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OF THE
STATE OF DELAWARE

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RE: *Nikita Bernstein v. MyJoVE Corporation*,
C.A. No. 2026-0301-DH (LWW)

Dear Counsel:

This statutory books and records action is before me on exceptions to a Magistrate in Chancery's Final Report. Before reaching the merits of the plaintiff's demand, the Magistrate determined that a general release in a partial stock redemption agreement barred the action. The plaintiff took no exception to that recommendation. The defendant's sole exception concerns the Final Report's silence on its request for attorneys' fees and expenses.

After a de novo review, I conclude that the defendant is not entitled to fees. The exception is overruled, and the Magistrate's recommendation to enter judgment for the defendant is adopted—though I do not endorse the unchallenged conclusion that the release extinguished the plaintiff's statutory inspection rights.

I. BACKGROUND[1]

Plaintiff Nikita Bernstein co-founded defendant MyJoVE Corporation, a privately held Delaware corporation, with Moshe Pritsker and Klaus Korak in 2007.[2] In 2011, Bernstein resigned as an officer and was removed from the board of directors but retained a substantial equity stake in the company.[3]

After Bernstein prevailed in a prior books and records action, MyJoVE produced financial statements in December 2024 that reflected "[n]otes receivable" totaling over $7 million in loans to Pritsker and Korak.[4] In April 2025, Bernstein's counsel requested supplemental books and records regarding the approval and fairness of those insider loans.[5]

Days after the supplemental request, Pritsker and Korak acted by majority stockholder written consent to expand the board from two to three seats, and elected

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[1] The facts are drawn from the record developed at trial. Magistrate's Post-Trial Final Report (Dkt. 38) ("Final Report"). Citations to the Joint Trial Exhibits are in the form "JX __," and citations to the June 16, 2026 trial transcript (Dkt. 45) are in the form "Trial Tr. __."

[2] Final Report 2 (citing Pre-Trial Stipulation and Order (Dkt. 22) ("PTO") ¶¶ 11, 13-15).

[3] *Id.* at 2-3 (citing PTO ¶¶ 18-19, 24-27).

[4] *Id.* at 3 (citing PTO ¶¶ 30-33, 37, 40); JX 38 at 1-2.

[5] Final Report 3 (citing PTO ¶ 42); JX 47 at 1-2.

James Elgart and Evan Hackel to serve alongside Pritsker.[6] Korak resigned from the board upon these elections.[7] Two days later, Elgart also resigned, and Pritsker and Korak acted by a second majority stockholder written consent to elect Larry Siff to replace him.[8]

Under a Redemption Agreement dated July 17, 2025, Bernstein sold 889,679 of his 4,800,000 shares of Class A voting common stock back to MyJoVE for $2.5 million and retained nearly 4 million shares.[9] Section 5.2 of the Redemption Agreement contains a release (the "Release"):

> With the sole exception of his right to enforce the terms of this Agreement, the Seller, for himself and his heirs, successors, assigns, advisors and affiliates (collectively, the "Seller Releasors") hereby fully, forever, irrevocably and unconditionally releases, remises and discharges the Company and its affiliates, officers, directors, stockholders, employees, attorneys and advisors (collectively the "Company Released Parties") from any and all claims, charges, complaints, demands, actions, causes of action, suits, rights, debts, sums of money, costs, accounts, reckonings, covenants, contracts, agreements, promises, doings, omissions, damages, executions, obligations, liabilities, and expenses (including attorneys' fees and costs), of

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[6] Final Report 3-4 (citing PTO ¶¶ 43-50; JX 16); JX 35 at 2-4.

[7] Final Report 3-4 (citing PTO ¶¶ 43-50; JX 16); JX 35 at 2-4.

[8] Final Report 3-4 (citing PTO ¶¶ 43-50; JX 16); JX 35 at 2-4.

[9] Final Report 3, 4-5 (citing PTO ¶¶ 27, 53; JX 31 ("Redemption Agreement")); Redemption Agreement § 1.1. The parties stipulated that the agreement was executed on July 27, 2025. Final Report 4, 7 (citing PTO ¶ 53).

> every kind and nature which he ever had or now has against the Company Released Parties, including without limitation a[ny] claims related to the Seller's ownership of the Redeemed Shares and amounts payable with respect thereto.[10]

On September 30, 2025, Bernstein served a demand on MyJoVE under 8 *Del. C.* § 220 that sought nine categories of documents about the nomination, selection, and independence of the newly appointed directors.[11] MyJoVE's counsel responded on October 7, asserting that the demand was barred by the Release in the Redemption Agreement.[12] MyJoVE made a partial production on November 5, 2025, but refused to produce more records.[13]

On March 4, 2026, Bernstein filed this action under Section 220.[14] MyJoVE answered on April 1, raising the Release as an affirmative defense and requesting an award of attorneys' fees and expenses under the Redemption Agreement.[15] A trial on a paper record was held before a Magistrate in Chancery on June 16, 2026.[16]

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[10] Final Report 7 (citing Redemption Agreement § 5.2).

[11] *Id.* at 1, 5 (citing PTO ¶ 58); JX 38 at 1, 4-5.

[12] Final Report 5 (citing PTO ¶¶ 61-62); JX 49 at 1-3.

[13] Final Report 5-6 (citing PTO ¶¶ 64, 66); JX 49 at 4.

[14] Final Report 6 (citing PTO ¶ 69).

[15] *Id.* (citing PTO ¶ 70); Def.'s Answer and Affirmative Defenses (Dkt. 10) 27, 29.

[16] Final Report 1-2, 6 (citing Dkt. 37).

The Magistrate issued a post-trial Final Report on July 2, 2026, recommending that judgment be entered in favor of MyJoVE.[17] Relying on general release jurisprudence, the Magistrate concluded that Section 5.2 is an unambiguous release that encompassed personal claims and demands Bernstein "ever had or now has," including unknown claims.[18] Because this Section 220 suit is a direct claim concerning corporate actions from April 2025 and Bernstein received statutory notice of those actions when notice was mailed to him in May 2025, the Magistrate held that the Release barred Bernstein's demand and Section 220 suit.[19] The Magistrate rejected MyJoVE's assertion that the Release barred Bernstein from bringing a derivative action and did not reach the substantive elements of Section 220 or MyJoVE's request for attorneys' fees.[20]

Bernstein took no exception to the Final Report. MyJoVE filed a single exception challenging the Final Report's failure to award it attorneys' fees and

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[17] *Id.* at 1, 17.

[18] *Id.* at 7-8, 13 (citing *Corp. Prop. Assocs. 6 v. Hallwood Gp. Inc.*, 817 A.2d 777, 779 (Del. 2003); *see also Koscho v. Merit Distrib. Gp., LLC*, 2025 WL 2770543, at *2, *6 (Del. Super. Sept. 29, 2025); *Rust v. Rust*, 2023 WL 3120545, at *8 n.100 (Del. Ch. Apr. 27, 2023)).

[19] Final Report 7, 9-17.

[20] *Id.* at 10-11, 17 (citing *Cal. State Tchrs.' Ret. Sys. v. Alvarez*, 179 A.3d 824, 847 (Del. 2018); *Marchand v. Barnhill*, 2025 WL 3540294, at *9 (Del. Ch. Dec. 10, 2025)).

expenses under Section 8.13 of the Redemption Agreement.[21] Briefing on MyJoVE's exception was complete as of August 7, 2026.[22]

II. ANALYSIS

The Court of Chancery reviews exceptions to a Magistrate's final report de novo.[23] The exceptions are evaluated "on the record before the Magistrate in Chancery, unless the Reviewing Judge determines to expand the record for good cause shown."[24] Because MyJoVE's sole exception turns on questions of contract interpretation applied to a stipulated paper record, a new hearing is unnecessary.[25]

A. The Unchallenged Holding Regarding the Release

Before turning to MyJoVE's fee-shifting exception, an observation on the posture of the underlying Section 220 claim is warranted. In the Final Report, the Magistrate applied general release principles to conclude that Section 5.2 of the

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[21] Def.'s Opening Br. in Supp. of Exceptions (Dkt. 43) ("Def.'s Opening Exceptions Br."); Pl.'s Answering Br. in Opp'n to Def.'s Exceptions (Dkt. 46) ("Pl.'s Answering Exceptions Br.").

[22] Def.'s Reply Br. in Further Supp. of Exceptions (Dkt. 48) ("Def.'s Reply Exceptions Br.").

[23] *See* Ct. Ch. R. 144(b)(2); *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

[24] Ct. Ch. R. 144(e).

[25] *See DiGiacobbe*, 743 A.2d at 184; *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 266 (Del. 2022).

Redemption Agreement—a release of all claims and demands "which [Bernstein] ever had or now has"—extinguished Bernstein's right to demand corporate books and records about the April 2025 board changes.[26] He held that the Release barred both Bernstein's September 2025 books and records demand and this action.[27]

The Court of Chancery has previously observed that, to the extent one can waive statutory inspection rights by contract, the waiver must be "clearly and affirmatively expressed in the relevant document."[28] The Release in Section 5.2 of the Redemption Agreement makes no mention of Section 220, statutory information

[26] Final Report 7-8, 13 (quoting Redemption Agreement § 5.2).

[27] *Id.* at 7-17 ("In short, the parties agreed that Plaintiff would not seek recourse for all manner of grievances, past or pending, in exchange for the stock buyback.").

[28] *Kortum v. Webasto Sunroofs, Inc.*, 769 A.2d 113, 125 (Del. Ch. 2000) (holding that a stockholders agreement did not limit inspection because it did not "expressly provide for a waiver of statutory inspection rights under § 220"); *accord Schoon v. Troy Corp.*, 2006 WL 1851481, at *2 (Del. Ch. June 27, 2006) (applying *Kortum* to hold that a stock purchase agreement did not abridge a stockholder's Section 220 rights where no waiver was clearly and affirmatively expressed); *Juul Labs, Inc. v. Grove*, 238 A.3d 904, 909-11, 919-20 & n.15 (Del. Ch. 2020) (applying *Kortum*'s "clearly and affirmatively expressed" standard to construe a waiver of inspection rights, but leaving open whether an express waiver of Section 220 rights in a private agreement is enforceable under Delaware public policy); *see also Peneff Hldgs. LLC v. Nurture Life, Inc.*, 2024 WL 3964006, at *5 (Del. Ch. Aug. 28, 2024) ("[E]ven assuming a stockholder can waive statutory inspection rights by contract, the waiver must be clear." (citing *Kortum*, 769 A.2d at 125)).

rights, or books and records.[29] Yet neither party presented the Magistrate with precedent addressing contractual waivers of statutory inspection rights under Section 220. Nor did the Final Report address this precedent.

Bernstein did not take exception to the Final Report and waived any challenge under Court of Chancery Rule 144.[30] As such, I adopt the Final Report's recommendation to enter judgment in MyJoVE's favor.[31] In doing so, however, I do not endorse the conclusion that the Release extinguished Bernstein's statutory inspection rights.[32]

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[29] *See* Redemption Agreement § 5.2; *cf. Juul Labs*, 238 A.3d at 909-11 (holding that a provision waiving inspection rights "provided for in Section 220" was not sufficiently clear and affirmative to waive inspection rights under California's books and records statute).

[30] *See* Ct. Ch. R. 144(c)(2)(A), (d)(2); Pl.'s Answering Exceptions Br. 1, 6 ("Plaintiff took no exceptions to the Final Report and does not ask the Court to revisit the Final Report's disposition of his Section 220 claim . . . ."); *cf. Cowan v. Furlow*, 2024 WL 4362264, at *2 (Del. Sept. 30, 2024) (holding that substantive challenges to a Magistrate's final report that are unasserted in exceptions under Rule 144 are not preserved for review by the Delaware Supreme Court on appeal).

[31] *See* Final Report 1, 17.

[32] Because Bernstein did not take exceptions to the dismissal of his Section 220 claim, I also have no occasion to review whether his demand satisfied the substantive requirements of recently amended Section 220.

B. The Exception Regarding Fee-Shifting Under Section 8.13

MyJoVE's exception seeks attorneys' fees and expenses under Section 8.13 of the Redemption Agreement.[33] Contrary to the parties' contentions, neither side waived its arguments on fee shifting. MyJoVE preserved a request for fees in its answer, the Pre-Trial Order, its pre-trial briefs, and at trial.[34] MyJoVE asserts that Bernstein waived his textual arguments by raising them for the first time in his exceptions answering brief, but the trial transcript reflects that Bernstein's counsel quoted Section 8.13 and addressed its applicability.[35]

Delaware follows the American Rule, under which litigants bear their own attorneys' fees absent a recognized exception, such as a contractual fee-shifting provision.[36] As the party seeking fees, MyJoVE must establish that the provision's

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[33] Def.'s Opening Exceptions Br. 1-2, 9-10.

[34] Def.'s Answer and Affirmative Defenses 27, 29; PTO ¶ 85; Def.'s Opening Pre-trial Br. (Dkt. 21) 11, 25, 33; Def.'s Answering Pre-trial Br. (Dkt. 27) 9, 17; Trial Tr. 71-72.

[35] *Compare* Def.'s Reply Exceptions Br. 3-5, *with* Pl.'s Answering Pre-trial Br. (Dkt. 26) 16 n.2, *and* Trial Tr. 92-93.

[36] *Juul Labs*, 238 A.3d at 917 & n.11 ("Delaware follows the American rule on fees and costs, and in a Section 220 action, each party bears its own attorney's fees unless there is an exception to that rule." (quoting *Donnelly v. Keryx Biopharmaceuticals, Inc.*, 2019 WL 5446015, at *6 (Del. Ch. Oct. 24, 2019))).

text covers the dispute and that any contractual conditions have been satisfied.[37] Delaware courts adhere to the objective theory of contracts, construing an agreement as a whole and giving effect to the plain meaning of terms within its four corners.[38]

Applying these principles, MyJoVE has not shown that it is entitled to contractual fee-shifting. Section 8.13, titled "Breach," addresses breaches of the Redemption Agreement. It establishes a mandatory pre-suit notice-and-cure procedure for a breach, and shifts attorneys' fees to the prevailing party in the resulting dispute:[39]

> In the event of breach of this Agreement by one party, the other party shall give notice of such breach and the breaching party shall have ten (10) business days to cure such breach. Attorney's

[37] *See Bako Pathology*, 288 A.3d at 280-81; *Sunline Com. Carriers, Inc. v. CITGO Petroleum Corp.*, 206 A.3d 836, 846 (Del. 2019).

[38] *See Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159-60 (Del. 2010) ("We will read a contract as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage."); *Sunline*, 206 A.3d at 846 ("The contract must also be read as a whole, giving meaning to each term and avoiding an interpretation that would render any term 'mere surplusage.'"); *see also Bako Pathology*, 288 A.3d at 266 (noting that contractual fee-shifting provisions are interpreted de novo as a matter of contract interpretation).

[39] Redemption Agreement § 8.13. Although Section 8.9 of the Redemption Agreement states that headings are for convenience and do not affect interpretation, the first sentence of Section 8.13 frames the provision around "the event of breach of th[at] Agreement by one party." *Id.* §§ 8.9, 8.13.

> fees shall be awarded to the prevailing party in the event of any dispute arising hereunder.[40]

The second sentence refers to "any dispute arising hereunder."[41] Read in isolation, that language could arguably encompass disputes about the Release. But the sentence must be read with the preceding sentence, which addresses breaches of the Redemption Agreement and provides for notice and an opportunity to cure.[42] Together, the sentences establish a procedure for resolving disputes over alleged breaches and fee-shifting for "any" such disputes.[43]

This Section 220 action is not a dispute over a breach of the Redemption Agreement.[44] MyJoVE did not plead a breach of that agreement or invoke Section 8.13's notice-and-cure procedure.[45] Instead, MyJoVE asserted the Release

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[40] *Id.* § 8.13.

[41] *Id.*

[42] *Id.*; *see Sunline*, 206 A.3d at 846 ("The contract must also be read as a whole, giving meaning to each term . . . .").

[43] Redemption Agreement § 8.13.

[44] *See SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 352 (Del. 2013) ("In contract litigation, where the contract contains a fee-shifting provision, we will enforce that provision."); *Sternberg v. Nanticoke Mem'l Hosp., Inc.*, 62 A.3d 1212, 1220 (Del. 2013) ("An exception to [the American Rule] is found in contract litigation that involves a fee shifting provision.").

[45] *See Gotham P'rs, L.P. v. Hallwood Realty P'rs, L.P.*, 714 A.2d 96, 103 (Del. Ch. 1998) ("The scope and purpose of a Section 220 proceeding is narrow. Time and time again, this Court has rejected claims that would expand a statutory hearing beyond its statutory purpose."); *see also* JX 49 at 1-4 (raising the Release as an objection to proper purpose

as an affirmative defense to Bernstein's statutory inspection claim, and the Final Report enforced it as a bar to inspection.[46] The Release is phrased as a present discharge of liability rather than an executory covenant not to sue.[47] Unlike a covenant not to sue, which imposes an ongoing obligation to refrain from litigation, a release discharges liability upon execution.[48] Thus, enforcement of the Release as an affirmative defense did not establish that Bernstein breached the Redemption Agreement by bringing this action.[49]

MyJoVE's reliance on *Manti Holdings, LLC v. Authentix Acquisition Co.* highlights this distinction.[50] In that appraisal action, the Delaware Supreme Court

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though offering a partial production and inviting a meet and confer, without declaring a breach, invoking Section 8.13, or demanding a cure within ten business days).

[46] Final Report 6-8, 17.

[47] Redemption Agreement § 5.2 (stating that Bernstein "hereby fully, forever, irrevocably and unconditionally releases, remises and discharges" MyJoVE).

[48] *See New Enterprise Assocs. 14, L.P. v. Rich*, 295 A.3d 520, 535–36 (Del. Ch. 2023) ("A covenant not to sue and a release are different things. . . . Unlike a release, where the cancellation of the claim and the discharge of the released party are complete upon execution, the covenant not to sue is an executory contract that contemplates ongoing performance.").

[49] Delaware courts have noted that asserting a released claim can conceivably support a pleaded claim or counterclaim for breach of contract damages. *See, e.g.*, *Namdar v. Fried*, 340 A.3d 1184, 1191, 1209 n.93 (Del. Ch. 2025); *Carlyle Inv. Mgmt. L.L.C. v. Moonmouth Co. S.A.*, 2015 WL 5278913, at *15 (Del. Ch. Sept. 10, 2015). No such claim was brought in this summary proceeding.

[50] 261 A.3d 1199, 1229-30 (Del. 2021).

enforced a fee-shifting provision after concluding that the petitioners had contractually waived their appraisal rights and promised to refrain from exercising them.[51] The fee-shifting provision in *Manti* covered "any litigation or other legal proceeding involving the interpretation" of the operative contract "or enforcement of the rights or obligations of the [p]arties" to it.[52] That language encompassed disputes over contractual rights regardless of whether the agreement was invoked as the basis for a claim or as a defense. Section 8.13 of the Redemption Agreement, by contrast, limits fee-shifting to disputes involving alleged breaches. MyJoVE's successful reliance on the Release therefore does not, without more, entitle it to fee-shifting.[53]

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[51] *Id.* at 1204, 1229-30.

[52] *Id.* at 1229.

[53] Redemption Agreement § 8.13. The other decisions cited by MyJoVE are also distinguishable. They concern either claims for breach of the agreements containing the fee-shifting provisions or contractual inspection rights and a broader fee-shifting provision covering litigation "arising out of or relating to" the LLC contract. *Leistner v. Red Mud Enters. LLC*, 2023 WL 11196881, at *1, *3-4 (Del. Ch. Apr. 26, 2024) (awarding fees under a limited liability company agreement's fee-shifting provision after the defendant prevailed in a books-and-records action); *see GB-SP Hldgs., LLC v. Walker*, 2024 WL 4799490, at *24 (Del. Ch. Nov. 15, 2024) (awarding fees where the plaintiff proved a breach of a stockholders agreement); *Navient Sols., LLC v. BPG Off. P'rs XIII Iron Hill LLC*, 2023 WL 3120644, at *16 (Del. Super. Apr. 27, 2023) (addressing a claim for breach of a commercial lease).

Accordingly, MyJoVE is not entitled to its attorneys' fees and expenses under Section 8.13.

III. CONCLUSION

For the above reasons, MyJoVE's exception is overruled. The Final Report's recommendation that judgment be entered in favor of MyJoVE on Bernstein's books and records claim is adopted as unchallenged. Each party will bear its own attorneys' fees and expenses. IT IS SO ORDERED.

Sincerely yours,

/s/ Lori W. Will

Lori W. Will
Vice Chancellor