliance with the requirements imposed on one of the Company's principal A3 and A4 fundraising round investors . . . .;[55]

- In 2024, HerdDogg undertook large-scale purchases of raw materials, totaling several million dollars by the end of Q3. These purchases were subsequently reclassified as finished goods inventory, despite the absence of any clear sales pipeline, order fulfillment activity, or documented commercialization efforts. The company's claimed inventory grew significantly, but without corresponding

[52] *Id.* ¶ 78.

[53] *Id.* ¶ 80.

[54] *Id.* ¶ 91.

[55] *Id.* ¶ 92.

increases in accounts receivable, product revenue, or customer engagement; [56]

- Meanwhile, HerdDogg reported negligible product revenue for the entire year, suggesting either operational failure or deliberate misreporting. Despite this, the company incurred substantial professional and legal expenses, outpacing even core operational costs in some quarters. This raises the possibility that much of the company's spending has gone toward legal work connected to unresolved IP disputes, investor disclosures, or internal governance challenges;[57]

- The disconnect between HerdDogg's asset reporting, cash burn, and operational results poses serious red flags. The financials suggest a company artificially inflating its book value through unsold inventory, with no viable path to revenue—and possibly misusing investor or public funds to sustain a non-viable business model;[58]

- HerdDogg's substantial expenditures in 2024 on raw materials—amounting to several million dollars—and its subsequent decision to relocate manufacturing operations to Mexico did not reflect bona fide commercial needs, but instead most reasonably indicates undisclosed self-dealing;[59]

- This raises the strong possibility that one or more officers, directors, or significant investors caused HerdDogg to enter into transactions that primarily benefitted other entities to which those individuals are affiliated, whether through ownership, control, or prior business relationships. These transactions may have served to enrich such parties at the company's expense, without independent oversight or fair market validation;[60]

- This concern is heightened by the fact that no board minutes, investor disclosures, or audited statements to date have addressed the

[56] *Id.* ¶ 93.

[57] *Id.* ¶ 94.

[58] *Id.* ¶ 95.

[59] *Id.* ¶ 96.

[60] *Id.* ¶ 98.

identity of the Mexican manufacturing partner, the terms of engagement, or any evaluation of alternative domestic suppliers;[61]

- Rather, the pattern of opaque expenditures, inflated inventory reporting, and offshore contracting suggests a possible scheme to extract value from HerdDogg through non-arm's-length transactions that provide windfall profits to insiders or related parties, while leaving the company insolvent and its public and private investors defrauded;[62]

- Finally, Plaintiff did not become aware of Defendants' misconduct in forging her signature in the DocuSign system to fraudulently assign the patents relating to the Stolen Inventions from Plaintiff to the Company until December 2023;[63]

- These misrepresentations included, but were not limited to, fraudulent claims that HerdDogg possessed valid and unencumbered ownership of its core intellectual property portfolio, including the Stolen Inventions; that Plaintiff had executed a general release of all claims against the Company; and that HerdDogg maintained meaningful operations or employment activity in the State of North Dakota;[64]

- Each of these statements was knowingly false. HerdDogg possessed no executed release from Plaintiff. Plaintiff never consented to assign her patents to the Company. HerdDogg's purported North Dakota presence was a sham. As of the relevant time period, the Company had no production or sales activity in North Dakota and employed, at most, one or two remote support workers in the state. Its so-called manufacturing operation had in fact been outsourced to Mexico;[65]

- In early 2025, Plaintiff, through her counsel, submitted a formal books and records demand through her pursuant to 8 Del. C. § 220 in early 2025. This request sought corporate documents necessary to evaluate HerdDogg's governance, IP assignments, fundraising

[61] *Id.* ¶ 99.

[62] *Id.* ¶ 101.

[63] *Id.* ¶ 104.

[64] *Id.* ¶ 110.

[65] *Id.* ¶ 111.

representations, and shareholder rights compliance. The company initially resisted production, providing only limited, disorganized, and at times internally contradictory materials. Key records—such as board resolutions, patent documentation history, and voting records—were either withheld or produced in formats suggesting gaps or irregularities;[66]

- In light of these deficiencies and the apparent years-long lapse in any shareholder meeting, Plaintiff's counsel also demanded that the company comply with its statutory and fiduciary obligations by calling a proper meeting of shareholders. Under mounting legal pressure, the company finally agreed to hold a shareholder meeting. However, it refused to circulate Plaintiff's proposed resolutions or platform items as part of the agenda, and took no action to ensure meaningful shareholder participation beyond select insiders;[67]

- This action is brought, in part, under the Racketeer Influenced and Corrupt Organizations Act ("RICO"),18 U.S.C. § 1961 et seq., and the Colorado Organized Crime Control Act ("COCCA"), Colorado Revised Statutes ("C.R.S."), 18-17-101et seq., based on a pattern of racketeering activity involving multiple defendants acting in concert through an enterprise—or alternatively, through multiple related enterprises—for the purpose of misappropriating Plaintiff's intellectual property, defrauding state and federal entities of public funds, concealing the lack of commercial viability of a venture, and defrauding investors through material omissions and misrepresentations;[68]

- The enterprise engaged in interstate commerce, including by transmitting offering materials, investor updates, financial records, and internal communications across state lines using email, wire transfers, and digital platforms. These communications constitute acts of wire fraud in violation of 18 U.S.C. § 1343, and were made repeatedly between at least 2021 and the present, including but not limited to: misrepresentations about ownership of the foundational patents; communications falsely asserting Plaintiff had executed a general

[66] *Id.* ¶ 121.

[67] *Id.* ¶ 122.

[68] *Id.* ¶ 125.

release; and communications seeking additional funding under materially false pretenses;[69]

- Further predicate acts include unauthorized access to digital accounts and/or the use of credentials to improperly reassign patent rights originally held by Plaintiff without her knowledge or consent. Upon information and belief, these unauthorized assignments occurred between mid-2021 and early 2022, in the lead-up to key investment rounds, and were used to fraudulently represent to investors that the company held undisputed rights to all intellectual property foundational to its product line;[70]

- These acts are not isolated. They are part of a coordinated and deliberate course of conduct spanning multiple years and jurisdictions. The predicate acts began no later than 2021 and are continuing into 2025, involving ongoing attempts to secure funding, avoid regulatory scrutiny, and exclude Plaintiff from her rights as a founder and stakeholder. Each act of email communication, misrepresentation to government funders, and concealment of the fraudulent patent assignments constitutes a distinct racketeering act under federal law;[71]

- In the months since Plaintiff's attempts to obtain a complete and accurate set of corporate board records and to meaningfully participate in a substantive shareholders' meeting were thwarted by Defendants, the Company has apparently continued to fraudulently raise additional debt and/or equity funding from investors who Defendants have continued to lie to about the Company's ownership of the Stolen Inventions and about possessing a release from Plaintiff;[72]

- Indeed, over just the past few weeks, Defendants have doubled down on their fraud scheme—again—by soliciting yet more rounds of outside investment in HerdDogg to keep the scheme running, denominated as the Series A5 and A6 rounds. Worse, it appears that one of the entities that Defendants induced to put more cash into the company is Invest Nebraska, meaning that the conspirators' scheme to

[69] *Id.* ¶ 127.

[70] *Id.* ¶ 129.

[71] *Id.* ¶ 131.

[72] *Id.* ¶ 140.

find and use additional public funds to perpetuate their fraud is still ongoing;[73]

- In order to fraudulently induce these latest rounds of investment in HerdDogg—which of course has also had the effect of further diluting Plaintiff's shareholding in the company—Defendants made numerous false and misleading statements in their offering materials, including, but not limited to, claims that: (a) HerdDogg owns the Stolen Inventions; (b) Plaintiff had signed a release of the Company from liability; (c) Plaintiff had signed termination non-solicitation, and non-compete agreements with the Company; and (d) the Company knew of no ongoing disputes or claims subjecting it to liability;[74]

- At this point, it appears that Defendants have managed to take in approximately $15 million in investment across the four rounds of fraudulent solicitations (Series A3, A4, A5 and A6) they have conducted since 2023;[75]

- In addition, it appears from an updated cap table Plaintiff can still access that Defendant Uden has been awarded additional incentive compensation in the form of company stock, despite the fact that he has performed no discernable function for the Company other than to make deceptive social media appearances in which he falsely implies that HerdDogg is a thriving, going concern, as opposed to a fraud vehicle with no meaningful revenues;[76]

- Of course, Plaintiff cannot determine the extent to which Defendants have further looted the Company's remaining resources and dissipated the new funds they have fraudulently induced from investors, because HerdDogg has failed to provide any updated financial information to shareholders generally, or in response to Plaintiff's explicit written demands, for any time periods after the third quarter of 2024;[77]

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[73] *Id.* ¶ 141.

[74] *Id.* ¶ 142.

[75] *Id.* ¶ 143.

[76] *Id.* ¶ 144.

[77] *Id.* ¶ 145.

- As a result, Plaintiff can only determine from the updated cap table that Defendants have purportedly diluted Plaintiff's shareholding to approximately 7.5%, while increasing the ownership stake of Defendant Uden—who has done nothing but serve as a front for the Defendants' fraud scheme—to over 10% of a company he helped steal from Plaintiff;[78]

- In addition, it appears that in the course of the A5 and A6 rounds, Defendants have not only diluted Plaintiff's shareholdings to an all-time low, they have also preferenced themselves and the A5 and A6 Series to such an extent that Plaintiff's shares would be effectively worthless even in the (unanticipated) event of a 100% buyout of the Company by a third party;[79]

- Plaintiff has tried to resolve this matter through the use of the internal mechanisms provided for by Delaware law, and by engaging with Defendants in good faith to achieve a reasonable resolution of her concerns. Instead of meeting their legal and moral obligations to their Company's founder, Defendants have instead attempted to use their resources and clout to squelch her inquiries and destroy her career. As a result, Plaintiff has been left with no choice but to seek meaningful remedies and the vindication of justice for Defendants' wrongdoing from this Court;[80]

- In the course of perpetrating their wider scheme to defraud Plaintiff out of her ownership and control of HerdDogg and the benefits of her inventions, including, without limitation, their subsidiary scheme to forge assignments of the patents to the Stolen Inventions, Defendants made multiple false representations and omissions of material facts;[81]

- Specifically, Plaintiff seeks a judicial declaration that: (a) Plaintiff remains the rightful owner of two foundational patents misappropriated and reassigned without consent; (b) the claimed assignments of those patents to HerdDogg were obtained through forgery and are null and void; (c) no valid general release or termination agreement was ever executed by Plaintiff in favor of HerdDogg or any

[78] *Id.* ¶ 146.

[79] *Id.* ¶ 147.

[80] *Id.* ¶ 148.

[81] *Id.* ¶ 225.

related party; and (d) all subsequent representations by Defendants regarding full and uncontested ownership of such intellectual property were materially false and should be declared invalid and unlawful;[82]

- The appointment of a permanent receiver to manage, operate, and provide an orderly resolution of claims of ownership in, and liabilities to and of, HerdDogg, Inc.;[83]
- A declaration that the Stolen Inventions are wholly and solely owned by Plaintiff, and that the purported assignments of related patents to HerdDogg, Inc. were and are void as *ultra vires*;[84]
- An injunction compelling HerdDogg, Inc. to issue public corrections to its prior false statements concerning its ownership of the Stolen Inventions;[85]
- The appointment of a permanent receiver to manage, operate, and provide an orderly resolution of claims of ownership in, and liabilities to and of, HerdDogg, Inc.;[86]
- A declaration that the Stolen Inventions are wholly and solely owned by Plaintiff, and that the purported assignments of related patents to HerdDogg, Inc. were and are void as *ultra vires*;[87]
- A permanent injunction compelling HerdDogg, Inc. to issue public corrections to its prior false statements concerning its ownership of the Stolen Inventions;[88]

On January 14, 2026, District Judge Gordon P. Gallagher issued an Order to Show Cause to indicate why the matter should not be dismissed "based on

[82] *Id.* ¶ 232.

[83] *Id.* at p. 52 (Prayer for Relief 1.c.).

[84] *Id.* (Prayer for Relief 2.b.).

[85] *Id.* at p. 53 (Prayer for Relief 2.c.).

[86] *Id.* (Prayer for Relief 4.c.).

[87] *Id.* (Prayer for Relief 4.d.).

[88] *Id.* (Prayer for Relief 4.e.).

[Petitioner's] failure to proceed in this action due to her failure to respond to the motions discussed herein."[89] On January 23, 2026, with no response by Petitioner to the Order to Show Cause, District Judge Gallagher dismissed the Colorado Litigation *with prejudice* "as a sanction for Plaintiff's noncompliance."[90]

Specifically, the dismissal detailed how Petitioner failed to "lodge[] a response to any" of the four outstanding motions filed by both Respondent and other defendants ("Other Defendants").[91] The dismissal characterized Petitioner's Counsel, John Oleske's, statement that he "intend[ed] to submit the two responses to the [outstanding motions]" as "disingenuous," given his failure to respond to either motion.[92] Finally, the dismissal set forth that despite Mr. Oleske "f[alling] on his sword"[93] by accepting responsibility in failing to respond to the aforementioned motions, Petitioner nonetheless is "responsible for their choice of counsel and sometimes reaps the unfortunate consequences of that choice[.]"[94] The dismissal suggested that Petitioner, "should she choose, can proceed against Counsel for

[89] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 45 at 6.

[90] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49 at 1 & 7.

[91] *Id.* at 2.

[92] *Id.* at 4-5.

[93] *Id.* at 5.

[94] *Id.* (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962)).

potential malpractice."[95] Time for appeal on the dismissal elapsed on February 23, 2026.[96]

On July 16, 2026, Magistrate Judge N. Reid Neureiter issued a Report and Recommendation to order Plaintiff to pay the Other Defendants $84,408 in response to their motion for an award of attorneys' fees under 35 U.S.C. § 285.[97] On July 23, 2026, Mr. Oleske filed a motion to withdraw ("Motion to Withdraw"), to withdraw as counsel for Petitioner, as Petitioner "terminated undersigned counsel as her attorney."[98] The District Court granted the Motion to Withdraw on July 29, 2026.[99] Petitioner lodged an objection to Magistrate Neureiter's Report and Recommendation on August 5, 2026.[100]

On June 29, 2026, some of the Other Defendants filed a complaint in the United States District Court in the District of Colorado (the "Colorado Litigation 2"), alleging abuse of process and malicious prosecution claims against Petitioner.[101] Petitioner filed an answer, affirmative defenses, and counterclaims on August 17,

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[95] *Id.*

[96] *See* Fed. R. App. P. 4(a)(1)(A) (providing 30 days after entry of the judgment or order appealed from in a civil case).

[97] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 58 at 2.

[98] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 59 at 1.

[99] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 61 at 1.

[100] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 64.

[101] Colorado Litigation 2 Case No. 26-cv-02903-TPO Dkt. 1 at 2.

2026.[102] On September 8, 2026, the plaintiffs in the Colorado Litigation 2 case filed a Motion to Dismiss Petitioner's counterclaims,[103] and Petitioner opposed the motion on September 28, 2026.[104]

On August 5, 2026, Petitioner filed a Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure Rule 60(b) (the "Motion for Relief").[105] Petitioner set forth her contentions that she "was deprived of any meaningful opportunity to have her claims adjudicated on their merits" due to the "complete abandonment of [Petitioner's] case by the attorney she retained to litigate it."[106] The Motion for Relief is fully briefed, and there is no dispositive ruling on the Motion for Relief as of November 5, 2026. [107]

C. Facts Asserted in the Motion for Sanctions

Respondent in seeking sanctions pursuant to Court of Chancery Rule 11 directs the Court to the Colorado Litigation Complaint and the Dismissal discussed above.[108] The Respondent also highlights Magistrate Judge Neureiter's Order on Other Defendants' Motion for Attorneys' Fees, entered July 16, 2026, identifying

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[102] Colorado Litigation 2 Case No. 26-cv-02903-TPO Dkt. 10.

[103] Colorado Litigation 2 Case No. 26-cv-02903-TPO Dkt. 14.

[104] Colorado Litigation 2 Case No. 26-cv-02903-TPO Dkt. 19.

[105] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 65.

[106] *Id.* at 2.

[107] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkts. 65, 72, & 74.

[108] Dkt. 113 at 1-2.

concerns that Petitioner did not submit any evidence to explain the factual basis for bringing her lawsuit, and noting the defendants evidence was unrebutted.[109]

Respondent next points to the filing of the Petition, and the overlap of the assertions in the Colorado Litigation with those in the Petition.[110] Finally, the factual background in the Motion for Sanctions discusses the Court's disposition of the Petitioner's motion to expedite and motion for TRO.[111]

D. Other Facts Relevant to the Motion for Sanctions

Aside from what is included in the Respondent's Motion for Sanctions, some of Petitioner's conduct throughout the course of this litigation is also germane to the question of whether sanctions are appropriate. Specifically, Petitioner's statements during the hearing on the Motion to Dismiss presented a concerning development regarding her prior candor to the Court, as she conceded that the Petition was drafted by her former counsel in the Colorado Litigation, Mr. Oleske.[112] While the Petitioner seeks to excuse many of the failings of her pleadings and statements during the July 20, 2026 Hearing as part of Mr. Oleske's assistance, Mr. Oleske is not a party to this

[109] *Id.* at 2-3 (citing Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 58, at 14 (D. Col. July 16, 2026)).

[110] *Id.* at 3.

[111] *Id.*

[112] Oct. 15, 2026 Oral Arg. Tr. 41: 9 - 41:14 ("I was not being assisted by him. He did write the motion for me, and he assured me that going forward he would be able to support me. He was not involved in any of the filing that I did post motion.").

case, has not appeared, and the Court has received no independent evidence to substantiate to what extent he was involved before the termination on July 21, 2026 that Ms. Brandao identifies.

As discussed above, the Colorado Litigation docket contains a Motion to Withdraw by Mr. Oleske, and authorization to cease his representation in that matter dated July 23, 2026 and July 29, 2026, respectively.[113]

II. ANALYSIS

A. Standard of Review

1. Motions to Dismiss

When considering a motion to dismiss under Court of Chancery Rule 12(b)(6), the Court accepts all well pleaded facts as true, accepts vague allegations as well pleaded if they give the opposing party notice of the claim, and draws all reasonable inferences in the non-moving party's favor.[114] A claim will be dismissed only if there is no "reasonably conceivable" set of circumstances under which the alleged facts may support it.[115] "While the nonmoving party is entitled to 'all reasonable inferences that logically flow from the face of the complaint,' the '[C]ourt

[113] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkts. 59 & 61.

[114] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011).

[115] *Id.* at 536.

is not . . . required to accept as true conclusory allegations "without specific supporting factual allegations."""[116]

A petition for a receiver under 8 *Del. C.* § 291 requires: (1) that the Company is insolvent "at the time the [petition] was filed,"[117] by "clear and convincing proof,"[118] (2) a neutral third party is necessary "to protect the insolvent corporation's creditors or shareholders by showing 'some benefit that such an appointment would produce or some harm it could avoid,'"[119] and (3) "the potential benefits must outweigh any potential harm that appointment of a receiver could cause."[120]

Relevant to the circumstances presented here, "it is virtually axiomatic that courts may take judicial notice of other courts' decisions at any stage of the proceedings."[121] "Delaware courts routinely consider collateral estoppel arguments

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

[117] *Ross Hldg. & Mgmt. Co. v. Advance Realty Gp.*, LLC, 2010 WL 3448227, at *5 (Del. Ch. Sept. 2, 2010).

[118] *In re Geneius Biotech, Inc.*, 2017 WL 6209593, at *5 (Del. Ch. Dec. 8, 2017) (first quoting *Kenney v. Allerton Corp.*, 151 A. 257, 257 (Del. Ch. 1930); then quoting *Manning v. Middle States Oil Corp.*, 137 A. 79 (Del Ch. 1927); and then citing *Whitmer v. William Whitmer & Sons*, 99 A. 428, 430 (Del. Ch. 1916)).

[119] *Badii ex rel. Badii v. Metro. Hospice, Inc.*, 2012 WL 764961, at *7 (Del. Ch. Mar. 12, 2012) (quoting *Pope Invs. LLC v. Benda Pharm., Inc.*, 2010 WL 5233015, at *8 (Del. Ch. Dec. 15, 2010)).

[120] *Geneius Biotech.*, 2017 WL 6209593, at *5 (quoting *Badii ex rel. Badii*, 2012 WL 764961, at *7).

[121] *PVP Aston, LLC v. Fin. Structures Ltd.*, 2023 WL 2728775, at *7 (Del. Super. Ct. Mar. 31, 2023) (first citing *Aequitas Sols., Inc. v. Anderson*, 2012 WL 2903324, at *3 (Del. Ch.

on motions to dismiss and grant those motions where it is plain from the pleadings and the matters of which the court may take judicial notice that the pending claims are barred by collateral estoppel."[122]

"Under Rule 41(b) a prior dismissal operates as an adjudication upon the merits unless the court in its dismissal order otherwise specifies."[123] "[T]he very function of a dismissal for failure to prosecute is to have the dismissal be with prejudice. This is surely[sic] the norm."[124] "[D]ismissal of [a party's] first case was with prejudice, meaning that the second suit, even if timely filed, is barred by *res judicata*."[125]

July 10, 2012) (holding that court may take judicial notice of a declaration because it was a pleading filed in a California bankruptcy proceeding); and then citing *In re Wheelabrator Tech. Inc. S'holders Litig.*, 1992 WL 212595, at *12 (Del. Ch. Sept. 1, 1992) (holding that "publicly filed documents [including certificate of incorporation] are judicially noticeable on a motion to dismiss.")).

[122] *Id.* (first citing *Pyott v. La. Mun. Police Emps.'s Ret. Sys.*, 74 A.3d 612, 618 (Del. 2013) (reversing Court of Chancery decision that wrongly declined to grant motion to dismiss based on collateral estoppel); then citing *Asbestos Workers Loc. 42 Pension Fund v. Bammann*, 2015 WL 2455469, at *15 (Del. Ch. May 21, 2015) (granting motion to dismiss because collateral estoppel barred plaintiffs' claims); then citing *Adjile, Inc. v. City of Wilm.*, 2010 WL 1379921, at *2 (Del. Super. Mar. 31, 2010) (granting motion to dismiss based on collateral estoppel); and then citing *Nelson v. Emerson*, 2008 WL 1961150, at *10 (Del. Ch. May 6, 2008) (granting motion to dismiss based on collateral estoppel where issues were addressed in prior bankruptcy proceedings)).

[123] *Hughes v. Trans World Airlines, Inc.*, 336 A.2d 572, 576 (Del. 1975).

[124] *In re Wilm. Tr. Co. v. Connors*, 1997 WL 127957, at *3 (Del. Super. Ct. Feb. 14, 1997) (quoting *Nyce v. Stella*, 1996 WL 944887, at *4 (Del. Super. Ct. Apr. 1, 1996) ("This surely is the norm." in the original)).

[125] *Savage v. Himes*, 2010 WL 2006573, at *1 (Del. Super. Ct. May 18, 2010), *aff'd*, 9 A.3d 476 (Del. 2010).

2. Res Judicata and Collateral Estoppel

The Respondent's briefing for res judicata and collateral estoppel includes both the Eleventh Circuit standard and that applicable in Delaware.[126] As the Delaware standards are slightly more stringent as to jurisdictional requirements, the Court applies them out of an abundance of caution, but recognizes the law of the foreign court typically applies when a party seeks relief relying on collateral estoppel.[127] "*Res judicata* exists to provide a definite end to litigation, prevent vexatious litigation, and promote judicial economy."[128] "The procedural 'bar of *res judicata* extends to all issues which might have been raised and decided in the first suit as well as to all issues that actually were decided.'"[129] There is a five-part test to apply res judicata:

> (1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action

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[126] Dkt. 45 Opening Br. at 10-12.

[127] *See Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1217 (Del. 1991) (describing the test as enunciated in *Bata v. Bata*, 163 A.2d 493 (Del. 1960)); *see also Nelson v. Emerson*, 2008 WL 1961150, at *6 (Del. Ch. May 6, 2008) ("The Emersons base their collateral estoppel claim on the findings and conclusions of the U.S. Bankruptcy Court for the Northern District of Illinois and the U.S. District Court for the Northern District of Illinois, and therefore the collateral estoppel standard of the U.S. Court of Appeals for the Seventh Circuit applies.").

[128] *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191 (Del. 2009) (footnotes omitted) (first citing *Maldonado v. Flynn*, 417 A.2d 378, 381 (Del. Ch. 1980); and then citing *Playtex Fam. Prods., Inc. v. St. Paul Surplus Lines Ins. Co.*, 564 A.2d 681, 683 (Del. Super. Ct. 1989)) (footnotes omitted).

[129] *Id.* at 191-92 (quoting *Cassidy v. Cassidy*, 689 A.2d 1182, 1185 (Del. 1997)).

> or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the [party who's claims would be dismissed] in the case at bar; and (5) the decree in the prior action was a final decree.[130]

"Delaware, like the federal courts, follows a transactional approach to *res judicata*."[131] "Two claims 'derive[d] from a common nucleus of operative fact[s]' arise from the same transaction."[132]

When "the collateral estoppel doctrine applies, and [parties] are bound by the adverse decisions in the other jurisdictions, the [party's] complaint must be dismissed with prejudice."[133] "Collateral estoppel, also known as issue preclusion, refers to the preclusive effect of a judgment on the merits of an issue that was previously litigated or that could have been litigated."[134] "Delaware courts routinely consider collateral estoppel arguments on motions to dismiss and grant those motions where it is plain from the pleadings and the matters of which the court may

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[130] *Id.* at 192 (quoting *Dover Hist. Soc'y, Inc. v. City of Dover Plan. Comm'n*, 902 A.2d 1084, 1092 (Del. 2006).

[131] *Id.* at 193 (footnotes omitted).

[132] *Id.* (quoting *Maldonado v. Flynn*, 417 A.2d 378, 383 (Del. Ch. 1980)).

[133] *PVP Aston, LLC v. Fin. Structures Ltd.*, 2023 WL 2728775, at *1 (Del. Super. Ct. Mar. 31, 2023).

[134] *Shahin v. Darling*, 606 F. Supp. 2d 525, 545 (D. Del. 2009); *see also Tyndall v. Tyndall*, 238 A.2d 343, 346 (Del. 1968) (setting forth collateral estoppel provides repose by preventing re-litigation of an issue previously decided); *PVP Aston*, 2023 WL 2728775, at *7.

take judicial notice that the pending claims are barred by collateral estoppel."[135] To make a determination whether collateral estoppel applies, the Court must analyze:

> 1) the issue previously decided is identical to the one presented in the action in question; 2) the prior action has been finally adjudicated on the merits; 3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication; and 4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.[136]

3. Laches

The Court may also entertain laches defenses on a motion to dismiss.[137] "Laches is an equitable defense born from the longstanding maxim equity aids the vigilant, not those who slumber on their rights."[138] To defend on laches, a party "must demonstrate that (a) [p]laintiff had knowledge of the invasion of his rights,

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[135] *PVP Aston*, 2023 WL 2728775, at *7 (first citing *Pyott v. La. Mun. Police Emps.'. Ret. Sys.*,74 A.3d 612, 618 (Del. 2013) (reversing Court of Chancery decision that wrongly declined to grant motion to dismiss based on collateral estoppel); and then citing *Asbestos Workers Loc. 42 Pension Fund v. Bammann*, 2015 WL 2455469, at *15 (Del. Ch. May 21, 2015) (granting motion to dismiss because collateral estoppel barred plaintiffs' claims)).

[136] *Id.* at *8 (citing *Klauder v. Echo/RT Hldgs., LLC (In re RayTrans Hldgs., Inc.*), 573 B.R. 121, 130 (Bankr. D. Del. 2017) (citing *Betts v. Townsends, Inc.*, 765 A.2d 531, 535 (Del. 2000)).

[137] *Akrout v. Jarkoy*, 2018 WL 3361401, at *11 (Del. Ch. July 10, 2018) ("When it is 'clear from the face of the complaint' that the claims are time-barred, particularly when an analogous statute of limitations is in play, it is appropriate to adjudicate the claims then and there on a motion to dismiss rather than kick the can down the road to summary judgment.") (quoting *Bean v. Fursa Cap. P'rs, LP*, 2013 WL 755792, at *6 (Del. Ch. Feb. 28, 2013)); *see also de Adler v. Upper N.Y. Inv. Co. LLC*, 2013 WL 5874645, at *12 n.145 (Del. Ch. Oct. 31, 2013) (collecting cases where this court has dismissed claims as untimely based on laches at the motion to dismiss stage).

[138] *Akrout*, 2018 WL 3361401, at *8 (quoting Reid *v. Spazio*, 970 A.2d 176, 182 (Del. 2009)).

(b) [p]laintiff unreasonably delayed in bringing suit to vindicate those rights, and (c) the delay resulted in injury or prejudice to [the defending party]."[139] An "action will be barred by laches only if unusual conditions or extraordinary circumstances make it inequitable to allow the prosecution of [a] claim within the time allowed by law."[140]

4. Motion for Sanctions

Court of Chancery Rule 11(b), provides that when an attorney or unrepresented party presents to the Court "a pleading, written motion, or other paper," they certify that:

> [T]o the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . . it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation . . . the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law . . . the factual contentions have evidentiary support, or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery[.][141]

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[139] *Id.* (citing *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 210 (Del. 2005)).

[140] *Reid v. Spazio*, 970 A.2d 176, 183 (Del. 2009).

[141] Ct. Ch. R. 11(b).

Rule 11 applies "to all papers filed during the course of litigation,"[142] but not "to discovery disclosures or oral representations, both of which have other avenues through which any misstatements can and will be addressed."[143] As expressed in *Crumplar v. Superior Court ex rel. New Castle County*,[144] "Judges in all Delaware trial courts should determine whether an attorney should be sanctioned under Rule 11 under an objective standard[,]" as "Delaware demands more from attorneys than pure hearts and empty heads."[145] Therefore, under the objective standard, "the attorney's duty is one of reasonableness under the circumstances[.]"[146] If the Court finds that Rule 11(b) has been violated, "the Court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation."[147] Rule 11 sanctions can be in the form of "reasonable attorney's fees and other expenses" incurred by the prevailing party, "nonmonetary directives," or penalties to the Court.[148]

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[142] *Hurst v. Gen. Dynamics Corp.*, 583 A.2d 1334, 1341 (Del. Ch. 1990).

[143] *Magna-D Glob. Healthcare No. 1 Private Equity Fund v. Colmmune, Inc.*, 2025 WL 1568186, at *4 (Del. Ch. June 3, 2025) (citing Ct. Ch. R. 11(d)); Ct. Ch. R. 11(d) ("This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rule 26 through 37.").

[144] 56 A.3d 1000 (Del. 2012).

[145] *Id.* at 1008.

[146] *Id.*

[147] Ct. Ch. R. 11(c).

[148] Ct. Ch. R. 11(c)(4).

Furthermore, under 10 *Del. C.* § 5106, the Court may order a litigant to pay "costs in every case as is agreeable to equity[,]"[149] which is "limited to court costs and certain other expenses necessarily incurred in the litigation process, but excluding legal fees."[150] Additionally, the Court, "under [its] equitable powers, has latitude to shift attorneys' fees,"[151] and the Delaware Supreme Court identified three equitable grounds under which fee shifting is warranted: "(i) the creation of a common fund or benefit, (ii) reprehensible conduct before the litigation began, and (iii) bad faith during the litigation process."[152] However, the Court may also award fees in "an individual case . . . where equity requires."[153] Importantly, for the Court to shift fees on equitable grounds, the "party seeking fees must produce '*clear evidence*' of the bad faith conduct."[154]

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[149] 10 *Del. C.* § 5016.

[150] *Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 686 (Del. 2013) (quoting *Cove on Herring Creek Homeowners' Ass'n v. Riggs*, 2005 WL 1252399, at *2 (Del. Ch. May 19, 2005)).

[151] *Id.* at 688 (citations omitted).

[152] *ASB Allegiance Real Estate Fund v. Scion Breckenridge Managing Member, LLC*, 2013 WL 5152295, at *6 (Del. Ch. Sept. 16, 2013) (citing *Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 687 (Del. 2013)).

[153] *Id.*

[154] *Id.* (emphasis added) (citing *Arbitrium (Cayman Is.) Handels AG v. Johnston*, 705 A.2d 225, 232 (Del. Ch. 1997), *aff'd*, 720 A.2d 542 (Del. 1998)) (emphasis added); *see also Beck v. Atl. Coast PLC*, 868 A.2d 840, 851 (Del. Ch. Feb 11, 2005) (citations omitted) ("The party seeking a fee award bears the stringent evidentiary burden of producing 'clear evidence' of bad faith conduct.").

Rule 11 sanctions, however, are an "extreme remedy,"[155] and therefore, "sanctions should be reserved for those instances where the Court is reasonably confident that an attorney does not have an objective good faith belief in the legitimacy of a claim or defense."[156] As expressed by Vice Chancellor Will, to award Rule 11 sanctions, "[t]he court must be confident, after careful consideration, that outrageous and abusive conduct has occurred."[157] Furthermore, the sanction imposed "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated."[158]

B. Petitioner Fails to State a Claim for Appointment of a Receiver

Independent from the other grounds to be discussed below, the Petitioner has failed to plead that the Respondent was insolvent on the date of the Petition, and that special circumstances justify the appointment of a receiver.[159] The four corners of the Petition focus primarily on financial data received by the Petitioner covering the

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[155] *Price Org., Inc. v. Universal Comput. Servs., Inc.*, 1993 WL 400152, at *6 (Del. Ch. Oct. 1, 1993).

[156] *Franklin v. Glenhill Advisors LLC*, 2023 WL 569192, at *11 (Del. Ch. Jan. 27, 2023) (citations omitted).

[157] *Id.*

[158] Ct. Ch. R. 11(c)(4).

[159] *See In re Geneius Biotech., Inc.*, 2017 WL 6209593, at *5 (Del. Ch. Dec. 8, 2017); *Pope Invs. LLC v. Benda Pharm., Inc.*, 2010 WL 5233015, at *6 (Del. Ch. Dec. 15, 2010).

third quarter of 2024.[160] Discussion of "self-dealing" transactions occurring from 2022 through the present, relies on conclusory statements that those unspecified dealings have left Respondent with unusable and unsellable goods, while incurring substantial liabilities to counterparties.[161] No allegation as to the size of those liabilities is made. No balance sheet was attached, no example transaction is described, and nothing is provided to substantiate that the assets the Petitioner recognizes exist are unusable or unsellable.

The Petition expressly relies on the absence of more current financial information than what Petitioner received dating to the third quarter of 2024 as sufficient to establish insolvency under both a Balance Sheet and Cash Flow approach.[162] While there may be an issue with Respondent making timely communications to stockholders, the Respondent's continued existence, two years after the information Petitioner relies on to show "imminent exhaustion" of the Company's liquidity, is the type of conclusory allegation the Court need not accept to permit such a pleading to survive a motion to dismiss.[163]

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[160] Dkt. 1 ¶¶ 24-26.

[161] *Id.* ¶¶ 17-20 & 24.

[162] *Id.* ¶ 24.

[163] *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001) ("[A] claim may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law.").

The Delaware Supreme Court in distinguishing well-pleaded facts from conclusory statements has affirmed dismissal of claims when the complaint alleges the elements of the claim, but no facts from which the claim could be stated.[164] The Petition concludes without providing standalone factual allegations that any assets are unmarketable or have no realizable value, that the Patents have lost value due to rampant infringement, and that attendant liabilities to vendors exceed those asset values.[165]

In the context of another receiver action under the LLC Act, then-Vice Chancellor Zurn held, "[s]peculation cannot support a reasonable inference of a Section 18-804 violation."[166] The Petition's speculation as to the value of assets, both physical and intangible, and to liabilities is not sufficient to withstand Respondent's Motion.

Petitioner's allegations regarding disclosure issues, fiduciary duty breaches, diversion of corporate opportunities, and other theories relating to Mr. Uden and Mr.

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[164] *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 72 (Del. 1995) ("Plaintiffs fail to allege any facts which would state a claim against Burlington. They merely include a conclusory statement that 'BNI [Burlington] had knowledge of the Individual Defendants' fiduciary duties and knowingly and substantially participated and assisted in the Individual Defendants' breaches of fiduciary duty, and therefore, aided and abetted such breaches of fiduciary duties described above.' Other than this statement, Plaintiffs have alleged no facts from which a claim for aiding and abetting breaches of fiduciary duty could be stated.") (brackets in the original quotation).

[165] Dkt. 1 ¶ 24.

[166] *PXP Producing Co. LLC v. MitEnergy Upstream LLC*, 342 A.3d 402, 416 (Del. Ch. 2025).

Mitchell's simultaneous services for the Respondent and Cattlytx also fail to state a standalone claim. The assertions are included to "demonstrat[e] . . . the total failure of corporate governance" in seeking a receiver "to investigate these conflicts and to protect the Company's assets from further diversion."[167] The assertions are speculative and lack facts to treat the Petitioner's concerns as a claim independent of seeking appointment of a receiver.[168] Based on the allegations, in order for anything regarding the dual roles to proceed as a standalone claim, the Petitioner would need to have complied with Court of Chancery Rule 23.1, and pleaded accordingly:

> (1) state with particularity:
> (A) any effort by the derivative plaintiff to obtain the desired action from the entity; and
> (B) the reasons for not obtaining the action or not making the effort; and
> (2) allege facts supporting a reasonable inference that the derivative plaintiff has standing to sue derivatively under the law governing the entity.[169]

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[167] Dkt. 1 ¶ 34.

[168] *See Brehm v. Eisner*, 746 A.2d 244, 249 (Del. 2000) ("[C]oncerns about lavish executive compensation and our institutional aspirations that boards of directors of Delaware corporations live up to the highest standards of good corporate practices do not translate into a holding that these plaintiffs have set forth particularized facts excusing a pre-suit demand under our law and our pleading requirements."); *see also Hassanein v. NTO Fund I*, 2026 WL 2240127, at *19 & *24 (Del. Ch. Aug. 4, 2026) (setting forth a description of direct claims versus derivative claims).

[169] *Hassanein*, 2026 WL 2240127, at *24 (quoting Ch. Ct. R. 23.1(a)).

Petitioner has not done so, and so these allegations fail to state a claim independently, or in connection with the request to appoint a receiver.

The direct versus derivative issue is further clarified by examining a motion to dismiss where the self-represented plaintiffs' 8 *Del. C.* § 291 request was mooted by the entity filing a bankruptcy petition.[170] The plaintiffs in *Thornton*,[171] include many of the same issues the Petition complains of in seeking to establish insolvency "plus" to support the appointment of a receiver, including: failure to hold and attend board meetings; failures to provide financial statements during an extended period; refusing requests from directors to convene board meetings and access financial statements and other information; sabotaging business relationships; wasting assets of the company; engaging in interested transactions to the benefit of certain directors and officers; that the CEO was "grossly incompetent or was blatantly deceitful, or both"; transfer of company assets without reasonable value; and various disclosure claims.[172] Claims setting forth "quintessential director mismanagement and [where] any recovery would be for the benefit of the corporate entity," are derivative.[173]

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[170] *Thornton v. Bernard Techs., Inc.*, 2009 WL 426179, at *2 n.11 (Del. Ch. Feb. 20, 2009) ("The Complaint was originally framed as a request for the appointment of receiver for Bernard, pursuant to 8 *Del. C.* § 291. The Plaintiffs now concede that the Bankruptcy filing moots this request.").

[171] 2009 WL 426179.

[172] *Id.* at *1-2.

[173] *Id.* at *3.

"[A]ctions seeking recovery for alleged acts of waste . . . historically have been regarded as derivative in nature, since such claims 'do not affect contractual rights of stockholders associated with the ownership of common stock.'"[174] Disclosure claims are generally direct in nature, at issue in *Thornton* were allegations that inadequate disclosure, "prevented them from making an informed decision when electing the Defendants to their positions on the [company's board]."[175]

The Petition does not seek standalone relief as to any of the alleged self-dealing, fraudulent statements, or lack of disclosure, instead seeking either direction that the receiver investigate or other parties cooperate fully with the receiver.[176] Even if it had sought relief as to the above, any derivative claims have not been pleaded in compliance with Rule 23.1, and the Petition contains no allegations that any specific vote or other stockholder action was impeded by the disclosure-type claims that could be inferred from the Petition. The four corners of the Petition fail to state a claim that withstands Respondent's Motion to Dismiss.

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[174] *Id.* (quoting Donald J. Wolfe, Jr. and Michael A. Pittenger, Corporate and Commercial Practice in the Delaware Court of Chancery § 9.02[a], at 9-7 (2008) (quoting *Kramer v. W. Pac. Indus., Inc.*, 546 A.2d 348, 353 (Del. 1988))).

[175] *Id.*

[176] Dkt. 1 at p. 22-24 (Prayer for Relief).

1. Petitioner Cannot Defend the Petition by Expanding its Scope, and Amendment is Now Procedurally Improper

Once Respondent's motion invoking Rule 12(b)(6) was filed, Petitioner had a binary choice. She could stand on the original Petition or amend. If she wished to amend the Petition in response to Respondent's Motion, she was required to do so no later than the date the answering brief was due.[177] Petitioner instead chose to defend the Petition as filed. Having opted to stand on the Petition in its entirety, rather than amend, dismissal is the result of Petitioner's own choice.[178] Importantly, Rule 15(aaa), the precursor to Rule 15(a)(5), was written to induce plaintiffs to either "stand on the complaint and answer the motion; or, to amend or seek leave to amend the complaint before the response to the motion was due."[179] "Further, '[t]here is no different set of rules for *pro se* plaintiffs,' and [any] leniency cannot go so far as to affect the parties' substantive rights."[180]

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[177] Ct. Ch. R. 15(a)(5)(A).

[178] *Lidya Hldgs. Inc. v. Eksin*, 2022 WL 274679, at *1 n.3 (Del. Ch. Jan. 31, 2022) (declining to consider new facts that *pro se* petitioner alleged because he chose to respond to the motion to dismiss instead of amending his claims under Court of Chancery Rule 15(aaa)).

[179] *Tchernavskikh v. Accetturo*, 2026 WL 2085860, at *7 (Del. Ch. July 20, 2026) (quoting *Braddock v. Zimmerman*, 906 A.2d 776, 783 (Del. 2006)).

[180] *Shaw v. New Castle Cnty.*, 2022 WL 3226773, at *3 (Del. Ch. Aug. 10, 2022), *report and recommendation adopted*, 2022 WL 3682165 (Del. Ch. Aug. 24, 2022) (footnotes omitted) (first quoting *Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del. 2001); and then citing *Chance v. Kraft Heinz Foods Co.*, 2018 WL 6655670, at *8 (Del. Super. Dec. 17, 2018)) (footnotes omitted).

To oppose the Motion to Dismiss, Petitioner now attempts to expand the facts alleged in her Petition, which is procedurally improper when the Respondent has chosen to oppose the relief on the basis that the Petition fails to state a claim.[181] In opposing a complaint a defendant may open up the proceeding to one for summary judgment by resorting to matters outside the pleading, but a plaintiff, or a petitioner, cannot expand the scope by submitting additional matters beyond what was initially pleaded.[182] "Our Rules offer plaintiffs no opportunity to move to amend while an opposed motion to dismiss is pending."[183] Further, a motion under Rule 15(d)'s permissive standard would not even reach the additional items Petitioner points to that happened between commencing the Colorado Litigation in July of 2025, and the date of the Petition, June 23, 2026, as such supplemental pleadings are limited to

[181] *PXP Producing Co. LLC v. MitEnergy Upstream LLC*, 342 A.3d 402, 420 (Del. Ch. 2025) ("On Intervenor's motion to dismiss, Petitioner's assertions regarding the $2.58 million cannot be considered. They were made only in Petitioner's answering brief opposing dismissal, not in the Amended Complaint.") (citing *Parseghian ex rel. Gregory J. Parseghian Revocable Tr. v. Frequency Therapeutics, Inc*., 2022 WL 2208899, at *8 n.75 (Del. Ch. June 21, 2022) ("Plaintiff[ ] cannot amend [its] Complaint through [its] brief.")).

[182] *See Malpiede v. Townson*, 780 A.2d 1075, 1090-92 (Del. 2001).

[183] *Kablaoui v. Gerar Place Condo. Ass'n*, 2022 WL 17827089, at *4 (Del. Ch. Dec. 21, 2022), *aff'd*, 303 A.3d 1219 (Del. 2023) (quoting *Wells Lory Hillblom v. Wilm. Tr. Co.*, 2022 WL 17428978, at *5 (Del. Ch. Dec. 6, 2022) (citing *Stern v. LF Cap. P'rs, LLC*, 820 A.2d 1143, 1146 (Del. Ch. 2003))).

"any transaction, occurrence or event that happened after the date of the pleading to be supplemented."[184]

Petitioner's answering brief spends substantial time seeking to avoid the outcome that her own litigation choices dictate on this issue.[185] Fatally, Petitioner acknowledges this within the answering brief, expressly stating: "Respondent argues that the Petition's insolvency allegations rest 'solely' on 'stale' third-quarter 2024 financial information, and that this data is 'nearly two years old.' *That characterization was accurate as to the four corners of the Petition*."[186]

2. Petitioner's Failure to Follow Through on Books and Records Demands Does Not Alter the Result

Petitioner raises concerns about prejudice resulting from denial of her stockholder's statutory inspection rights,[187] but jumps to the conclusion that making a demand without then following appropriate procedures should alter the applicable standards in her favor.[188] Filing of a plenary action acts as a certification a litigant has all of the information to state a claim.[189] "Delaware courts have recognized that

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[184] Ct. Ch. R. 15(d); *see also Kablaoui v. Gerar Place Condo. Ass'n*, 2022 WL 17827089, at *4 (Del. Ch. Dec. 21, 2022), *aff'd*, 303 A.3d 1219 (Del. 2023).

[185] Dkt. 88 at 9-24.

[186] *Id.* at 9-10 (emphasis added) (citing Dkt. 45 Respondent's Opening Brief in Support of Motion to Dismiss at 30-31).

[187] *Id.* at 18.

[188] *Id.*

[189] *See, e.g.*, *Bizzari v. Suburban Waste Servs.*, 2016 WL 4540292, at *6 (Del. Ch. Aug. 30, 2016) ("By filing the Plenary Action, Mr. Bizzari effectively conceded that the books

a stockholder who files a plenary action asserting claims of mismanagement undercuts his alleged need to obtain documents under Section 220 to investigate the same alleged acts of mismanagement."[190] The Delaware Supreme Court remarked that the rise of books and records litigation, "is directly attributable to this Court's encouragement of stockholders, who can show a proper purpose, to use the 'tools at hand' to obtain the necessary information before filing a derivative action. Section 220 is now recognized as 'an important part of the corporate governance landscape.'"[191] Petitioner cannot convert her decision to forego the tools at hand to allow her admittedly stale Petition to proceed.

C. Petitioner's Petition is Barred by Res Judicata and Collateral Estoppel

While the above would be sufficient to require dismissal of the Petition, the Petition is also barred under the doctrines of res judicata and collateral estoppel, as the Petition seeks relief against the Respondent brought a second time by the

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and records he seeks are not necessary or essential to his stated purpose of investigating mismanagement or wrongdoing with respect to the removal or asset sale issues. Mr. Bizzari and his counsel presumably concluded they possessed sufficient information under Rule 11 to file the complaint without first inspecting books and records.") (footnote omitted).

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

[191] *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 120 (Del. 2006) (citations and footnotes omitted).

Petitioner, after a final and non-appealed dismissal order adjudicated the merits of the claims the Petition rests on as a penalty dismissal.

The Court may take judicial notice of another court's decisions at any stage of a proceeding.[192] Doing so is especially appropriate when the party defending an action moves to dismiss, asserting the action is barred by collateral estoppel.[193] In evaluating these grounds for dismissal the Court takes judicial notice of the Petitioner's complaint in the Colorado Litigation, and the dismissal order entered by the District Court.[194]

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[192] *PVP Aston, LLC v. Fin. Structures Ltd.*, 2023 WL 2728775, at *7 (Del. Super. Ct. Mar. 31, 2023) (first citing *Aequitas Sols., Inc. v. Anderson*, 2012 WL 2903324, at *3 (Del. Ch. July 10, 2012) (holding that court may take judicial notice of a declaration because it was a pleading filed in a California bankruptcy proceeding); and then citing *In re Wheelabrator Tech. Inc. S'holders Litig.*, 1992 WL 212595, at *12 (Del. Ch. Sept. 1, 1992) (holding that "publicly filed documents [including certificate of incorporation] are judicially noticeable on a motion to dismiss.")).

[193] *PVP Aston, LLC*, 2023 WL 2728775, at *7 (first citing *Pyott v. La. Mun. Police Empls.'s Ret. Sys.*,74 A.3d 612, 618 (Del. 2013) (reversing Court of Chancery decision that wrongly declined to grant motion to dismiss based on collateral estoppel); then citing *Asbestos Workers Local 42 Pension Fund v. Bammann*, 2015 WL 2455469, at *15 (Del. Ch. May 21, 2015) (granting motion to dismiss because collateral estoppel barred plaintiffs' claims); then citing *Adjile, Inc. v. City of Wilm.*, 2010 WL 1379921, at *2 (Del. Super. Mar. 31, 2010) (granting motion to dismiss based on collateral estoppel); and then citing *Nelson v. Emerson*, 2008 WL 1961150, at *10 (Del. Ch. May 6, 2008) (granting motion to dismiss based on collateral estoppel where issues were addressed in prior bankruptcy proceedings)).

[194] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 & 49. Judicial notice of other items is appropriate for the Motion for Sanctions, but for purposes of the res judicata and collateral estoppel analysis the Court need not look beyond Petitioner's complaint in the Colorado Litigation, and the District Court's dismissal with prejudice.

1. Res Judicata is Satisfied

Taking the five-part test from *LaPoint v. AmerisourceBergen Corp.*,[195] in order. First, the District Court for the District of Colorado had subject matter jurisdiction over the Colorado Litigation, and had jurisdiction over the Respondent.[196] Petitioner's Colorado complaint asserted causes of action predicated on Federal RICO statutory provisions and U.S. Patent and Trademark law, in addition to certain state law claims, and therefore had adequate Federal Question subject matter jurisdiction for the complaint.[197] Petitioner as plaintiff in the Colorado Litigation, voluntarily submitted to the District Court's jurisdiction by bringing suit there, and dismissal was not granted on lack of personal jurisdiction over the Respondent.[198]

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[195] 970 A.2d 185, 191 (Del. 2009) ("(1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the appellants in the case at bar; and (5) the decree in the prior action was a final decree").

[196] *See, e.g.*, Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 9, 68, 110, 125, 127, 129, 142, 225, & 232; Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49 (setting forth the defendants).

[197] *See* 28 U.S.C. §§ 1331 & 1367; Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 9, 68, 110, 125, 127, 129, 142, 225, & 232.

[198] *See Genuine Parts Co. v. Cepec*, 137 A.3d 123, 130 (Del. 2016*)* ("because the personal jurisdiction requirement is a waivable right, there are a 'variety of legal arrangements' by which a litigant may give 'express or implied consent to the personal jurisdiction of the court.'") (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14 (1985))); *see*

Second, Petitioner was the plaintiff in the Colorado Litigation, and Respondent was one of a number of defendants in that action.[199] As a result no question of the identity of the parties or privity need be addressed in the test articulated by *Lapoint*.

Third, the Colorado Litigation included in its prayer for relief that a receiver be appointed, with a focus on the financial condition of the Respondent, and resolution of the Patent Disputes as central items for determination by the court.[200] The same factual predicate for the Colorado Litigation is asserted in full for the Petitioner seeking a receiver in this case.[201] Key allegations to both actions include: Respondent is "insolvent and non-revenue-generating";[202] self-dealing insider transactions dissipating company assets;[203] the fraudulent and forged patent

also 18 U.S.C. § 1965(b) (permitting service of parties residing in any other district to "be brought before the court").

[199] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49 (setting forth the defendants).

[200] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 9, 68, 110, 127, 129, 142, 225, 232 & at p. 52-53 (prayer for relief).

[201] *Compare* Dkt. 1 ¶¶ 9, 12, 13, 17-20, 24, & 27-33 (setting forth the Patent Dispute and self-dealing transactions and misappropriation of investment proceeds), *with* Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 8-9, 59-60, 67-69, 78, 80, 91-96, 98-99, 101, 104, 110, 121-22, 127, 129, 131, 142, 144-48, 225, & 232 (setting forth the more detailed versions of those events alleged in the Colorado Litigation).

[202] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶ 78.

[203] *Id.* ¶ 101.

documentation;[204] and unusable or unsalable assets.[205] The time periods asserted in the Colorado Litigation all correspond to those included in the Petition here.[206] The Petition focuses on the same "transactions" and relies on the same nucleus of operative facts, as did the Complaint in the Colorado Litigation.[207]

Fourth, Ms. Brandao's complaint in the Colorado litigation was dismissed with prejudice, an adverse decision related to the Petition she now seeks relief on.[208] Petitioner had the opportunity to pursue the substance of all the issues she now seeks relief on in this action, but failed to do so, resulting in the imposition of a penalty dismissal.[209]

Fifth, and finally for purposes of res judicata analysis, the Colorado Litigation's dismissal was a final decree and is no longer subject to appeal.[210]

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[204] *Id.* ¶ 232.

[205] *Id.* ¶¶ 91-96 & 98.

[206] *Compare* Dkt. 1 ¶¶ 9, 12, 13, 17-20, 24, & 27-33 (identifying issues from 2022 through the present [June 2026]), *with* Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 8-9, 59-60, 67-69, 78, 80, 91-96, 98-99, 101, 104, 110, 121-22, 127, 129, 131, 142, 144-48, 225, & 232 (starting with 2019, and Patent Dispute dates in 2021, but covering 2022 through 2024, with acts continuing into 2025).

[207] *See Lapoint*, 970 A.2d at 191-93.

[208] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49 at 1 & 7; Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 65.

[209] *Id.*

[210] *Id.*; *see also* Fed. R. App. P. 4(a)(1)(A) (providing 30 days after entry of the judgment or order appealed from in a civil case).

Petitioner's pending motion for reconsideration under Federal Rule of Civil Procedure 60 does not affect the finality of the judgment.[211]

Petitioner argues that the "same causes of action or issues" and "decision adverse" in the earlier case are not satisfied, citing *Mott v. State*.[212] Petitioner's argument fails to the extent it seeks to expand the record beyond the four corners of the Petition in the same way discussed above.[213] Respondent does not inject any new facts permitting conversion of the motion to one for summary judgment.[214] While the precise issue with Mr. Uden, regarding the alleged competing venture, was not raised in the Colorado Litigation, the Petitioner's complaint there did take umbrage with the value that Petitioner ascribes to his service with the Respondent.[215]

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[211] *See* Fed. R. Civ. P. 60(c)(2) ("does not affect the judgment's finality or suspend its operation."); 18A Wright & Miller, Fed. Prac. & Proc. § 4432 (3d ed., Apr. 2026 update) ("civil Rule 60(c)(2) expressly provides that a motion to vacate does not affect the finality of a judgment or suspend its operation, so preclusion should not be suspended merely because such a motion is pending.").

[212] Dkt. 88 at 51 (citing *Mott v. State*. 49 A.3d 1186, 1189 (Del. 2012)).

[213] *See supra* Section II.B.1 (discussing Petitioner's decision to defend the Petition and not pursue amendment).

[214] Dkt. 45 Opening Br. at 2 ("HerdDogg vigorously contests the facts alleged in the Petition, but assumes the cited allegations to be true solely for the purposes of this Motion.").

[215] *See* Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 144 & 146 ("In addition, it appears from an updated cap table Plaintiff can still access that Defendant Uden has been awarded additional incentive compensation in the form of company stock, despite the fact that he has performed no discernable function for the Company other than to make deceptive social media appearances in which he falsely implies that HerdDogg is a thriving, going concern, as opposed to a fraud vehicle with no meaningful revenues." & "As a result, Plaintiff can only determine from the updated cap table that Defendants have purportedly diluted Plaintiff's shareholding to approximately 7.5%, while increasing the ownership

But as the Petition does not independently assert claims relating to these allegations, and fails to state any derivative claims relating to the dual roles, this issue does not affect the res judicata determination.[216] Petitioner sought a receiver in the Colorado Litigation asserting insolvency, self-dealing transactions, fraud relating to the Patent Disputes, and Mr. Uden's conduct, and failed to prosecute the action, resulting in a penalty dismissal on the merits.

Petitioner's arguments regarding division of claims and issues between the Colorado Litigation should the Rule 60(b) motion succeed, and those to be litigated in this case likewise rely on matters outside the Petition, and ask the Court here to disregard the final and non-appealable dismissal.[217]

2. Collateral Estoppel is Also Satisfied

In belt and suspenders fashion, the Court also reviews the Respondent's arguments that collateral estoppel is satisfied as another independent bar to the Petition. The jurisdictional analysis is the same, and Petitioner as the voluntary plaintiff, and Respondent as a defendant who was properly before the District Court

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stake of Defendant Uden—who has done nothing but serve as a front for the Defendants' fraud scheme—to over 10% of a company he helped steal from Plaintiff.").

[216] *See supra* Section II.B. (discussing Petitioner's failure to state a claim for a receiver or any derivative claim).

[217] *See* Dkt. 88 at 51-53. *Compare* Fed. R. Civ. P. 60(c)(2) ("The motion does not affect the judgment's finality or suspend its operation."), *with* Fed. R. Civ. P. 59 advisory committee's note to 1995 amendment ("These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court.").

on matters within that court's subject matter jurisdiction.[218] The Petition relies on the same underlying information as the Colorado Litigation complaint, and seeks to relitigate factual issues resolved against the Petitioner in that earlier case.[219] While narrower than res judicata, the effect of collateral estoppel on the facts and circumstances presented by the Petition is largely the same.

Turning to the test for collateral estoppel as supplied by *PVP Aston*,[220] the analysis follows similarly to that of res judicata.

First, the operative relief is the appointment of a receiver, which was likewise sought in the prior litigation, premised on: insolvency, insider self-dealing, wasting assets, and disputes over the ownership of the Respondent's patents.[221] The Court has found collateral estoppel operates when the underlying proceeding is as different in nature from the suit before the Court of Chancery as a party seeking dismissal of a bankruptcy petition for bad faith.[222] Here, the issues of insolvency, the need for a receiver, insider self-dealing, the Patent Disputes, and the Respondent's

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[218] *See supra* note 197.

[219] *Compare* Dkt. 1 ¶¶ 9, 12, 13, 17-20, 24, & 27-33 (setting forth the Patent Dispute and self-dealing transactions and misappropriation of investment proceeds), *with* Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 8-9, 59-60, 67-69, 78, 80, 91-96, 98-99, 101, 104, 110, 121-22, 127, 129, 131, 142, 144-48, 225, & 232 (setting forth the more detailed versions of those events alleged in the Colorado Litigation).

[220] 2023 WL 2728775, at *8 (Del. Super. Ct. Mar. 31, 2023).

[221] *See supra* note 219.

[222] *Nelson v. Emerson*, 2008 WL 1961150, *1 & *7 (Del. Ch. May 6, 2008).

representations to investors and stockholders were all in the Colorado Litigation complaint that the Petitioner failed to prosecute.[223]

Second, the penalty dismissal entered by the Colorado District Court is a final adjudication on the merits, and the Rule 60(b) motion does not affect that.[224] Third, Petitioner was the Plaintiff in the Colorado Litigation, and sued the Respondent as one of the defendants there.[225] Fourth, because the dismissal was a sanction for failures to respond to pending dismissal and sanctions items, and because it was entered with prejudice, Petitioner had a full and fair opportunity to litigate the issues

[223] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 8-9, 59-60, 67-69, 78, 80, 91-96, 98-99, 101, 104, 110, 121-22, 127, 129, 131, 142, 144-48, 225, 232 & at p. 52-53 (prayer for relief).

[224] C*ompare* Fed. R. Civ. P. 60(c)(2) ("The motion does not affect the judgment's finality or suspend its operation."), *with* Fed. R. Civ. P. 59 advisory committee's note to 1995 amendment ("These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court.").

[225] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1.

in the prior action.[226] The Court discusses full and fair opportunity to litigate further below, as the Petitioner argues that is not satisfied in the answering brief.[227]

Petitioner's focus with respect to collateral estoppel is primarily the absence of a full and fair opportunity to litigate the issues in the Colorado Litigation.[228] Petitioner's ignorance of applicable law's consequences for dismissal of her earlier action, does not displace longstanding case law that "[u]nder Rule 41(b) a prior dismissal operates as an adjudication upon the merits unless the court in its dismissal order otherwise specifies."[229] The Petition is distinguishable from *Trans World Airlines*. *Trans World* featured multifaceted claims being pared down after litigation to the U.S. Supreme Court.[230] The District Court in *Trans World* specifically provided that it would not settle non-federal claims relating to defendants in that

[226] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49 at p. 1 & 7; 18A Wright & Miller Fed. Prac. & Proc. Juris. § 4440 (3d ed., Apr. 2026 update) ("§ 4440 'On the Merits'—Penalty Dismissals" . . . "Penalty dismissals provide a category in which there is little need to venture beyond Civil Rule 41(b) in search of preclusion answers. Rule 41(b) provides that unless the dismissal order states otherwise, dismissals for failure to prosecute, to comply with the civil rules, or to comply with a court order operate as an adjudication on the merits. The purpose of this provision is to establish a strong sanction to enforce compliance with proper procedure. Quite apart from Rule 41(b), this purpose of itself would suggest that penalty dismissals often should preclude a second action on the same claim.").

[227] Dkt. 88 at 48-53.

[228] *Id.* at 50-51.

[229] *Hughes v. Trans World Airlines, Inc.*, 336 A.2d 572, 576 (Del. 1975).

[230] *Id.*

matter.[231] Petitioner was sanctioned with a penalty dismissal for the failure to prosecute the action, which relies on the same nucleus of facts as does her request for a receiver here.[232] Petitioner's situation is distinguishable from those where a litigant does not have notice of an earlier action, and thus did not have the opportunity to present evidence with respect to issue.[233] Petitioner has commenced this case and the Colorado Litigation, and now seeks to avoid the consequences of declining to prosecute the earlier case.

While Petitioner argues *Savage v. Himes*,[234] is distinguishable,[235] the court's analysis is applicable with equal force to the result the Petitioner complains of here. Both situations involve a dismissal for failure to prosecute, and the Petitioner's remedy was an appeal from that earlier dismissal, not the filing of a subsequent action to collaterally attack the result.[236] A further remedy for the Petitioner as

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[231] *Id.* (writing "it does not follow that such a dismissal (in the Federal Court) would be a bar to the nonfederal claims[.]").

[232] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 8-9, 59-60, 67-69, 78, 80, 91-96, 98-99, 101, 104, 110, 121-22, 127, 129, 131, 142, 144-48, 225, 232 & at p. 52-53 (prayer for relief); Dkt. 1 ¶¶ 9, 12, 13, 17-20, 24, & 27-33.

[233] *See First Nat. Bank of Palmerton v. A.E. Simone & Co.*, 1998 WL 437147, at *3 (Del. Super. Ct. May 18, 1998).

[234] 2010 WL 2006573, at *1 (Del. Super. Ct. May 18, 2010), *aff'd*, 9 A.3d 476 (Del. 2010).

[235] Dkt. 88 at p. 50-51.

[236] *Savage*, 2010 WL 2006573, at *1.

identified in the Colorado Litigation Dismissal order, is to "proceed against Counsel for potential malpractice."[237] That is a consistent point with Delaware law.[238]

C. Laches Serves as a Defense to the Petition on These Unusual Conditions

On the facts asserted in the Petition, as further informed by judicial notice, laches also bars the claim for a receiver. Separate and apart from having commenced litigation that is barred by principles of res judicata and collateral estoppel, and even separated from that decision to commence the case in another forum at an earlier date, the Petitioner unreasonably delayed in bringing the Petition on the asserted facts it contains.[239] A party seeking an equitable remedy must proceed with diligence and vigilance.[240] An "action will be barred by laches only if unusual conditions or extraordinary circumstances make it inequitable to allow the prosecution of [a] claim within the time allowed by law."[241]

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[237] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49 at p. 5.

[238] *Vance v. Irwin*, 619 A.2d 1163, 1165-66 (Del. 1993) ("We have sympathy for the plaintiffs; but our system necessarily imposes upon them the consequences of their chosen attorneys' course of conduct in these circumstances; and we may not overlook the rights of the defendant . . . which are also entitled to protection by our Courts. In the final analysis, the plaintiffs must look to their attorneys for an accounting for their actions in this cause.") (quoting *Gebhart v. Ernest DiSabtino & Sons Inc.*, 264 A.2d 157, 160 (Del. 1970)).

[239] *See* Dkt. 1 (relying on financial information from third-quarter 2024 and filed June 23, 2026).

[240] *Whittington v. Dragon Grp., L.L.C.*, 991 A.2d 1, 7-9 (Del. 2009).

[241] *Reid v. Spazio*, 970 A.2d 176, 183 (Del. 2009).

As the review of the Colorado Litigation and the Petition has established, Petitioner had knowledge of the claim for appointment of a receiver.[242] Second, Petitioner filed a different action, lost, and then still waited five months to repackage her claims to try again here.[243] Third, the Respondent is prejudiced by having to yet again defend against the same claims the Petitioner asserted and did not prosecute in the Colorado Litigation to draw a penalty dismissal, and as discussed in the Court's previous reports, has endeavored to make the process lengthy and costly for the Respondent.[244]

While the Delaware Supreme Court cautions against applying affirmative defenses like laches on a motion to dismiss, this is a situation where judicial notice of the Colorado Litigation, makes such application possible.[245] The Petition starkly

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[242] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶¶ 3, 8-9, 59-60, 67-69, 78, 80, 91-96, 98-99, 101, 104, 110, 121-22, 127, 129, 131, 142, 144-48, 225, 232 & at p. 52-53 (prayer for relief); Dkt. 1 ¶¶ 9, 12, 13, 17-20, 24, & 27-33.

[243] *Compare* Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49 (dismissing the case January 23, 2026), *with* Dkt. 1 (seeking the same relief on Petition date, June 23, 2026).

[244] *See* Dkts. 157 & 170.

[245] *PVP Aston, LLC v. Fin. Structures Ltd.*, 2023 WL 2728775, at *7 (Del. Super. Ct. Mar. 31, 2023) (first citing *Aequitas Sols., Inc. v. Anderson*, 2012 WL 2903324, at *3 (Del. Ch. July 10, 2012) (holding that court may take judicial notice of a declaration because it was a pleading filed in a California bankruptcy proceeding); and then citing *In re Wheelabrator Tech. Inc. S'holders Litig.*, 1992 WL 212595, at *12 (Del. Ch. Sept. 1, 1992) (holding that "publicly filed documents [including certificate of incorporation] are judicially noticeable on a motion to dismiss.")).

contrasts with the situation in *Reid v. Spazio*.[246] That case featured a failed suit in another forum due to jurisdictional issues followed by vigorous appellate review.[247] Here, Petitioner's appellate rights were not pursued, deciding instead to repackage the claims and try for a second bite at the apple in a different forum.[248] Tactical litigation decisions have consequences, and an unreasonable delay in commencing an equitable action may be barred by laches.[249]

The Petition establishes that Petitioner possessed the information forming the basis of the request for the receiver by "the end of the third quarter of 2024[.]"[250] In the Colorado Litigation Complaint, Petitioner goes further to allege the Respondent was "insolvent and non-revenue-generating" in July of 2022.[251] The underlying

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[246] 970 A.2d 176 (Del. 2009).

[247] *Id.* at 183-84.

[248] *Compare id.* (reversing the Court of Chancery's dismissal of the action where the plaintiff "promptly and vigorously pursued [his rights]—with both parties seeking appellate review of adverse rulings."), *with supra* note 210 (setting forth dismissal was a final decree and is no longer subject to appeal).

[249] *See Houseman v. Sagerman*, 2015 WL 7307323, at *11 (Del. Ch. Nov. 19, 2015) (detailing how a party "elected not to pursue her rights here based on fiduciary duty simultaneously, also presumably for tactical reasons. Those choices have consequences, as does her unexplained delay of one year and seven months before filing this action, *after* the Minnesota trial court's decision to dismiss her cause of action."). "The Plaintiffs pursued their appellate rights in Minnesota and then waited 10 months after the Minnesota court's decision denying further review in November 2012 to bring this action." *Id.* at *11 n.62.

[250] Dkt. 1 ¶ 25.

[251] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 1 ¶ 78.

Patent Disputes center on transactions occurring in 2021.[252] After failing to prosecute the Colorado Litigation, the Petitioner waited five additional months to seek the same type of relief against the Respondent, while making no mention of the Colorado Litigation in her filings in this case until after the Respondent's opposition to the motion to expedite raised it.[253]

Acknowledging that the period of time between the Colorado Litigation's dismissal and filing of the Petition is shorter than the period in *Reid*,[254] five months versus six months from the denial of a U.S. Supreme Court certiorari petition,[255] the lack of timely appellate engagement by the Petitioner makes this situation distinguishable.[256]

The unusual conditions Petitioner has created make laches an appropriate bar to further proceedings in this Court. In affirming a dismissal by the Chancellor on laches grounds, the Delaware Supreme Court in *Shanik v. White Sewing Machine*

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[252] *Id.* ¶¶ 59-60 & 67-69.

[253] *See* Dkts. 1, 10, & 12.

[254] 970 A.2d 176 (Del. 2009).

[255] *Id.* at 179.

[256] *Compare* Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 65 (seeking the court to vacate its order of dismissal, Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 49 filed August 5, 2026), *with* 970 A.2d at 179 (filing in S.D. Tex. 2001 dismissed by agreement March of 2002 for lack of diversity jurisdiction; March 2002 suit in Texas State Court, subject to special appearance to contest personal jurisdiction, appeals court determination no personal jurisdiction December 2003; Texas Supreme Court review with denial August 2005 and denial of rehearing March of 2006; June 2006 petition for certiorari to U.S. Supreme Court, denied October 2006).

Corporation,[257] has found laches to be an appropriate defense as part of a motion to dismiss when the complainant had the information forming the basis of the claim for less than 2 years before acting.[258] Here the Petitioner has now twice commenced actions alleging insolvency. Defending against those suits requires the Respondent to incur very real costs regardless of the merits of the Petitioner's claims. On the facts and circumstances here, it would be inequitable to allow the Petition to survive the Motion to Dismiss and therefore bring the Respondent closer to insolvency that the Petitioner inadequately asserted existed back in June of 2026 when the Petition was filed, and once before in July of 2025 that she failed to prosecute in the Colorado Litigation.

[257] 19 A.2d 831 (Del. 1941).

[258] *Shanik v. White Sewing Mach. Corp.*, 19 A.2d 831, 837-38 (Del. 1941) ("complainant knew of the contemplated plan from March 7, 1938; he knew of the approval of the plan by the stockholders on December 12, 1938, and that the plan would become effective. He knew that on June 28, 1939, the directors declared the plan operative, and that the formal corporate action in filing the requisite papers was taken on August 5, 1939. More particularly he knew that after August 7, 1939, the new prior preferred stock and the new common stock were freely admitted to trading on the New York Stock Exchange. Notwithstanding all this knowledge, he took no action until January 26, 1940 . . . . We have no hesitation in saying that the action and course of conduct of the complainant constituted laches which prevented affirmative action on his bill of complaint.").

D. Respondent Has Failed to Demonstrate Sanctionable Conduct by Petitioner and Sanctions Are Denied

In determining the Respondent's Motion for Sanctions, the Court evaluates the evidence presented in the Motion, facts not otherwise in dispute, and takes judicial notice of various items from the Colorado Litigation and Colorado Litigation 2.[259] The Court does not resolve any of the factual issues asserted in the Colorado Litigations by its opinion here, and instead only cites to those items for purposes of its analysis that the Respondent has failed to meet its burden on sanctions.

In the Motion for Sanctions, Respondent failed to present enough objective evidence to demonstrate that the sanctions are appropriate against the Petitioner. Respondent asserts that sanctions against the Petitioner are appropriate for "three reasons: (1) [Petitioner's] Petition is frivolous; (2) [Petitioner] made material misrepresentations to this Court in alleging that HerdDogg's January 26, 2026, letter to its shareholders constituted HerdDogg's insolvency; and (3) [Petitioner] act[ed] in bad faith."[260] Respondent requests that the Court require Petitioner to pay for Respondent's attorney's fees and costs and to preclude Petitioner from making

[259] *Franklin v. Glenhill Advisors LLC*, 2023 WL 569192, at *1 (Del. Ch. Jan. 27, 2023) (citing *Lima Delta Co. v. Glob. Aerospace, Inc.*, 2017 WL 4461423, at *4 (Del. Super. Oct. 5, 2017) (explaining that dockets, pleadings, and transcripts from a foreign action are subject to judicial notice)).

[260] Dkt. 113 at 4.

subsequent filings without approval from the Court.[261] The Court addresses each argument in turn.

1. Preclusion Doctrines Fail to Establish that the Filing of the Petition was Frivolous

The crux of Respondent's argument is that the Petition was frivolous because Petitioner objectively understood prior to the filing of the Petition that "it [was] barred by res judicata and collateral estoppel principles," but Petitioner filed the Petition anyways.[262] However, the objective evidence presented in Respondent's Motion for Sanctions is insufficient for the Court to be "reasonably confident that [Petitioner] does not have an objective good faith belief"[263] in filing the Petition.

Respondent asserts that before filing the Petition, Petitioner knew that "the Colorado court had already dismissed the RICO Case with prejudice,"[264] and as asserted above and in Respondent's papers, a dismissal with prejudice constitutes a "final adjudication on the merits" for preclusion purposes.[265] However, Petitioner

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[261] *Id.* at 12.

[262] *Id.* at 4-5.

[263] *Franklin v. Glenhill Advisors LLC*, 2023 WL 569192, at *11 (Del. Ch. Jan. 27, 2023).

[264] Dkt. 113 at 5.

[265] *See* Fed. R. Civ. P. 41(b) ("[A] dismissal under this subdivision . . . operates as an adjudication on the merits."); 18A Wright & Miller Fed. Prac. & Proc. § 4440 (3d ed., Apr. 2026 update) ("§ 4440 'On the Merits'—Penalty Dismissals" . . . "Penalty dismissals provide a category in which there is little need to venture beyond Civil Rule 41(b) in search of preclusion answers. Rule 41(b) provides that unless the dismissal order states otherwise, dismissals for failure to prosecute, to comply with the civil rules, or to comply with a court order operate as an adjudication on the merits. The purpose of this provision is to establish

argues reliance on her counsel's misleading representations of the Colorado Litigation's validity and counsel's encouragement to pursue the receivership action in Delaware, and thus the Respondent has not demonstrated a lack of an objective and good faith belief the subsequent action was not barred.[266] In Petitioner's Motion for Relief in the Colorado Litigation, she states that "former counsel told [Petitioner] only that the case had been dismissed, would have been 'expensive to defend,' and remained 'still valid.'"[267] Moreover, Petitioner advances that her counsel not only failed to disclose "that the dismissal was with prejudice,"[268] but also encouraged Petitioner to "initiate a complex Delaware receivership action while giving her no indication of the risks awaiting her there."[269] Finally, Petitioner argues that it was only at the July 20, 2026 Hearing in the Delaware litigation that she "learned for the

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a strong sanction to enforce compliance with proper procedure. Quite apart from Rule 41(b), this purpose of itself would suggest that penalty dismissals often should preclude a second action on the same claim."); Dkt. 155 at 3.

[266] *See* Colorado Litigation 2 Case No. 26-cv-02903-TPO Dkt. 10 at p. 27-28 (asserting Mr. Oleske "fail[ed] to inform her of the dismissal with prejudice entered January 23, 2026, or its true basis." And Petitioner asserts she learned "the full extent of former counsel's inaction [on] July 20, 2026 — at a hearing in her Delaware receivership proceeding, from opposing counsel, not from her own attorney."). Petitioner did learn the Colorado Litigation was dismissed with prejudice from the Respondent, but it is unclear on this record as to what effect Petitioner understood that to have. *See* Dkt. 10 Ex. C. ("**dismissed with prejudice**") (emphasis in original).

[267] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 65 at p. 5 ("**January 24-27, 2026 - 'Still Valid.'** Former counsel tells Plaintiff only that the case was dismissed, would have been 'expensive to defend,' and remained 'still valid.'").

[268] *Id.* at p. 10.

[269] *Id.* at p. 10-11.

first time the full extent of his abandonment and its continuing prejudice . . . from opposing counsel[,]"[270] after which Petitioner fired her counsel.[271] Petitioner's response to the Motion for Sanctions, likewise discusses her former counsel's failings in the Colorado Litigation, and advancing arguments those deficiencies and not the merits of her claims resulted in the prior results.[272]

Respondent cites to *ASB Allegiance Real Estate Fund v. Scion Breckenridge Managing Member LLC*,[273] for the proposition that sanctionable conduct "includes situations where a plaintiff files 'a lawsuit the core allegations of which they knew to be false at the time they filed it.'"[274] However, *ASB Allegiance* is distinguishable from this matter. *ASB Allegiance* cited to the Court's equitable powers to shift fees within the context of the bad faith exception to the American Rule,[275] whereas here, Respondent cites to 10 *Del. C.* § 5106 and Court of Chancery Rule 11 within the context of frivolous legal arguments as the grounds upon which sanctions should be

[270] *Id.* at p. 11.

[271] *See* Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkts. 59 & 61 (Motion to Withdraw as Counsel); *see also* Oct. 15, 2026 Oral Arg. Tr. 41:15-21.

[272] Dkt. 88 at p. 6-8 (setting forth among other things, "Silence caused by an attorney who abandoned his obligations is not an adjudication that the underlying allegations are false.").

[273] 2013 WL 5152295 (Del. Ch. Sep. 16, 2013).

[274] *Id.* at *10 (quoting *Soterion Corp. v. Soteria Mezzanine Corp.*, 2012 WL 5378251, at *18 (Del. Ch. Oct. 31, 2012)).

[275] *Id.* at *1.

awarded.[276] Additionally, *ASB Allegiance* revolved around a party filing suit in three different jurisdictions in an effort to intimidate the other party "despite knowing that the core allegations about [the] compensation structure were false."[277] However, Respondent argues that Colorado Litigation was dismissed with prejudice, so allegations therein were "adjudicated on the merits," and thus Petitioner must have known that the claims in the Petition were "false" at the time of filing.[278] Adopting such a position would expand the contours of *ASB Allegiance*, and ignore the objectively supported developments in this action and the Colorado Litigations regarding Mr. Oleske's role that Ms. Brandao has since argued and alleged following July 20, 2026.[279] Absent an evidentiary hearing to test the validity of what Mr. Oleske told the Petitioner, the Respondent lacks clear and convincing evidence that

[276] Dkt. 113 at 3-4. The Court notes that Respondent, in its Motion for Sanctions, requested reimbursement of attorney's fees, but fails to cite the Court's equitable powers to shift fees. *Id.* at 4 (citing to Court of Chancery Rule 11 and 10 *Del. C.* § 5106, but not the bad faith exception to the American Rule). To the extent that Respondent may be relying on 10 *Del. C.* § 5106 for purposes of seeking attorneys' fees, the Court follows prior case law that the statute is limited to costs and not attorneys' fees. *See Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 685-86 (Del. 2013) (citations omitted) ("Section 5106 provides that '[t]he Court of Chancery shall make such order concerning costs in every case as is agreeable to equity.' 'Costs' in this context is a term of art that does not include attorneys' fees. Any contrary precedent, we expressly overrule. We have made clear that costs 'do not generally include a party's counsel fees.'"). However, because Respondent advances various bad faith arguments, the Court will address the application of equitable fee shifting *infra* Section II.D.2.

[277] *ASB Allegiance*, 2013 WL 5152295, at *15 (citation omitted).

[278] Dkt. 113 at 5-6.

[279] *See* Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkt. 64 at p. 10-11.

Ms. Brandao knew the allegations in the Petition were false. The Court has determined, in addressing Respondent's Motion to Dismiss and granting relief, that such an additional evidentiary hearing is unnecessary.[280]

In any event, even assuming, *arguendo*, that *ASB Allegiance* applies to this case, the Court is reasonably convinced that Respondent has not substantiated that Petitioner knew that the core allegations of her Petition were false at the time she filed it; that Petitioner did not reasonably rely on the representations and encouragement of her counsel and believe in the merit of her receivership petition,[281] and those points are supported by the objective conduct and Petitioner's statements that once she knew the full extent of Mr. Oleske's deficiencies in the prior Colorado litigation, she fired him.[282]

The Court cannot conclude that Petitioner, based on her asserted reliance on counsel's representations about the continuing validity of the Colorado Litigation and his subsequent encouragement of the receivership petition, lacked an "objective good faith belief in the legitimacy" of the receivership petition,[283] and thus the

[280] A further discussion of the Court's determination not to hold an evidentiary hearing is located *infra* notes 317-18.

[281] *Id.*

[282] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkts. 59 & 61 (Motion to Withdraw as Counsel & Order Granting Withdrawal).

[283] *Franklin v. Glenhill Advisors LLC*, 2023 WL 569192, at *11 (Del. Ch. Jan. 27, 2023).

alleged misconduct is not sanctionable.[284] The Court is not convinced to the required threshold, based on the objective evidence presented by Respondent, that Petitioner filed the Petition knowing that her claims were barred due to preclusion doctrines. Nor can the Court conclude that "outrageous and abusive conduct has occurred" by Petitioner by not understanding the legal consequences of a dismissal with prejudice.[285] None of the foregoing should shield future events from appropriate redress.

2. The Alleged Misrepresentations Fail to Amount to Sanctionable Conduct

Respondent argues that Petitioner should be subject to sanctions because Petitioner misrepresented to the Court in her Notice of Supplemental Evidence that "HerdDogg is structurally insolvent."[286] Specifically, Respondent argues that the shareholder letter by Andrew Uden that Petitioner cites to for that proposition "states

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[284] In light of Petitioner's admissions during the Motion to Dismiss hearing that her counsel John Oleske drafted the receivership petition, the Court also finds it inequitable to award monetary fees based upon frivolous legal contentions arguments. *See* Ct. Ch. R. 11(c)(5)(A) ("The Court must not impose a monetary sanction: (A) against a represented party for violating Rule 11(b)(2)."). This rule is not binding given that Petitioner officially is not represented by counsel and is holding herself out to be pro se, but the rule is rather merely informative towards the unusual facts of this matter. Whether any of the foregoing ought to result in additional consequences for Mr. Oleske is best left to the disciplinary authorities. *See Crumplar v. Super. ex rel. New Castle Cty.*, 56 A.3d 1000, 1009 (Del. 2012) ("[T]rial judges have no independent jurisdiction to enforce the Rules of Professional Conduct.").

[285] *Franklin*, 2023 WL 569192, at *11.

[286] Dkt. 113 at 6.

no such thing."[287] Furthermore, Respondent argues that Petitioner's omission from the Notice of Supplemental Evidence that Respondent's financial strain was actually caused by Petitioner's filing of the Colorado Litigation constitutes bad faith.[288]

Because Respondent cites bad faith as the primary reason upon which the Court should award sanctions for Petitioner's alleged misrepresentations and omissions, the Court may award Respondent attorneys' fees only upon a showing of "'clear evidence' of the bad faith conduct" by the Petitioner.[289] The Court finds that, based on the alleged misconduct, Respondent failed to present sufficient evidence to satisfy the standard for the Court to order sanctions.

At the outset, the Court notes that Respondent cites to *Beck v. Atlantic Coast PLC*,[290] to support the proposition that "Delaware courts recognize that parties act

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[287] *Id.*

[288] *Id.* at 7.

[289] *ASB Allegiance Real Estate Fund v. Scion Breckenridge Managing Member, LLC*, 2013 WL 5152295, at *6 (Del. Ch. Sept. 16, 2013) (citing *Arbitrium (Cayman Is.) Handels AG v. Johnston*, 705 A.2d 225, 232 (Del. Ch. 1997), *aff'd*, 720 A.2d 542 (Del. 1998)). The Court notes that Respondent's Opening Brief in Support of Motion for Sanctions is not clear as to what legal standard it is applying for sanctions. The brief fails to cite the circumstances under which the Court may exercise its equitable powers to shift fees, Dkt. 113 at 4 (citing to Court of Chancery Rule 11 and 10 *Del. C.* § 5106, but not the bad faith exception to the American Rule), but nonetheless cites to case law that solely discusses the bad faith exception to the American rule for awarding attorneys' fees and not Court of Chancery Rule 11. *See, e.g.*, *id.* at 7 (citing *Soterion Corp. v. Soteria Mezzanine Corp.*, 2012 WL 5378251, at *18 (Del. Ch. Oct. 31, 2012) (referencing only the bad faith exception to the American Rule to award attorneys' fees)).

[290] 868 A.2d 840 (Del. Ch. 2005).

in bad faith when they 'deny [courts] extremely probative information relevant to an exceedingly important determination.'"[291] Then-Vice Chancellor Strine discussed this type of bad faith within the context of Court of Chancery Rule 37 sanctions, and not Court of Chancery Rule 11 sanctions, and therefore the cited portion is not directly applicable to the Respondent's motion.[292] Even assuming that the cited rule applied here, the Court is not convinced that Petitioner's representation to the Court that Respondent's CEO's shareholder letter indicated "that HerdDogg is structurally insolvent"[293] amounts to "extremely probative information."[294] The Court did not have to rely on Petitioner's Notice of Supplemental Evidence to make the determination that Petitioner failed to adequately plead insolvency to survive a motion to dismiss; the Court only had to rely on the four corners of the Petition to make that determination, and had a more expansive record and discussion to address

[291] Dkt. 113 at 7 (citing *Beck v. Atl. Coast PLC*, 868 A.2d 840, 855 (Del. Ch. 2005)).

[292] *See Beck v. Atl. Coast PLC*, 868 A.2d 840, 855 (Del. Ch. 2005) ("Most inexcusably of all, Beck's counsel knew that they were, on Beck's behalf, asking this court to certify Beck as an appropriate fiduciary for a class of persons who would have to depend on his fidelity, and that of his counsel, for appropriate representation. By their own conduct, Beck's counsel acted to deny this court extremely probative information relevant to an exceedingly important determination *in violation of Rule 37*." (emphasis added)); *see also* Ct. Ch. R. 11(d) ("This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.").

[293] Dkt. 113 at 6.

[294] *Beck*, 868 A.2d at 855.

the motion to expedite and TRO during the July 20, 2026 Hearing, at which time the Court resolved the relief in the Respondent's favor.[295]

Respondent is correct that the Court has found "bad faith conduct where parties have . . . misled the court."[296] However, the "award of attorneys' fees is highly exceptional" and "must be based upon clear evidence,"[297] which Respondent has failed to present through its Motion for Sanctions. This determination is informed by *Arbitrium (Cayman Islands) Handels AG v. Johnson*.[298]

In *Arbitrium*, the Court awarded fee shifting against the defendants under the bad faith exception of the American Rule.[299] In making that determination, the Court found that the defendants misled the Court by representing that they had "'serious doubts' regarding Mr. Vendel's testimony that Arbitrium was merely his nominee[,]" which compelled the Court to grant the defendants' motion to compel.[300] However, at trial, defendants claimed that "since 1984 they knew that

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[295] *See supra* Section II.B.

[296] Dkt. 113 at 7; *Soterion Corp v. Soteria Mezzanine Corp.*, 2012 WL 5378251, at *18 (Del. Ch. Oct. 31, 2012).

[297] *Arbitrium (Cayman Islands) Handels AG v. Johnson*, 705 A.2d 225, 235 (Del. Ch. 1997), *aff'd*, 720 A.2d 542 (Del. 1998)); *see also Beck*, 868 A.2d at 851 (citations omitted) ("The party seeking a fee award bears the stringent evidentiary burden of producing 'clear evidence' of bad faith conduct.").

[298] 705 A.2d 225, 235 (Del. Ch. 1997).

[299] *Id.*

[300] *Id.* at 236.

Arbitrium was a mere nominee for Vendel's TCI II shares."[301] Based on the defendants reversing their stance during trial, the Court concluded that:

> (1) either the defendants' testimony . . . was false, in which case the defendants intentionally misled the Court in order to support their merits position at trial; or (2) that testimony was true, in which event the defendants intentionally misled this Court into ordering needless discovery of Arbitrium and its Swiss law firm.[302]

Additional conduct to mislead the Court by the defendants included altering testimony, changing positions, and disavowing previous litigation positions.[303]

Here, the alleged misrepresentation and omission by Petitioner pales in comparison to previous conduct satisfying the "clear evidence" standard for the purpose of fee shifting under the Court's equitable powers.[304] Petitioner's assertion that the CEO shareholder letter indicates that "HerdDogg is structurally insolvent" failed to mislead the court to take additional actions for the benefit of Petitioner's position, and was readily apparent upon review of the exhibit.[305] Of note, the Court in the July 20, 2026 Hearing discredited Petitioner's assertion that the shareholder letter indicated HerdDogg's insolvency, and thus the Court failed to rely on

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[301] *Id.*

[302] *Id.*

[303] *Id.* at 235.

[304] *Beck v. Atl. Coast PLC*, 868 A.2d at 851 (citations omitted) ("The party seeking a fee award bears the stringent evidentiary burden of producing "clear evidence" of bad faith conduct.").

[305] *See* Dkts. 41-42 (denying motion to expedite and motion for a TRO).

Petitioner's misrepresentation when deliberating over whether the Court should grant or deny the motion to expedite and the motion for a TRO.[306] Although the Court has concerns with Petitioner's omission that HerdDogg's financial strain was actually due to the initiation of the Colorado Litigation by Ms. Brandao,[307] the Court was not ultimately misled by Petitioner's characterization of the shareholder letter, and the Court subsequently denied the motion to expedite and the motion for a TRO based on applicable law.[308] Additionally, the alleged misrepresentation or omission did not involve altering testimony, changing positions, or disavowing previous litigation positions, which was found to be sufficient for fee shifting in *Arbitrium*.[309] Instead, it was at most a purposeful mischaracterization of a party opponent's statement, but not one completely untethered to the character of the argument the

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[306] *See* July 20, 2026 Hearing Tr. 59:07 - 59:19 ("Exhibit C does not say that HerdDogg is insolvent. Instead, it references the dismissal of a lawsuit against the company, which was dismissed with prejudice and cannot be refiled, stating HerdDogg's position that the lawsuit had hindered efforts to find additional financing . . . The letter, consistent with statements made in the petition, looks toward future improvements as compared to past performance. But as with the petition's statements, nothing is provided to demonstrate that such efforts are not being pursued by HerdDogg consistent with commercially rational decision-making.").

[307] *Id.* Tr. 59:20 - 60:04 ("What Docket 10 omits is telling. Not mentioned or disclosed by the petitioner is how the dismissal referenced in the January 26, 2026, letter to shareholders relates to a Federal District Court of Colorado action also brought by Ms. Brandao regarding the patent disputes, which featured as named defendants many of the individuals and stockholders that are the subject of allegations in the petition here, but are not named as defendants in this action.").

[308] Dkts. 41-42.

[309] Dkt. 113 at 6; *Arbitrium (Cayman Islands) Handels AG v. Johnson*, 705 A.2d 225, 235 (Del. Ch. 1997), *aff'd*, 720 A.2d 542 (Del. 1998).

Petitioner attempted to make. The Notice openly discussed financial difficulties, and the Petitioner's attempt to stretch that to an admission of a fact in issue was promptly refuted by the Respondent, and the Court was able to evaluate the information in context.

The Court concludes that the Respondent failed to meet its burden in producing "clear evidence" that Petitioner acted in bad faith through its representations and omissions in the Notice of Supplemental Information. Deviations from the American Rule in the Court of Chancery are only reserved for "rare instances" when "the party's conduct . . . clearly evidence bad faith," which is not the case here.[310] The Petitioner's attempt to fashion Respondent's communication into evidence in support of the relief Petitioner sought did not mislead the Court or otherwise suggest bad faith, it appears to be an instance of an unsupported logical leap hoping to accomplish the Petitioner's stated objectives in this action.[311]

3. The Allegations of Bad Faith are Insufficient to Award the Relief Requested

Finally, Respondent argues that the Court should prohibit Petitioner "from making further filings absent leave of the Court" because Petitioner "is acting in bad

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[310] *Soterion Corp v. Soteria Mezzanine Corp.*, 2012 WL 5378251, at *18 (Del. Ch. Oct. 31, 2012).

[311] *Id.* ("a party acting merely under an incorrect perception of its legal rights does not engage in bad-faith conduct[.]").

faith and brings her Petition to [the] Court with unclean hands."[312] Specifically, Respondent emphasizes that Petitioner, by bringing the Petition in Delaware, is dragging HerdDogg "through the same discredited allegations a second time and in a second forum[,]"[313] the same allegations that Magistrate Judge Neureiter found to be "objectively unreasonable in both the factual and legal components of the case."[314] Additionally, Respondent explains that Petitioner's filing of multiple motions in Delaware has resulted in "costly response on the company's part[,]" which warrants "the imposition of an anti-filing restriction."[315]

While the Court previously acknowledged some of the litigation tactics that Petitioner has employed in deciding the Motion for Disqualification raise a specter of tactical abuse,[316] the record for this case does not support a sanction to restrict Petitioner's ability to file on a prophylactic basis. Petitioner may have viewed the Petition as an opportunity for a "do-over" after the dismissal of the Colorado Litigation. Unfortunately for the result she seeks to achieve, it is not. As with the preceding conduct which the Court has determined insufficient for sanctions under Rule 11, there is sufficient corroboration in the record to preclude a finding of clear

[312] Dkt. 113 at 8.

[313] *Id.*

[314] *Id.*

[315] *Id.*

[316] Dkt. 157 at 18-23.

and convincing evidence that the petition "was brought in bad faith or with the intention to harass" the Respondent.[317] As such, the Court has decided to resolve this matter and the issues presented on the papers, obviating the need for an evidentiary hearing. Petitioner's filings in the Colorado Litigations, while not being accepted for the truth of Petitioner's statements, present thorny factual issues that would be difficult for the Respondent to overcome in seeking testimony from the Petitioner.[318] Rather than prolong this matter and require the Respondent to incur additional costs, the Court concludes the probity of additional evidence is outweighed by the resources that would be necessary to generate it.[319]

Petitioner's assertions here and in the Colorado Litigations demonstrate an honest, but mistaken, view that the prior dismissal did not affect her ability to seek redress as to the elements of the Petition that were the subject of the prior case. This Opinion, subject to appropriate practice on exceptions, and any appeal, should leave

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[317] *See Franklin*, 2023 WL 569192, at *11.

[318] Colorado Litigation Case No. 25-cv-02254-GPG-NRN Dkts. 59, 61, 65, & 74; Colorado Litigation 2 Case No. 26-cv-02903-TPO Dkts. 10 & 19; *see also* Oct. 15, 2026 Oral Arg. Tr. 41:9 - 41:14 & July 20, 2026 Hearing Tr. 15:15 - 20:11.

[319] *See Crumplar v. Super. ex rel. New Castle Cnty.*, 56 A.3d 1000, 1011 n.61 (citing Fed. R. Civ. P. 11 advisory committee's note to 1993 amendments ("Whether the matter should be decided solely on the basis of written submissions or should be scheduled for oral argument (or, indeed, for evidentiary presentation) will depend on the circumstances.")); *see also Goldstein v. Denner*, 2024 WL 776033, at *19 (Del. Ch. Feb. 26, 2024) (discussing in evaluating Rule 37 Sanctions, that due process does not always require an evidentiary hearing).

no doubt that further pursuit of the underlying claim to seek a receiver is barred by the dismissal with prejudice.

Should the Petitioner choose to initiate litigation in the future, the Court strongly urges the Petitioner to engage and retain reputable counsel admitted to practice in the jurisdiction where the litigation will be filed.[320]

III. CONCLUSION

The Motion to Dismiss should be granted, as the Petitioner does not state a claim under 8 *Del. C.* § 291 for a receiver, proceeds on facts and legal theories barred under res judicata and collateral estoppel, and finally, is subject to laches by unreasonably delaying bringing the claim in this forum on the unusual conditions presented by this case. The dismissal is with prejudice and bars any further filing relying on third quarter 2024 financials of HerdDogg, Inc., and other earlier financial status and transactions as a basis for the Company's insolvency. The Motion for Sanctions is denied as the Respondent has not made a clear and convincing showing that the requested sanctions are appropriate under applicable law. This is a final report in this case, and exceptions are governed by Rule 144. As this was not an expedited matter, exceptions are due 11-days following the entry of this opinion and the respective orders.

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[320] *Cf. Rawley v. Direct Pharmacy Serv. Inc.*, 2008 WL 81510, at * 1 (Del. Ch. Jan. 3, 2008) (denying a motion for a continuance for a defendant corporation, "As in the past, I again urge you to retain counsel for the company.").