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IN THE SUPREME COURT OF THE STATE OF DELAWARE

TWO RIVERS FARM, LLC, Defendant Below Appellant, v. MELISSA GARLINGTON, Plaintiff Below Appellee.	No. 199, 2025 On Appeal from the Court of Chancery of the State of Delaware C.A. No. 2024-0917-BWD

APPELLANT'S REPLY BRIEF ON APPEAL

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INTRODUCTION

This appeal presents a fundamental question about the scope of relief under Court of Chancery Rule 60(b)(6): can a trial court condition the partial setting aside of a default judgment on a defendant's waiver of meritorious statutory defenses, and prevent defendant from taking any discovery? The answer under Delaware law is unequivocally no.

Appellee's Answering Brief rests on a false premise that the Company's initial procedural missteps somehow justify stripping it of substantive statutory rights. But Delaware's policy favoring decisions on the merits does not disappear when a defendant initially fails to timely answer a complaint. To the contrary, that policy is most important when it prevents courts from forcing defendants to abandon valid defenses as the price of relief from default judgment.

Appellee's Answering Brief notably addresses none of the facts that would support discovery into the propriety of Appellee's stated purpose. Appellee is a former employee of Galtere, Inc. (A0090, A1314, A1316), which sued the Company's manager seeking over $800,000. A1343-49. While Galtere's litigation against the manager was pending, Appellee escalated her demands for the Company's Member List in coordination with Galtere's litigation strategy, copying Galtere employees on her correspondence and coordinating with Galtere's own parallel demand for the same information. Galtere admitted that Appellee was

"affiliated" with them (A1356-57) and expressly sought to use member information to "hold [the manager] personally responsible" for financial damages. A0096.

This evidence raises substantial questions about whether Appellee's stated purposes of valuing her investment and investigating mismanagement are pretextual covers for Galtere's campaign to extract money from the Company through management changes. Delaware law permits discovery to test the propriety of a plaintiff's stated purpose, and permits a manager to keep certain information confidential from members under 6 *Del. C.* § 18-305(c) precisely to prevent such abuse of inspection rights.

The Court of Chancery partially set aside the default judgment "solely for the purpose of determining whether the Member List must be produced in unredacted form and/or subject to a confidentiality order." A1307. But having reopened this issue, the Court could not then prevent the Company from asserting its statutory defense or conducting discovery necessary to prove that defense. The Court effectively required the Company to prove improper purpose while tying its hands behind its back, which violates both Delaware law and basic due process.

Appellee's attempt in her Answering Brief to reframe this as a simple case about procedural defaults misses the point entirely. The issue is not whether the Company's initial conduct was excusable, but whether Delaware law permits courts to condition Rule 60(b)(6) relief on the waiver of meritorious statutory defenses. No

Delaware court has ever approved such a condition, and Appellee cites no such case law from *any* jurisdiction. Allowing it here—where defendant has otherwise substantially complied with the inspection demand and provided ample circumstantial evidence supporting an improper purpose—would gut the protections Delaware law provides against pretextual books and records demands.

This Court should reverse and remand for proceedings that allow the Company to present its statutory defenses and conduct the discovery necessary to protect both its members' confidential information and the integrity of Delaware's books and records law.

REPLY STATEMENT OF FACTS

Appellee's Answering Brief presents a one-sided narrative that omits key facts demonstrating her aggressive litigation tactics and refusal to engage in good faith meet-and-confer efforts. Her Counterstatement of Facts simply appears to be a re-litigation of a sanctions motion that the trial court properly denied, to distract from the limited issues on appeal. To the extent relevant to this appeal, the complete record tells a different story.

A. Appellee's Aggressive Litigation Posture and Refusal to Meet and Confer.

Contrary to Appellee's portrayal of herself as a patient victim of the Company's delays, the record demonstrates that once counsel appeared for the Company, Garlington consistently refused reasonable attempts at resolution and pursued an unnecessarily aggressive litigation posture.

Most tellingly, when the Court of Chancery specifically ordered the parties to "meet and confer … and provide status update to the Court" following the November 21, 2024 hearing (A2117), Appellee refused altogether to speak with Appellant. A2119, 2122. In response to the Company's offer to meet and confer in compliance with the Court's directive, Appellee's counsel simply responded: "We are in the process of filing a letter to the Court asking for a ruling on our pending motions." A2122. When pressed again about the Court's explicit order to meet and confer, Appellee's counsel ignored the request entirely. A2119, 2122.

This refusal to meet and confer is particularly striking because counsel for the Company explained that it had recently been engaged, that Thanksgiving week had intervened, and that it was attempting to comply with the trial court's order "in the spirit of resolution." A2122. Rather than engage constructively, Appellee refused to speak altogether in violation of the trial court's judicial action form. A2117, A2119, 2122.

The trial court was not impressed with Appellee's refusal to meet and confer. In response, it entered a Minute Order dated December 6, 2024 ordering the parties to meet and confer again, and to submit a *joint* status report. A0010. Appellee finally agreed to speak with Appellant on December 11, 2024. B134, 143-44.

Yet, despite the trial court's clear instruction, Appellee nonetheless proceeded to file her own, one-sided status report after-hours on Christmas Eve rather than cooperating with the Company to file a joint status report. B104-107, 133-134. Garlington unreasonably provided a one (1) business day deadline for the Company to respond to her version of the status report in the days leading up to the Christmas holiday. B133-134.

Moreover, as reflected in the Company's December 26, 2024 status report, Appellee did not accurately portray the December 11 meet and confer call the parties had several weeks earlier to the trial court. B134. Promptly following that call, the Company: (i) disclosed management fees (no management fees are paid at the

Company level) (ii) provided a draft confidentiality agreement; (iii) offered to produce draft financial statements for 2024 pursuant to a confidentiality agreement; and (iv) confirmed which documents do not exist. B134. But, once again, Garlington refused to further meet and confer, curtly responding: "It appears we are at an impasse." B134. The Company asked Garlington to explain specifically how the parties are at an impasse. B134. Garlington refused to engage further, including providing no comments to the Company's proposed confidentiality order. B134.

Notably, Appellee chose not to include the Company's December 6, 2024 status letter highlighting Garlington's refusal to meet and confer (A2119) or the trial court's judicial action form ordering the parties to meet and confer and submit a joint status report (A2117) in her Appendix, nor does she reference these communications or the December 11 meet and confer call in her Counterstatement of Facts. These omissions are telling, as these documents and communications directly contradict her claims that the Company was acting in bad faith or refusing to engage in the litigation process.

B. Appellee's Mischaracterization of Company Conduct.

Appellee's Answering Brief characterizes the Company as having "repeatedly and knowingly ignored Court-ordered deadlines" and "flagrantly violat[ed] court-ordered deadlines." AB at 1, 17, 22. But this narrative ignores that the Company had been working to comply with its production obligations while properly asserting its

statutory defenses, and that Appellee has been the party refusing to engage in court-ordered meet-and-confer efforts.

The December 2024 correspondence and the Company's December 6 and 26, 2024 status reports show that when given the opportunity to work collaboratively toward resolution, Appellee chose confrontation over cooperation. A2118-A2126, B133-B150.

This was further exemplified when Garlington continued to press forward with an unfounded motion for sanctions and the appointment for a receiver, despite having received the entirety of her demanded documents other than the Member List. Garlington escalated the parties' legal fees by refusing to accept the Company's representations that it had produced all responsive documents other than the Member List.

Tellingly—and contrary to Appellee's narrative—after hearing oral argument, the trial court disagreed with Garlington, found that the Company had fully complied other than the Member List, denied Garlington's motion for sanctions, and agreed with the Company that relief was warranted under Court of Chancery Rule 60(b)(6). A1229, 1230.

C. **The Real Procedural Posture.**

This additional evidence confirms that Appellee's characterization of the Company as an obstructionist defendant—to the extent even relevant to this appeal—is both inaccurate and unfair. While it may be true that default judgment was entered against the Company, once counsel entered their appearance, it promptly revived its standing and worked with Appellee through counsel to produce the *entirety* of demanded documents, save for the Member List.

These facts, which Appellee omitted from her Answering Brief, provide important context for understanding the true procedural posture of this case and underscore why the Company should be permitted to assert its statutory defenses and conduct appropriate discovery.

ARGUMENT ON REPLY[1]

I. The Trial Court Abused its Discretion by Preventing Appellant from Litigating a Meritorious Defense.

A. Appellee Cites No Authority Permitting a Trial Court to Restrict Meritorious Defenses When Setting Aside Default Judgment.

In her Answering Brief, Appellee cites to no authority permitting a trial court to set aside a judgment but then restrict the ability to develop and assert a meritorious defense. Instead, Appellee devotes substantial argument to criticizing the Company, asserting that Appellant: "repeatedly and knowingly ignored Court-ordered deadlines" (AB at 1); purportedly "repeatedly flout[ed] court-ordered deadlines" (AB at 17), and "chose to flagrantly violate[d] court-ordered deadlines". AB at 22.

But the Company's initial procedural missteps are not at issue here. Garlington withdrew her cross-appeal to presumably challenge the trial court's granting of relief to Appellant under Court of Chancery Rule 60(b)(6). Dkt. No. 12. And, regardless, the trial court held that relief was warranted under Rule 60(b)(6), specifically noting that the Company fully complied with every request of Garlington's books and records demand with the sole exception of the Member List. A1229. Notably, the Court of Chancery also denied Garlington's aggressive motion for sanctions and her request to appoint a receiver. A1230. Garlington's latest round

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in Appellant's Corrected Opening Brief on Appeal ("Opening Brief" or "OB"). Appellee's Answering Brief is cited herein as "Answering Brief" or "AB".

of finger-pointing at the Company is unfortunately redundant of her briefing before the trial court, and misses the mark.

Bluster aside, Appellee's Answering Brief sidesteps the fundamental legal issue raised on appeal: whether Delaware law permits conditioning relief from default judgment on waiver of meritorious defenses. The trial court's characterization that Appellant wanted to "relitigate" purpose is legally incorrect—default judgment operates by deeming allegations admitted, not by constituting an adjudication on the merits after adversarial testing of evidence and legal arguments. Appellee cites to no authority challenging the various sources of case law provided by Appellant, including:

- Corpus Juris Secundum, Judgments, 49 C.J.S. Judgments § 604 (a court "in its discretion, may make it a condition that the defendant forbear to set up some particular defense that is considered unconscionable or purely technical. … [However,] [i]t is an abuse of discretion … to require the defendant to waive a meritorious defense." (collecting cases)).

- *Borden v. Briggs*, 49 R.I. 207, 142 A. 144, 145 (1928) (the Supreme Court of Rhode Island held that requiring a party to waive a meritorious defense would constitute an abuse of discretion, noting that "the weight of authority is against the imposition of such a condition, as a statute of limitations is generally considered a meritorious defense.")

- *Mitchell v. Campbell*, 13 P. 190, 192 (Or. 1887) (the Supreme Court of Oregon found it was error to require, as a condition to set aside a default judgment, that defendant waive meritorious defenses, stating: "The machinery of the court cannot be used as a means to compel a party to surrender either a meritorious cause

> of action or defense. Courts were not instituted, nor are they conducted for that purpose.").
>
> - *Dao v. Liberty Life Assur. Co*., 2015 U.S. Dist. LEXIS 12793, at *12, 2015 WL 457814 (N.D. Cal. Feb. 3, 2015) ("Accordingly, the Court declines to […] deprive defendant of its affirmative defenses").

Appellee's Answering Brief does not even address Corpus Juris Secundum's clear guidance. And her attempt to distinguish *Borden, Mitchell* and *Dao* are unavailing. Appellee attempts to escape the overarching principle of these cases—that setting aside a default judgment cannot be conditioned on waiver of meritorious defenses—by drawing distinctions having no bearing on this principle.

For example, Appellee attempts to distinguish *Dao* on the grounds that the court found that all factors weighed in favor of defendant in determining whether to set aside the default judgment. Appellee misses the point. Here, the trial court *already* set aside judgment under Rule 60(b)(6). The question on appeal is whether the trial court could do so while depriving Appellant of a meritorious defense. In *Dao*, the plaintiff requested alternative relief that the court "'deny the motion as to the uncontested claims for relief … and/or order that Liberty has waived all of its affirmative defenses' because it did not raise the defenses in a responsive pleading." *Id.* at *12. The U.S. District Court of the Northern District of California denied plaintiff's request, holding that "granting defendant's motion only on the condition that defendant waives its affirmative defenses—no matter how meritorious those

defenses may be—directly undermines the policy in favor of resolution on the merits." *Id.* *Dao* supports Appellant's position.

With respect to *Borden*, Appellee argues that "[c]ontrary to the Company's assertion, the Supreme Court of Rhode Island did not hold that 'requiring a party to waive a meritorious defense would constitute an abuse of discretion.'" (AB at 29, quoting OB at 18). But that is precisely the holding of the Supreme Court of Rhode Island. As stated in the opinion:

> Plaintiff claims that the court erred in vacating the judgment without imposing the condition that defendant could not plead the statute of limitations. *The weight of authority is against the imposition of such a condition as the statute of limitations is generally considered a meritorious defense.* 34 C.J. 380, 338; *Lilly-Brackett Co. v. Sonnemann*, 21 Ann. Cas. n. 1282. The imposition of terms as a condition for the removal of a judgment by default is within the discretion of the trial justice. *We find no abuse of discretion or error of law in the decision removing the default without condition.*

Id. at 145 (emphasis added). Moreover, Appellee's attempt to distinguish *Borden* on factual grounds is unpersuasive. Appellee relies on the fact that the *Borden* court set aside the default judgment based upon a finding excusable neglect. But the question of *why* that court vacated the judgment is not relevant: here, the Court of Chancery already vacated the default judgment as to the Member List, and Appellant withdrew her appeal of this ruling. *Borden* supports Appellant's position that vacating a default judgment conditioned upon the waiver of a meritorious defense constitutes an abuse of discretion.

Finally, Appellee's attempt to distinguish *Mitchell* fares no better. Appellee again focuses on the reasons why the Supreme Court of Oregon in *Mitchell* found that defendant should not have been in default. But the *Mitchell* court held that even if defendant had truly been in default, the default judgment should have nonetheless been vacated without any condition that defendant forego any meritorious defenses. *Mitchell*, *supra*, 13 P. at 191-92 ("But, *assuming that the defendant was in default*, it was the plain duty of the court to set it aside upon the showing made by the defendant, and to have allowed an answer to be filed; and to refuse it was such a manifest abuse of judicial discretion, as to call for the interposition of this court to correct it.") (emphasis added). Regardless, the question is not whether the judgment should have been set aside in the first place. Appellee withdrew her cross-appeal of that decision. Dkt. No. 12. And *Mitchell* weighs even more heavily in Appellant's favor because the condition to set aside the default judgment, namely that the defendant waive meritorious defenses, was *stipulated* to by the parties, not imposed by the court itself. *Mitchell* clearly favors Appellant.

Finally, Appellee attempts to rely upon *Apartment Communities Corp. v. Martinelli,* 859 A.2d 67 (Del. 2004), but that decision does not address whether a court can condition setting aside a default judgment upon waiver of a meritorious defense. While Appellant cited to *Apartment Communities* (OB at 17), it was simply for the position that courts consider whether a defaulted defendant "has a meritorious

defense" to the claims against it. *Id.* at 69-70. It is not disputed that the decision to set aside a default judgment is within the sound discretion of the trial court, as *Apartment Communities* holds. What is disputed (and not addressed by that decision) is whether, upon setting aside a default judgment, substantial restrictions can be imposed upon a defendant. *Apartment Communities* does not advance Appellee's position.

In sum, Appellee cites to no contrary authority that setting aside a default judgment can be conditioned on forgoing meritorious defenses. Appellee cites to no case law in Delaware (or in any jurisdiction, for that matter), permitting a trial court to set aside a default judgment in such a piecemeal fashion. Appellee's attempts to distinguish *Mitchell, Borden* and *Dao*, while not even addressing Corpus Juris Secundum, are unavailing.

Having not cited to any contrary authority, the Court should hold that Delaware law does not permit the setting aside of a default judgment conditioned upon a defendant waiving meritorious defenses. It was reversible error for the trial court to foreclose any opportunity by the Company to assert a meritorious defense directly connected to the issue for which default judgment was set aside, namely, whether the Member List should be withheld from Garlington.

B. Appellee Has Shown No Prejudice.

Appellee argues in a single paragraph that she would purportedly "suffer continued and significant prejudice through the Company's bad faith delay", if Appellant were permitted to assert an improper purpose defense and conduct limited discovery in support thereof. AB at 37. But the only prejudice Appellee alludes to is a delay in resolution of the action; Appellee does not articulate *how* she has been harmed. And Appellee would have borne the same litigation costs in conducting discovery with or without the default judgment. This is insufficient to deny Appellant the right to assert its statutory defenses and conduct discovery.

Further, there is no dispute that Appellee has been provided with the entirety of the information she sought, aside from an unredacted Member List. A1229-30 ("The company has represented that it has produced all documents in response to the demands that exist, with one exception. … Because the plaintiff hasn't demonstrated noncompliance with the default judgment, other than in the limited respect that I have just identified, I am going to deny the motion for sanctions."). A1229. The Company produced over 600 pages of documents to Appellee in response to her books and records demands, including the Company's certificate of formation, six years of tax returns, and six years of financial statements, and appraisals. A1320, A1356-A1958, and A0319 (a chart listing the documents produced by the Company

to Garlington). Appellee fails to articulate why the substantial number of documents produced by the Company are insufficient to accomplish her stated purposes.

Finally, the record cuts against Appellee's claim of prejudice. Appellee did not move to expedite this appeal, even though appeals of books and records actions are commonly expedited. *See* Donald J. Wolfe, Jr. & Michael A. Pittenger, Corporate and Commercial Practice in the Delaware Court of Chancery § 9.07 (2025) ("In keeping with the summary nature of Section 220 actions seeking to compel inspection of books and records, appeals from the Court of Chancery's final decision to the Delaware Supreme Court are often expedited."). Moreover, Appellee did not object to Appellant's Motion to Stay Pending Appeal, which was "[g]ranted as unopposed." A2116. Such acquiescence is not consistent with a party purportedly suffering prejudice. Appellee's actions undermine her claims of prejudice.

C. The Entry of Default Judgment is Not Subject to Appeal.

Finally, Appellee argues irrelevant points at length, including in Argument Section I(C)(1) that the "validly-entered default judgment is well-supported under Delaware law" (AB at 17-21), and in Argument Section I(C)(2) that the Court provided the Company with several opportunities to assert defenses. AB at 21-25. The Company neither appeals the Court's entry of default judgment nor disputes that it could have raised affirmative defenses had it timely responded to the Complaint,

as any litigant has the right to do. Therefore, the Company declines to respond to this portion of Appellee's brief.

II. The Trial Court Erred by Denying Discovery Necessary to Support Appellant's Defenses.

A. Appellee Cannot Defend the Trial Court's Denial of All Discovery After Partially Setting Aside Default Judgment.

Appellee's Answering Brief fails to address the fundamental due process problem created by the Court of Chancery's approach: requiring Appellant to prove improper purpose while denying the discovery tools necessary to develop that proof. Instead, Appellee argues that the Company "was not denied discovery" because it "had the opportunity to take discovery by participating in the action under the court-ordered case schedule." AB at 41. This argument misses the point entirely.

The Court of Chancery's Rule 60(b)(6) relief specifically contemplated relitigating the Member List issue "solely for the purpose of determining whether the member list must be produced in unredacted form and/or subject to a confidentiality order". A1307. Having reopened this narrow issue, due process required allowing Appellant to develop its statutory defense of improper purpose. The Court could not simultaneously invite briefing on confidentiality while preventing the factual development necessary to determine whether confidentiality protections were warranted due to Appellee's improper purpose.

Notably, Appellee cites no authority permitting a court to deny discovery after partially setting aside a default judgment. Delaware law is clear that discovery is appropriate in books and records actions to determine whether a proper purpose

exists. *See Pershing Square, L.P. v. Ceridian Corp*., 923 A.2d 810, 819 (Del. Ch. 2007) ("This Court is required under 8 *Del. C.* § 220 to ensure that a stockholder's primary purpose in demanding access to corporate books or records is proper and to prevent abusive use of such demands. Where those elements are in doubt, the Court will use its statutory powers to deny relief.") Appellee's argument that the Company forfeited discovery rights by initially defaulting would render Rule 60(b)(6) relief meaningless—parties could never effectively use the discovery process to develop defenses after obtaining relief from default judgment.

B. The Circumstantial Evidence of Improper Purpose Required Discovery to Resolve.

The trial court faulted Appellant for failing to prove that "Plaintiff is nothing more than Galtere's proxy," stating that Appellant "has not met its burden to prove that is the case." A2097. But the Court simultaneously denied Appellant any opportunity to develop the proof necessary to meet that burden. This Catch-22 violates basic due process.

As set forth in Appellant's Opening Brief, the record contains substantial circumstantial evidence of coordination between Appellee and Galtere that raised questions requiring discovery to resolve:

1. Appellee's Employment History: Appellee is a former Galtere employee (A0090, A1314, A1316) who credited Galtere with her investment in the Company. A1330.

2. Coordination of Demands: Appellee copied Galtere employees on her demands to the Company, including "Renee Haugerud" renee.h@galtere.com, "Jennifer Provenzano" Jennifer.P@galtere.com, and "Susan Haugerud" skhaugerud@gmail.com. A1319, A1351.

3. Parallel Demands: Galtere made its own separate demand for the identical member list. A0097.

4. Admitted Affiliation: Galtere admitted that Appellee was "affiliated" with them. A1356-57.

5. Financial Motivation: Galtere sought to use member information to "hold [the manager] personally responsible" for over $800,000 in claimed damages. A0096, A1343-49.

6. Timing: Appellee's escalating demands coincided with Galtere's litigation strategy against the Company's manager.

Despite this evidence, Appellee's Answering Brief simply endorses the trial court's finding that the Company "has not met its burden to prove" the coordination theory (A2097) without acknowledging that Appellee opposed the very discovery that would have allowed such proof to be developed.

This circumstantial evidence was sufficient to raise substantial questions about whether Appellee's stated purposes were pretextual. But circumstantial evidence, by definition, requires factual development to determine its true significance. Discovery into communications between Appellee and Galtere, the timing and coordination of their respective demands, and Appellee's true motivations was essential to resolve whether the Company's statutory defense had merit.

C. Appellee's Arguments About Pre-Default Discovery Opportunities Are Irrelevant.

Appellee argues extensively that the Company "had the opportunity to take discovery by participating in the action under the court-ordered case schedule" and "chose to completely ignore Plaintiff's discovery requests." AB at 41. These arguments are legally irrelevant for two reasons.

First, the Court of Chancery's Rule 60(b)(6) relief created a new litigation context focused specifically on the Member List issue. A1307. The prior scheduling order governed the entire case; the Court's partial relief opened a narrow window to address confidentiality and improper purpose issues related to the Member List. Having created this new procedural context, the Court could not rely on the Company's pre-default conduct to deny discovery necessary to the reopened issues.

Second, Appellee's argument proves too much. If prior default conduct always barred discovery after Rule 60(b)(6) relief, then such relief would be meaningless in virtually every case—defaulting parties would be unable to develop factual support for any defense. This would gut the remedial purpose of Rule 60(b)(6) and contradict Delaware's policy favoring decisions on the merits.

D. The Trial Court's Burden-Shifting Created an Impossible Standard.

The trial court's approach created an impossible burden: it required Appellant to prove improper purpose based solely on Appellee's demand letter, while denying

access to the evidence necessary to challenge Appellee's stated motivations. This is precisely backwards under Delaware law.

Appellee's Answering Brief embraces this impossible standard, endorsing the trial court's ruling that because "Plaintiff has identified a facially proper purpose for seeking a member list," no further inquiry was required. A2096. This approach would eliminate the improper purpose defense entirely, as any sophisticated litigant could simply articulate proper-sounding purposes regardless of their true motivations.

The burden should have been on Appellee to demonstrate her proper purpose through the normal litigation process, including responding to discovery about her true motivations and relationship with Galtere. Instead, the Court accepted Appellee's "facially proper" stated purposes without permitting any challenge to their veracity. A2096. Delaware law does not require companies to accept pretextual stated purposes at face value, particularly where substantial evidence suggests coordination with third parties having adverse interests.

The Court's approach effectively eliminated the improper purpose defense from Delaware law. If companies cannot conduct discovery to challenge stated purposes, then any litigant can obtain member lists simply by articulating facially proper purposes, regardless of their true motivations. This result would undermine the statutory protections Delaware law provides against abuse of inspection rights.

E. Discovery Was Directly Relevant to the Confidentiality Issues the Court Agreed to Address.

Finally, Appellee ignores that discovery into Garlington's improper purpose and abuse of confidential information was directly relevant to the confidentiality issues the Court of Chancery specifically agreed to address. *See In re: I2D Partners, LLC Books and Records Demand Litigation*, C.A. No. 2024-0043-BWD, 2024 WL 4952185, at *2 (Del. Ch. Dec. 2, 2024) (granting defendant's motion to compel discovery, finding that "discovery into Plaintiff's alleged abuse of confidential information may be relevant to Defendants' arguments under 6 *Del. C.* § 18-305(c)."). The Company's argument for confidentiality protections was based precisely on concerns about Appellee's improper use of member information in coordination with Galtere. A1324-33.

If Appellee was acting as Galtere's proxy to obtain member information for use in Galtere's campaign against management, then confidentiality protections would be inadequate—the information would inevitably be shared with and used by a third party with demonstrated animus toward the Company and its manager. Discovery into the Appellee-Galtere relationship was essential to determine what confidentiality protections, if any, would be sufficient to address the Company's legitimate concerns.

The Court of Chancery's denial of discovery thus undermined its own stated purpose in partially setting aside the default judgment. Having agreed to address

confidentiality issues, the Court could not then prevent the factual development necessary to intelligently resolve those issues.

For these reasons, the Court of Chancery's denial of discovery was an abuse of discretion that violated both Delaware law and basic due process. The Court should reverse and remand for proceedings allowing Appellant to conduct discovery necessary to develop its statutory defenses.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Honorable Court reverse the decision of the Court of Chancery and remand for further proceedings permitting Appellant to assert its statutory defenses and to conduct discovery necessary to develop those defenses.

Dated: August 13, 2025

Respectfully submitted,

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