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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MW GESTION, MW OPTIMUM, ALTIMEO PARTICIPATIONS, and CYRILLE PICHOT, Individually and On Behalf of All Others Similarly Situated, Plaintiffs-Below Appellants, v. SINOVAC BIOTECH LTD., WEIDONG YIN, NAN WANG, SIMON ANDERSON, YUK LAM LO, MENG MEI, SHAN FU, VIVO CAPITAL, LLC, VIVO CAPITAL VIII, LLC, VIVO CAPITAL FUND VIII, L.P., VIVO CAPITAL SURPLUS FUND VIII, L.P., VIVO CAPITAL IX, LLC, and VIVO CAPITAL FUND IX, L.P., Defendants-Below Appellees.	)	No. 245, 2026 Court Below: Court of Chancery of the State of Delaware, C.A. No. 2025-0417-JTL

APPELLANTS' OPENING BRIEF

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NATURE OF PROCEEDINGS

This is an appeal by Plaintiffs-Below/Appellants MW Gestion, MW Optimum, Altimeo Participations, and Cyrille Pichot ("Plaintiffs") seeking reversal of the Court of Chancery's dismissal of this action on the grounds of *forum non conveniens*, as described in the Transcript of the May 18, 2026 hearing ("Tr.") (Exhibit ("Ex.") B hereto) and accompanying order (Ex. C hereto) and its dismissal of Individual Defendants Weidong Yin, Simon Anderson, Yuk Lam Lo, Meng Mei, and Nan Wang for lack of personal jurisdiction, as described in the Orders dated April 21, 2026 (Ex. A hereto) and May 19, 2026 (Ex. D hereto). *See* Ex. E hereto (Final Dismissal Order).[1]

Defendants filed motions to dismiss on the issues of *forum non conveniens*, personal jurisdiction, standing, and the statute of limitations. The Court of Chancery granted Defendants Yin, Anderson, Lo, Mei, and Wang's motion for lack of personal jurisdiction, but declined to do so as to Defendant Sinovac Biotech Ltd ("Sinovac" or the "Company") based on "the filing of earlier litigation by Sinovac" in Delaware. Exs. A, D. The court's four-paragraph order dismissing these Individual Defendants

[1] Capitalized terms not defined herein have the same meaning as in Plaintiffs' Verified Second Amended Class Action and Derivative Complaint (A1328-1466). Citations and internal quotation marks are omitted, and emphases are added, unless noted otherwise below.

failed to engage with the applicable law and ignored entirely the personal role that each of them played in directing Sinovac's actions.

Additionally, the Court of Chancery denied Defendant Vivo Capital LLC's motion to dismiss for lack of personal jurisdiction "based on its alleged ties to Delaware, including a practice of forming Delaware entities, representations about being a Delaware entity, control over and action through Delaware entities, and the formation of transaction-related entities." A1991-93. None of the other Vivo Defendants challenged personal jurisdiction, because they are all Delaware entities. A1345(¶¶50-54).

The Court of Chancery then held oral argument "limited to the scope of (1) *forum non conveniens* and (2) timeliness." A1994(Apr. 24, 2026 Letter). After hearing argument on these issues, the court dismissed the case on *forum non conveniens* grounds, but expressly declined to rule on Defendants' other arguments for dismissal, noting these were "interesting issue[s]" that it was "not reaching." Tr. at 34:10-11, 49:11-22. The court's *forum non conveniens* ruling unduly focused on the need to apply Antigua law and certain foreign contacts, ignoring this Court's authority holding that those factors do not meet Defendants' burden of establishing an "overwhelming hardship" from litigating in Delaware. Moreover, even when comparing the hardship of each side, the Court of Chancery ignored the hardship

Plaintiffs would face if forced to bring this action in Antigua and exaggerated the burden that litigating in Delaware would place on Defendants.

SUMMARY OF ARGUMENT

The Court of Chancery erred for the following reasons when it dismissed this action on *forum non conveniens* grounds and ruled that it lacked personal jurisdiction over the Individual Defendants.

First, the Court of Chancery applied the wrong legal standard for *forum non conveniens*. While the court purported to assess whether Defendants established an "overwhelming hardship" from litigating in Delaware, it was clear that "I think this is a suitable case for the hybrid framework" under *Gramercy Emerging Mkts. Fund v. Allied Irish Banks, P.L.C.*, 173 A.3d 1033 (Del. 2017). Tr. at 41:14-42:9. That judgment infected the court's subsequent analysis, which gave more weight to factors than they merit under the "overwhelming hardship" standard and applied the *Gramercy* framework even when it was claiming to assess overwhelming hardship. That was the wrong legal framework because any potentially competing action is irrelevant since Plaintiffs are not a party to it and, even if it were relevant, this action was filed first. Furthermore, even if *Gramercy* applies, the Court of Chancery attributed undue hardship to factors that are not a basis for dismissal and failed to consider the hardship on Plaintiffs from forcing them to litigate in Antigua.

The Court of Chancery erred in basing its decision primarily on the need to apply Antigua law. This Court has held that the need to apply even unsettled issues of foreign law is not a proper basis for dismissal. The Court of Chancery also

mischaracterized the Antigua law issues here, which are no more complex than those that arise in other cases where the need to apply foreign law is not a basis for dismissal.

As to the other *Cryo-Maid* factors, the Court of Chancery acknowledged that the location of the parties, witnesses, and evidence is not dispositive. Nor could it be, since evidence is available electronically, the witnesses are under the control of the parties to this action, the underlying events are dispersed in different locations rather than centered in Antigua, and Defendants have not identified any specific evidence that is not available in Delaware.

In addition to improperly weighing the hardship on Defendants, the Court of Chancery failed to consider the substantial hardship that forcing Plaintiffs to bring this action in Antigua would impose on them because the Antiguan courts have been unable to resolve Sinovac's dispute with 1Globe for over eight years, with no end in sight. Plaintiffs would face the same fate if forced to litigate in Antigua, delaying their relief and allowing Defendants to continue their misconduct for years to come. The Court of Chancery also failed to consider that this action should proceed in Delaware because Sinovac chose to litigate its prior action against 1Globe here, the Vivo Defendants are Delaware entities, and this action is brought on behalf of shareholders of a company that listed its stock in the United States.

Second, the Court of Chancery erred when it dismissed the Individual

Defendants for lack of personal jurisdiction because the court (i) failed entirely to engage with the legal standard for personal jurisdiction; (ii) did not consider how that standard applies to the facts alleged here regarding the Individual Defendants, which the court did not even mention; and (iii) did not address the "conspiracy theory of jurisdiction" set out in *Istituto Bancario Italiano SpA v. Hunter Eng'g Co.*, 449 A.2d 210 (Del. 1982), which is an independent basis for personal jurisdiction over the Individual Defendants.

STATEMENT OF FACTS

Sinovac is a vaccine maker that is incorporated in Antigua with its principal offices in China. A1342(¶38), A1347-1348(¶¶59-60). In 2016, Defendant Yin, Sinovac's Chairman and CEO, sought to take the Company private at a valuation of $350 million, or $6.18 per share, far below its fair value. A1348(¶¶61-62). A battle for control of Sinovac ensued.

Yin's offer was contested right away by the Sinobioway Group, which offered 13% more. A1349(¶65). Instead of considering the superior offer, Sinovac's Board—including Defendants Yin, Anderson, Lo, Mei, Fu, and Lee—adopted and extended the Rights Agreement containing a poison pill, without seeking shareholder approval. A1349, A1351-53(¶¶66-67, 72-76). Sinovac's Board adopted the Rights Agreement to serve the Yin Group's personal interests, to protect their effort to take over the Company, rather than to protect Sinovac's minority shareholders from takeover attempts. A1355-56(¶¶89-90). With the poison pill in place, on June 26, 2017, Sinovac made a binding deal to be sold to the Yin Group for $7 per share, merely matching the Sinobioway Group's offer without giving them a chance to respond. A1356(¶¶91-92). The Vivo Defendants joined the Yin Group at this time by providing funding for the acquisition. A1356(¶91).

Sinovac and its incumbent Board beholden to Yin (*i.e.*, the Individual Defendants) did not seriously consider—or even disclose—the Sinobioway Group's

topping bid at a 15% premium. A1357(¶¶93-94). On January 31, 2018, ahead of Sinovac's Annual General Meeting on February 6, 2018 (the "AGM"), Sinobioway issued an open letter to Sinovac's shareholders, criticizing Sinovac's rejection of its offer and encouraging shareholders to attend the AGM to oppose the re-election of the incumbent Board, emphasizing that the Sinobioway Group was "ready to increase its offer price which will be always higher than the one offered by Sinovac's management." A1357-59(¶¶95-97).

A. Sinovac's Dispute With 1Globe

A dispute arose between Sinovac's incumbent Board and the Sinobioway Group over the Board election at the AGM in 2018. Prior to the meeting, the Sinobioway Group joined with 1Globe, Sinovac's largest shareholder, to vote for an alternative slate of directors. A1359(¶98). Although the Sinobioway Group cast 68% of the votes at the AGM, the incumbent Board and Sinovac's management took the position that 1Globe's votes were not valid. A1360-61(¶¶99-100). Sinovac issued a self-serving press release on March 5, 2018, stating that the incumbent Board—Yin, Anderson, Lee, Lo and Mei—was "re-elected by a majority of the votes validly cast." A1360-61(¶100).

This dispute spawned litigation starting in March 2018 between Sinovac and 1Globe in the Court of Chancery, Antigua, and Massachusetts over the validity of the Rights Agreement, whether 1Globe triggered it, and the validity of 1Globe's

votes at the AGM. A1332(¶6). Sinovac brought the Delaware Action in the Court of Chancery, *Sinovac Biotech Ltd. v. 1Globe Capital, LLC*, C.A. No. 2018-0143-JTL (Del. Ch.), seeking "a declaration that the Sinobioway Consortium's actions leading up to the AGM made them 'Acquiring Persons,' causing a 'Trigger Event' under the terms of the Rights Agreement." A0715-16(Sinovac Brief at 9-10); A1339(¶24), A1371-72(¶¶124-25). The Delaware Action was heavily litigated before it was stayed on April 8, 2019—including Sinovac making a motion for partial summary judgment—and remained pending for over seven years, until it was dismissed on April 7, 2025, after the Privy Council Decision in January 2025. Sinovac insisted in the Delaware Action that the Court of Chancery address its claims. The court concluded, based on the insistence of the parties and the Antigua court, that "we have a dispute that we have to deal with." A1340(¶27); A1629-30(Plaintiffs' Ex. 2 at 36-37).

Plaintiff MW Gestion likewise brought a prior action in the Court of Chancery alleging that Defendants implemented the poison pill in the Rights Agreement in an unfair way that favored the Yin Group at the expense of ordinary shareholders. A1335-36(¶¶14-16). MW Gestion voluntarily dismissed its appeal of that action because the Privy Council ruled that the Rights Agreement, upon which that action was premised, was not valid. *See* A1924-29(Plaintiffs' Ex. 13); *MW Gestion v. Sinovac Biotech Ltd.*, No. 443,2024 (Del. May 16, 2025) (Filing 76286969). Sinovac

did not contest that the Court of Chancery was the proper forum for Plaintiff's prior action.

B. The Privy Council Decision

On January 16, 2025, the Privy Council—the highest court for Antigua—reversed two prior decisions by the lower Antiguan courts. A1354(¶83 n.5); *see* A1439-66(Complaint Ex. A (Privy Council Decision)) and A0376-408(Individuals' Ex. 5 (12/19/18 Antigua decision)). The Privy Council ruled that the "Rights Agreement purportedly adopted by the Incumbent Directors of [Sinovac] was and has always been, void." A1361-62(¶103 n.7). The lower Antiguan courts "simply failed to address" the operation of Section 161(1)(e) of Antigua's International Business Corporations Act ("IBCA"). A1354(¶83); *see also* A1353-54(¶¶78-82).

The Privy Council also ruled that 1Globe's votes at the AGM were valid because the election of directors is not "special" business under the IBCA or Sinovac's By-Laws, and therefore does not require prior notice to shareholders, as well as because sufficient notice was provided. A1362-64(¶¶104-08). This result also makes sense under basic corporate governance principles because, as the Privy Council explained, it "is an important aspect of shareholder democracy that shareholders retain the freedom to elect whom they choose as directors at an AGM." A1362(¶104).

The Privy Council therefore ruled that the Sinobioway Group's new directors were "validly appointed and the Incumbent Directors have been imposters ever since" 2018. A1368(¶116). Additionally, the Privy Council emphasized that the AGM "went seriously off the rails by reason of a failure of the chairman [Defendant Yin] to have it adjourned." A1367-68(¶115); *see also* A1364-70(¶¶109-20). Yin's alternative approach of proceeding with the vote only to declare it invalid, leading to years of litigation, allowed him and the other Defendants to maintain *de facto* control of Sinovac while the dispute with 1Globe continued for years to come. A1370(¶¶119-20).

C. Defendants' Actions to Benefit the Yin Group Were Not Valid

The Privy Council Decision makes clear that Sinovac's adoption of the Rights Agreement and all of the actions taken by its purported Board comprised of imposters since 2018 are invalid. Defendants' actions entrenched the Yin Group in control and vastly enriched them, while tying Sinovac up in litigation for over eight years (and counting). As this Court explained in MW Gestion's prior action, "the Yin Group could not carry the day" because it did not have sufficient shareholder support to buy Sinovac, "[s]o the Board changed course." A1379(¶141); *MW Gestion v. Sinovac Biotech Ltd.*, 2024 WL 4262246, at *2 (Del. Ch. Sep. 23, 2024).

This includes the Board's attempt to implement the poison pill in the Rights Agreement on February 22, 2019 that, although unsuccessful, led to all trading in

Sinovac stock being halted since that time. A1370-74(¶¶121-30), A1383-84(¶153). The attempted Exchange was conducted to favor the Yin Group rather than minority shareholders because Defendants waited until after the Board issued 12 million shares (approximately 20% of Sinovac's outstanding shares) to the Yin Group—including the Vivo Defendants—at a steep discount in the PIPE Transaction in exchange for their votes in favor of Yin's preferred directors. A1379-80(¶¶142-43, 145). This timing of the Exchange was not justified because the Rights Agreement required a much earlier date, when the Yin Group had far fewer shares. A1374-78(¶¶132-40), A1382-83(¶¶150-52).

Through the PIPE Transaction and timing the Exchange, Defendants stood to give the Yin Group majority control of Sinovac. A1380-82(¶¶144, 148-49). The Board was highly self-interested in adopting this strategy because three of its six members—Defendants Yin, Fu (the Vivo Defendants' representative (A1343-44(¶¶ 45), A1397(¶182)) and Lee—were part of the Yin Group. A1380-81(¶146). The other Directors—Defendants Anderson, Mei, and Lo—were longtime Board members who acquiesced to these patently unfair transactions, have received substantial financial benefits from their actions, and were also beholden to Yin. A1381(¶147), A1392(¶172); *see infra* at 16.

While the attempted Exchange was paused pending resolution of Sinovac's litigation against 1Globe, the imposter Board continued to conduct more transactions

that favored the Yin Group. On May 22, 2020, Sinovac gave its members, including Vivo Capital, a 15% stake in Sinovac's operating subsidiary working on its COVID vaccine in a commercially unreasonable transaction that turned a $15 million loan into well over $1 billion in just one-and-a-half years, as well as billions of dollars in dividends and other conflicted transactions in the following years. A1384-90(¶¶155-67). Even so, Sinovac did not distribute any dividends this entire time to its ordinary shareholders. A1402(¶190). Shareholders are owed substantial sums based on the billions of dollars improperly distributed to the Yin Group and the Company's additional cash holdings that Defendants have withheld. A1412(¶209). These are just some of the highly conflicted and unfair transactions that Sinovac conducted while under the control of the imposter Board and trading in its stock was halted as a result of Defendants' actions. A1388-91, 1392-94(¶¶162-68, 172-77).

D. Defendants Continue to Vie for Control of Sinovac

The fallout from Defendants' misconduct and the Privy Council Decision continues to this day. Trading in Sinovac's shares remains halted. The Yin Group, including the Vivo Defendants, continues to vie for control of the Company and seeks to keep their ill-gotten gains. A1396-1400(¶¶181-86), A1407-10(¶¶198-203).

Following the Privy Council Decision, Sinovac filed an action in Antigua "to unwind the transactions that had been entered into by the Former Incumbent Directors on behalf of the Company, particularly the PIPE transaction, among

others." A0718(Sinovac Brief at 12). That action was filed by Sinovac, Orbimed, and 1Globe—while the Company was briefly under their control—"a month after Plaintiffs filed this case." A0195(Individuals' Brief at 48).

Even now, over eight years after litigation between Sinovac and 1Globe commenced in Antigua and the Privy Council issued a final decision, the Antiguan courts are unable to resolve these issues. On March 18, 2025, SAIF—part of the Yin Group—called for a Special Shareholder Meeting ("SSM") to have a new vote on Sinovac's directors. A1396-97(¶181). The Antigua Court of Appeal refused to enjoin the Yin Group, including the Vivo Defendants, from voting their plainly invalid PIPE shares at the SSM. A1186-88(Sinovac Ex. 11 (Case No. ANUHCV2025/0320) ¶¶52-58). An extraordinary sequence of events followed whereby Sinovac's new Chairman adjourned the SSM on July 8, 2025 to prevent the invalid PIPE shares from being voted. A1188-90(Sinovac Ex. 11 ¶¶59-68). The Yin Group then purported to reconvene in a minibus, called Defendant Lo on the phone and appointed him chairman of the meeting, in approximately five minutes declared that the Yin Group's nominees were elected to the Board, and then publicly "announced that they had been re-elected to the Board." A1191-92, A1194(Sinovac Ex. 11 ¶¶71-71.4, 79-83); A0720(Sinovac Brief at 14 (citing A1166-73(Sinovac Ex. 10))).

These chaotic events then spawned ***even more*** litigation in Antigua, including Sinovac, Orbimed, and 1Globe's additional lawsuit seeking a declaration that the vote "at the SSM was invalid," as well as a competing action by SAIF seeking the opposite relief. *See* A0720(Sinovac Brief at 14 (citing A1174-245(Sinovac Exs. 11-12))). Despite the patent impropriety in light of the Privy Council Decision allowing the PIPE shareholders to vote their shares and return the Yin Group's nominees to the Board, on December 11, 2025, the Antigua High Court of Justice inexplicably sided with the Yin Group. A1572-92(Plaintiffs' Ex. 1).

In particular, the Antiguan court ruled that the adjournment of the SSM "was made solely for partisan benefit," even though the Privy Council emphasized that the AGM in 2018 ***should have been adjourned*** (A1583-84(*id.* ¶¶[16], [18]); A1364-70(¶¶109-20)); "the gathering on the bus was a <u>continuance</u> of the SSM, without interruption, meaning no notice was required" (A1584(Plaintiffs' Ex. 1 ¶[19]) (emphasis in original)); "there are viable arguments both for and against" the validity of the PIPE shares (A1586(*id.* ¶[24])); and "the Court of Appeal intended that the meeting of 8th July 2025 should take place with the participation of PIPE shareholders," even though that appeal took place *ex parte* on an emergency basis and issued only a temporary order (A1588-89(*id.* ¶[32]); A1187-88(Sinovac Ex. 11 ¶¶56-58)). The Antiguan court therefore issued an order permitting the five "Post-SSM Directors"—including Defendants Yin, Anderson, Lo, and Fu—to serve

as directors "until trial of this matter," which was "essentially the relief sought by" the Yin Group. A1589(Plaintiffs' Ex. 1 ¶[34]). In other words, despite the Privy Council's ruling that the prior Directors aligned with Yin—Defendants here—were imposters, the Antiguan court has put them back in charge of the Company.

The Antiguan court made this order on a temporary basis pending trial and put certain protections in place limiting the new Board's powers. A1581, A1589, A1591-92(Plaintiffs' Ex. 1 ¶¶[12], [34] & pp. 19-20). But these protections do not address all potential harm that the Yin Group can do while in charge of the Company, such as the payment of dividends or compensation with Sinovac's cash unconnected to the PIPE shares. Defendants have in fact continued to use Sinovac's funds to enrich themselves, including paying $100.4 million in 2025 and $162.7 million in 2024, and accruing $116.9 million in 2025 and $102 million in 2024, "in compensation to Sinovac Antigua's directors and our executive officers." A2001(Sinovac 2025 20-F).[2]

Given the time needed to resolve the Antigua Action, including appeals, the dispute will continue for years to come—just as the prior dispute between these same parties took approximately seven years from for the Privy Council to issue an

[2] The Court may take judicial notice of this SEC filing, dated June 5, 2026. *See DFC Glob. v. Muirfield Value Partners*, 172 A.3d 346, 351 n.7 (Del. 2017) (taking judicial notice of SEC filings); *Hazout v. Tsang Mun Ting*, 134 A.3d 274, 280 n.13 (Del. 2016) (same).

ostensibly final decision in 2025 that Sinovac's incumbent directors were imposters since 2018. The current Antigua litigation is similarly unlikely to finally resolve the dispute because actions taken during the long duration that it takes to reach a final ruling will again yield further disputes.

In the meantime, Sinovac's minority shareholders such as Plaintiffs continue to suffer the harm resulting from that dispute, including (1) trading in Sinovac stock being halted since 2019, (2) the Yin Group having received billions of dollars in ill-gotten gains as a result of conflicted transactions, and (3) having to wait indefinitely longer for control of Sinovac to be determined before the Company can proceed with ordinary governance, during which time Defendants can continue their misconduct and fail to pay minority shareholders the substantial dividends they are owed.

ARGUMENT

I. THE COURT OF CHANCERY ERRED IN DISMISSING THIS ACTION ON THE GROUNDS OF *FORUM NON CONVENIENS*

A. QUESTION PRESENTED

Did Defendants meet their burden of showing that this action should be dismissed on the grounds of *forum non conveniens*? Plaintiff raised this issue in briefing and at oral argument below. A1518-35(Opp. at 38-55); Tr. at 26:2-31:23, 33:16-51:3.

B. SCOPE OF REVIEW

"Generally, a trial court's decision to dismiss a complaint on the ground of *forum non conveniens* is reviewed by this Court for an abuse of discretion. Whether the trial court applied the appropriate legal standard in considering a motion to dismiss, however, presents this Court with a question of law that is reviewed *de novo*." *Mar-Land Indus. Contractors, Inc. v. Caribbean Petroleum Refin.*, 777 A.2d 774, 777 (Del. 2001).

C. MERITS OF THE ARGUMENT

1. The Court of Chancery Misapplied the *Forum Non Conveniens* Standard

In order to "succeed on a motion to dismiss for *forum non conveniens*, a defendant must establish overwhelming hardship through the *Cryo–Maid*

factors...with particularity." *Mar-Land.*, 777 A.2d at 780.[3] "The defendant must put forth particularized evidence" for each factor relied upon. *Id.*

Although the Court of Chancery purported to apply the "overwhelming hardship" standard, it stated that "[p]ersonally, I think this is a suitable case for the hybrid framework" under *Gramercy*, 173 A.3d 1033. Tr. at 41:14-42:9. That assessment was based on the erroneous reasoning that "there are multiple litigations. The timing of when these things happened and how they fit in can be debated." Tr. at 41:23-42:3. Rather, the "overwhelming hardship" standard applies because this action was filed first.

Defendants admitted that a related case was filed by Sinovac, Orbimed, and 1Globe in Antigua "a month after Plaintiffs filed this case." A0195(Individuals' Brief at 48); *see supra* at 13-14. That does not make *Gramercy* apply. Rather, *Gramercy* applies "where there is a second-filed Delaware case after another jurisdiction has dismissed a first-filed action for reasons not going to the merits of the case." *Chaverri v. Dole Food Co.*, 245 A.3d 927, 938 (Del. 2021). That is not the situation here. This case is therefore not the "rare intermediate case subject to *Gramercy*." *GXP Cap. v. Argonaut Mfg. Servs.*, 234 A.3d 1186, 1195-96 (Del. Super. 2020) (*GXP I*) (applying *Gramercy* because "previously filed actions" were

[3] The *Cryo-Maid* factors are set out in *General Foods Corp. v. Cryo–Maid, Inc.*, 198 A.2d 681 (Del. 1964).

dismissed "without prejudice and not on the merits"), *aff'd*, 253 A.3d 93 (Del. 2021) (*GXP II*).

Separately, when actions are "simultaneously-filed," courts may apply the *Gramercy* framework when considering whether to "issue[] a stay in lieu of dismissal." *GXP II*, 253 A.3d at 102. But that route of a stay in lieu dismissal—which the Court of Chancery did not consider—also does not apply because this action was filed a month before the Antigua Action. Cases are considered simultaneously filed only when they are filed within ***days*** of each other. The purpose of this rule is to prevent a "race to the courthouse" when "two cases are filed at approximately the same time." *Id.* at 101 (citing *In re Citigroup S'holder Derivative Litig.*, 964 A.2d 106, 116 (Del. Ch. 2009) (holding actions considered "contemporaneous" because they "were filed only a few days apart")). There was no race to the courthouse here.

Gramercy also cannot apply for the independent reason that, regardless of when the cases were filed, Plaintiffs in this action are not parties to the Antigua Action. The cases therefore do not involve the "same parties." *GXP I*, 234 A.3d at 1195. Indeed, the Court of Chancery recognized that "those proceedings [in Antigua] are being pursued by different parties with different legal rights." Tr. at 48:4-7. This means that Plaintiffs cannot have their rights fully vindicated by the Antigua Action. *See infra* at 30-32. Furthermore, if this action were deemed similar enough to the

Antigua Action for *forum non conveniens* purposes (which it is not), the "overwhelming hardship" standard would still apply because in that case "a stay would likely have the same ultimate effect as a dismissal." *Citigroup*, 964 A.2d at 117 n.16.

For these reasons, Defendants must demonstrate an "overwhelming hardship" to support their *forum non conveniens* argument. While the Court of Chancery claimed to apply the "overwhelming hardship" standard, the following discussion shows that it did not actually do so because it relied on factors that are not relevant under that standard or gave them more attention than the standard calls for.

Additionally, even if *Gramercy* were to apply, Defendants' *forum non conveniens* arguments still fail under *Gramercy*'s "neutral burden assessment" that applies "*Cryo-Maid* straightforwardly." *GXP II*, 253 A.3d at 101. As the following analysis of the *Cryo–Maid* factors shows, there are strong reasons to litigate this action in Delaware rather than Antigua. On the other hand, the only factors that connect this action to Antigua are ordinary issues that arise when foreign parties are involved and do not support dismissal.

2. The Court of Chancery Erred in Its Assessment of the Role of Antigua Law

The Court of Chancery's primary reason for dismissing this action was that it involves the application of Antigua law. *See* Tr. at 44:5-47:23. But this Court has held that "[t]he application of foreign law is not sufficient reason to warrant

dismissal under the doctrine of *forum non conveniens*," because "[i]t is not unusual for courts to wrestle with open questions of the law of sister states or foreign countries." *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1200 (Del. 1997); *see also Ison v. E.I. DuPont de Nemours & Co.*, 729 A.2d 832, 844 (Del. 1999) (holding Delaware law not applying would be insufficient for dismissal); *Syngenta Crop Prot., LLC v. Travelers Cas. & Sur.*, 2025 WL 4101073, at *4 (Del. Super. Dec. 17, 2025) (holding that if "English law governs the case, this Court often decides legal issues under the law of other jurisdictions, and it is well-equipped to do so in this instance").

While the Court of Chancery characterized the Antigua law issues here as "difficult," Tr. at 44:21-22, even if that were true, that is still not a basis for dismissal because "Delaware courts often decide legal issues—even unsettled ones—under the law of other jurisdictions," *Berger v. Intelident Sols.*, 906 A.2d 134, 137 (Del. 2006); *see also Cont'l Auto. Sys. v. Nokia Corp.*, 2023 WL 1370523, at *24 (Del. Ch. Jan. 31, 2023) (holding "potential application of French law" is "an insufficient reason to dismiss"). Indeed, the federal court in Massachusetts has already rejected Sinovac's *forum non conveniens* argument as to the same issues of Antigua law that arise here because "the application of foreign law should be neither dispositive nor 'ascribed undue importance.'" *Heng Ren Invs. LP v. Sinovac Biotech Ltd.*, 542 F.

Supp. 3d 59, 68-69 (D. Mass. 2021) (*Heng Ren I*) (quoting *Mercier v. Sheraton Int'l*, 981 F.2d 1345, 1357 (1st Cir. 1992)).

The Court of Chancery worried about the "[t]he number of expert affidavits that I'm going to get on questions of Antiguan law." Tr. at 47:12-13. But that is no different than other cases in which the application of foreign law is not a basis for dismissal because "[e]very day, Delaware's business courts apply foreign jurisdictions' laws in commercial cases." *Everphone v. Go Tech. Mgmt., LLC*, 2023 WL 7996560, at *6 (Del. Super. Nov. 17, 2023). In direct contrast to the Court of Chancery's ruling, "[t]he expense and inconvenience of translating pertinent legal precedent, of retaining foreign lawyers, and of producing foreign law experts to testify at trial, has not been shown to be of material weight in an overwhelming hardship analysis." *Candlewood Timber Grp. v. Pan American Energy*, 859 A.2d 989, 1002–03 (Del. 2004) (holding no hardship from "applying Argentine law"); *see also Warburg, Pincus Ventures v. Schrapper*, 774 A.2d 264, 271 (Del. 2001) (same as to German law). Indeed, the need for expert submissions on similar issues of Antigua law did not support dismissal in *Heng Ren*. *See Heng Ren Invs. LP v. Sinovac Biotech Ltd.*, 588 F. Supp. 3d 153, 156-60 (D. Mass. 2022) (*Heng Ren II*).

To support its ruling, the Court of Chancery stated it "elaborated on that [issue] in the *Hamilton Partners* case." Tr. at 44:8-9. But *Hamilton Partners* dealt with the inverse situation, where Delaware law applied and thus "militate[d]

powerfully in favor of retaining jurisdiction." *Hamilton Partners, L.P. v. Englard*, 11 A.3d 1180, 1213 (Del. Ch. 2010). That does not mean the application of foreign law militates strongly in the opposite direction.

The Court of Chancery also incorrectly described this case as "similar" to *Gramercy*. Tr. at 44:19-20. Even if the *Gramercy* framework applies, however, its dismissal was based on far greater connections to the alternative jurisdiction than are present here for Antigua. *Gramercy* addressed a claim that Bulgarian regulators "applied their law incorrectly" to an investment that "took place" in Bulgaria. *Gramercy*, 173 A.3d at 1035, 1043-44. Here, in contrast, Plaintiffs seek judgment on Defendants' corporate activities involving events related to "a company []with multi-national investors, incorporated in Antigua, doing business in China, listed on Nasdaq and regulated by US securities law." A0392-93(Individuals' Ex. 5 (12/19/18 Antigua decision) ¶21); *see also* A0378(*id.*¶3 (2018 AGM in China)); A0710, A0722, A0726-27, A0731(Sinovac Brief at 4, 16 n.7, 20-21, 25) (describing Sinovac's location in China)). Even more activities here took place outside of Antigua—and in Delaware—because Sinovac filed its prior action in Delaware, the Vivo Defendants are Delaware entities, and this action focuses on the misconduct of Defendants that are not based in Antigua.[4] *See supra* at 2, 9; Tr. at 43:18-19 (noting

[4] Even the limited recent activities based in Antigua did not fully take place there because key participants attended remotely. *See* A1189, A1192(Sinovac Ex. 11 ¶65

some activities "took place in China"). At most, the events here are dispersed among different locations. *See infra* at 27.

The Court of Chancery is also wrong that the Antigua law issues here are unusually complex. The parties' arguments about Antigua law before the lower court were based on caselaw from well-developed jurisdictions. *See* A1535-41(Opp. at 55-61). *Heng Ren* applied the same Antigua law principles. *See Heng Ren II*, 588 F. Supp. 3d at 159-60. The Antigua law issues in this action therefore call for application of the same tools of legal analysis that courts typically use and that do not support a *forum non conveniens* argument.

Indeed, the Court of Chancery based its ruling on legal issues that have already been decided or that the parties have not even presented yet to the court. *See* Tr. at 44:5-47:11. For example, the court cited the Privy Council's "decision invalidating" the Rights Agreement. Tr. at 45:15-17. But that is a final ruling from Antigua's highest court and is therefore not an open issue. *See* A1353-55(¶¶78-84).[5] Likewise, the court noted "questions here that we don't even know the answers to under Delaware law," Tr. at 46:7-8, while acknowledging that *Moelis* resolves that issue, Tr. at 46:16-19; *see Moelis & Co. v. W. Palm Beach Firefighters' Pension Fund*,

(SSM included attendance "via Webcast"), ¶¶71.2-3 (attendance at Minibus meeting via telephone)).

[5] Even on this issue, the Privy Council's reasoning regarding the Rights Agreement applied basic tools of statutory interpretation. A1353-54(¶¶78-83).

2026 WL 184868 (Del. Jan. 20, 2026). And while the court does not "know if that issue carries over to Antiguan law," Tr. at 46:19-20, that is why courts allow the submission of expert materials on issues of foreign law (*see supra* at 21-23), which the parties have not done yet on this issue. The court also raised Delaware's borrowing statute as a "difficult issue[]." Tr. at 44:21-45:9. But that is a matter of Delaware law that, by its nature, arises in this precise scenario because the whole purpose of the borrowing statute is determine to what extent a foreign statute of limitations applies to actions "brought in a court of this State." 10 *Del. C.* § 8121.

Furthermore, there is not a great gulf between Antigua and Delaware law here because in Sinovac's prior action against 1Globe, the Antiguan court and the parties all chose to leave the issue of whether the Rights Agreement was triggered to the Delaware courts. As Vice Chancellor Laster acknowledged, the Antiguan court ruled that "the Delaware court is the proper court to determine whether there was a 'trigger event.'" A1340(¶27). The Privy Council also explained that the Rights Agreement "probably developed over time in Delaware." A1443(Privy Council Decision ¶8).

The Court of Chancery thus erred in the weight it attributed to the role of Antigua law in the *forum non conveniens* analysis.

3. The Location of the Parties and Evidence Does Not Support Dismissal

The Court of Chancery ruled that the location of the parties, witnesses, and evidence supported dismissal. Tr. at 42:6-44:4. But the court acknowledged that this

factor is not "dispositive." Tr. at 43:23-24. Sinovac also conceded below that "[g]iven modern methods of information transfer," the relative ease of access to proof "is 'largely insignificant for corporate and commercial disputes.'" A0730(Sinovac Brief at 24 (quoting *Hamilton Partners*, 11 A.3d at 1213-14)).

Moreover, the "relative ease of access to proof" does not support dismissal where evidence is located in foreign countries. *Ison*, 729 A.2d at 843. In the decades since *Cryo-Maid*, this Court "has never found overwhelming hardship based solely on the location of evidence." *Lee v. Choice Hotels Int'l*, 2006 WL 1148755, at *4 (Del. Super. Mar. 21, 2006); *see also Maric Healthcare v. Guerrero*, 2024 WL 2993336, at *5 (Del. Ch. June 14, 2024) (holding, "modern methods of information transfer render" such concerns "virtually irrelevant"). Relatedly, Sinovac conceded that there is no need to view the premises because information is "available electronically." A0725(Sinovac Brief at 29).

Delaware also does not pose a greater hardship than Antigua because the underlying events are dispersed among different locations. *See supra* at 24-25. There is therefore "no clear advantage or disadvantage to litigating in Delaware" as opposed to Antigua. *Lee*, 2006 WL 1148755, at *4. And while some of the underlying events took place in China, neither the parties nor the Court of Chancery considered China as an alternative forum. Additionally, although the Court of Chancery stated that this factor "is not only a function of ease of proof, although

that's certainly part of it, but it also goes into the question of Delaware's interest in the dispute," Tr. at 42:15-19, that does not change the low priority of this factor under well-established precedent.

The availability of compulsory process of witnesses similarly does not support dismissal because it is "closely related" to the ease of access to proof. *Ison*, 729 A.2d at 843. Where, as here, the parties are spread out across multiple jurisdictions, that "presents a mirror-image problem that does not" favor "any particular forum." *Id.* Through the court's "jurisdiction over" Sinovac and the Vivo Defendants as parties to this action, it "can compel [their] directors, officers, and managing agents to appear." *In re Activision Blizzard S'holder Litig.*, 86 A.3d 531, 552 (Del. Ch. 2014).

These factors also cannot support dismissal because Defendants (and the Court of Chancery) did "not specify any of the witnesses that are alleged to be beyond [their] reach." *Warburg*, 774 A.2d at 268-72 (holding "generalized references to the garden-variety concerns and expenses that characterize transnational litigation" do not alter "the traditional showing a defendant must make"); *see also Lee*, 2006 WL 1148755, at *5 (defendants must identify specific witnesses "and the specific substance of their testimony"); *Maric*, 2024 WL 2993336, at *5 (similar).

4. The Antigua Action Does Not Support Dismissal

The current Antigua Action among 1Globe, Sinovac, and the Individual Defendants is not an existing comparable action that supports dismissal, because there are significant differences between these cases. As the Court of Chancery recognized, "those proceedings are being pursued by different parties with different legal rights." Tr. at 48:4-6. The court therefore noted that "the lack of an existing comparable action is not dispositive." Tr. at 47:24-48:2.

Indeed, the Antigua "action cannot be considered" because "it involves different plaintiffs." *Ison*, 729 A.2d at 844. The Antigua Action is focused on the dispute between the two groups vying for control of Sinovac. It does not address how Defendants' misconduct has harmed the Company's minority shareholders, including from the halt in trading of Sinovac stock since 2019 that has resulted in the extraordinary harm of shareholders being unable to access their shares for over seven years, continuing to this day, and how Sinovac's minority shareholders should be compensated for the improper payment of billions of dollars to the Yin Group.

"The absence of another pending litigation weighs significantly against granting a *forum non conveniens motion*. This factor, while not dispositive, is significant and is only overcome 'in the most compelling circumstances.'" *Everphone*, 2023 WL 7996560, at *7 (Del. Super. Nov. 17, 2023) (quoting *Berger*, 906 A.2d at 137); *see also Harris v. Harris*, 2023 WL 355179, at *9-10 (Del. Ch.

Jan. 23, 2023). The Court should therefore "focus on the possible cost and delay to the plaintiff if dismissal forces" Plaintiffs to bring a new action in Antigua. *Ison*, 729 A.2d at 845.

While the Court of Chancery stated that there are efficiencies from having this case in the same court as the Antigua Action, *see* Tr. at 48:7-11, it ignored entirely the extreme inefficiencies and prejudice to Plaintiffs of forcing them to litigate in Antigua. Neither the pending Antigua Action nor a hypothetical new action by Plaintiffs in Antigua would resolve Plaintiffs' claims any time soon. ***First***, the Antigua Action will not be resolved for many years, following the conclusion of the lengthy action in the trial court and then many years of appeals.[6] After 1Globe brought its prior claim against Sinovac in Antigua in March 2018, the trial court issued its decision on December 19, 2018, the Antigua Court of Appeal did not issue a decision until December 9, 2021, and the Privy Council did not issue its decision until January 16, 2025. A1354(¶83 n.5), A1361-62(¶103); *see supra* at 8-10. The current Antigua Action, or any new action by Plaintiffs, are subject to the same process.

[6] Sinovac's most recent update explains that a trial in the Antigua Action was scheduled for early June 2026 only on "preliminary issues." A2007(Sinovac 2025 20-F). Sinovac has not provided any further update about the status of that action, including how that trial proceeded or when the action as a whole is likely to conclude.

Furthermore, the Vivo Defendants challenge "the jurisdiction of the Antigua Court," making it even more difficult and inefficient for Plaintiffs to proceed there against the Vivo Defendants. A2007(Sinovac 2025 20-F). The Vivo Defendants have also filed litigation against 1Globe in New York and Massachusetts, belying any contention that Antigua is the most efficient forum for them. A1407-08(¶¶198-200).

Second, even the Privy Council's purported final adjudication of the prior Antigua action approximately seven years after it was commenced did not actually resolve the matter because the Yin Group and Sinobioway Group are continuing to vie for control of Sinovac and dispute the proper composition of the Board. *See supra* at 13-17; A2003-09(Sinovac 2025 20-F). There is therefore little hope that the pending Antigua Action will finally resolve the issues presented, particularly given all of actions that Defendants can take in the interim that will spawn even more litigation. Just as those types of actions while the prior Antigua litigation was pending between 2018 and 2025 led to the current Antigua Action, new developments in the years it will take to resolve the current action will result in yet additional follow-on litigation.

Third, despite the clear injustice of the Yin Group continuing to seek control of Sinovac following the Privy Council's ruling that their prior directors have been "imposters" since 2018, the Antiguan court incredibly ruled that the Yin Group's

nominees remain in charge of the Company while the Antigua litigation is pending. *See supra* at 15-17. That interim ruling underscores the circuitous route that the Antigua Action will take and the harm that Defendants can continue to cause while that action is pending for years to come. Recent updates show that Defendants are in fact doing just that by continuing to pay at least hundreds of millions of dollars to Sinovac's directors and executive officers. *See supra* at 16.

In contrast to all of these factors that make the Antigua court unable to fully and finally resolve Plaintiffs' claims, the Delaware courts are well suited to resolve this corporate governance dispute expeditiously. These factors demonstrate why the pending Antigua Action not only does not support dismissing this action, but strongly supports keeping it in Delaware.

5. The Other *Cryo-Maid* Factors Support Maintaining This Action in Delaware

Rather than analyze the other *Cryo-Maid* factors in detail, the Court of Chancery repeated the same issues again, stating "I could go through the other *Cryo-Maid* factors, but from my standpoint, this [its prior analysis] is really the crux of the analysis." Tr. at 48:13-15. The court concluded that "there's overwhelming hardship on the defendants from litigating in Delaware. In large part, that overwhelming hardship comes from the massive amount of expense, the additional expense they'll have to incur to educate me." Tr. at 48:17-20. But, as explained above, the need to make expert submissions on Antigua law is no different here than

in other cases where the role of foreign law does not constitute an overwhelming hardship. *See supra* at 21-23.

The Court of Chancery also noted, "dare I say," the application of foreign law "also imposes a huge burden on the court." Tr. at 48:23-24. It ruled that "the court can and should consider burdens on the judicial system." Tr. at 48:24-49:6. But the ordinary steps needed to analyze the Antigua law issues in this action "neither encumbers nor overwhelms the Court's judicial or administrative faculties in a manner that would adversely affect the Court's ability to administer justice efficiently and effectively in either [this case] or the Court's docket as a whole." *In re Asbestos Litig.*, 929 A.2d 373, 389 (Del. Super. 2006). In *Asbestos*, dismissal was "not warranted" for mass tort litigation where over 100 cases were filed "involving foreign plaintiffs, foreign exposures and foreign substantive law." *Id.* at 379, 389. As the court explained, "[t]he appropriate inquiry under *Cryo–Maid* is whether the defendants have established that the application of foreign law will cause the defendants to suffer overwhelming hardship, ***not whether the Court will suffer hardship***." *Id.* at 387.

Moreover, the Court of Chancery concluded that "[t]his case is going to be a far heavier lift here for everyone concerned than it would be in Antigua, and from my standpoint that results in overwhelming hardship." Tr. at 49:7-10. This just demonstrates that while the court purported to apply the "overwhelming hardship"

standard, it did not actually do so because it "is insufficient" to show an "overwhelming hardship" that "'another court would be a more appropriate forum.'" *Mar-Land*, 777 A.2d at 778 (quoting *Ison*, 729 A.2d at 838); *see also Maric*, 2024 WL 2993336, at *4 (same, holding argument that "it would be easier to litigate in Texas" did not show "an 'overwhelming burden'—which, alone, is fatal").

Additionally, even if *Gramercy* were to apply, dismissal is not warranted under "a straightforward assessment of the *Cryo–Maid* factors" because Plaintiffs face a greater hardship from bringing this action in Antigua and Defendants face from litigating in Delaware. *Gramercy*, 173 A.3d at 1036. In addition to the factors discussed above, the *Cryo-Maid* factor of "other practical problems that would make the trial of the case easy, expeditious and inexpensive," strongly supports Plaintiffs. *Mar-Land*, 777 A.2d at 778.

Plaintiffs would face a significant hardship if they were forced to bring this action in Antigua because the Antiguan court is not able to efficiently resolve the issues presented here, making litigation in the Delaware courts far more efficient and expeditious. *See supra* at 30-32. This type of factor that makes it more difficult for a plaintiff to proceed in an alternative forum weighs in Plaintiffs' favor. *See Taylor*, 689 A.2d at 1201.

Defendants, in contrast, do not face any hardship from litigating in Delaware. Sinovac has already shown its willingness to litigate in Delaware by heavily

litigating its earlier action against 1Globe in the Court of Chancery. *See supra* at 8-9. As the court in *Heng Ren* held in a different action against Sinovac and Yin in Massachusetts, "[b]y filing *1Globe* in this Court, Sinovac has demonstrated its ability (and willingness) to litigate in this forum, thereby defeating any argument that proceeding in Massachusetts would be so inconvenient that transfer is needed to avoid serious unfairness to Sinovac." *Heng Ren I*, 542 F. Supp. 3d at 69. Litigating in Delaware is therefore not an overwhelming—or any—burden for Sinovac.

This action is even more appropriately litigated in Delaware because the Vivo Defendants are Delaware entities. *See* A1345(¶¶50-54); A1991-93(Vivo MTD Decision). Delaware's interest in regulating the conduct of Delaware entities "is strongest when the dispute involves corporate governance matters," as it does here. *Cresa Glob. v. Chirisa Cap. Mgmt. (US)*, 2025 WL 53168, at *4 (Del. Super. Jan. 9, 2025) (explaining "this Court often decides legal issues under the laws of other jurisdictions, where none of the parties involved are from Delaware, and where none of the events at issue occurred in Delaware" (citing *Candlewood*, 859 A.2d at 1000)); *see also Hamilton Partners*, 11 A.3d at 1218 (holding application of New York law was not a basis for dismissal given "the significant roles played by two Delaware entities in a highly suspicious transaction").

The Court of Chancery dismissed the connection of the Vivo Defendants to Delaware as "those folks who are potentially on the hook for secondary liability."

Tr. at 50:14-18; *see also* Tr. at 43:3-10. But that ignores the essential role that the Vivo Defendants played in Defendants' efforts to control Sinovac and improperly pay the Vivo Defendants at least hundreds of millions of dollars of Sinovac's assets. A1332(¶7), A1336(¶15), A1338(¶21), A1356(¶91), A1379-90(¶¶142-49, 155-67), A1396-99(¶¶181-84), A1407-1411(¶¶198-205). Moreover, Defendant Fu, one of the Individual Defendants, is the Vivo Defendants' representative on Sinovac's Board. A1334-35(¶12), A1341(¶31), A1343-44(¶45), A1379(¶142), A1389-90(¶¶164-66), A1396-98(¶¶181-83).

There also "is a strong public interest in making U.S. courts available to resolve disputes such as this, which allegedly involve the improper issuance and sale of shares of a company traded on the NASDAQ stock exchange, an American securities market." *Heng Ren I*, 542 F. Supp. 3d at 69. That is even more true now, when Sinovac's shares ***still*** have not resumed trading, over five years after *Heng Ren* and for over seven years in total.

The Court should also respect Plaintiffs' choice of forum in Delaware. "The fact that the plaintiffs are foreign nationals does not deprive them of the presumption that their choice of forum should be respected." *Ison*, 729 A.2d at 835. Even if "that presumption is not as strong" when plaintiffs are foreign, *id.*, it has heightened importance here where Plaintiffs seek to represent the minority shareholders of a U.S.-listed company where the alternative forum is outside the country.

In sum, this action should not be dismissed on *forum non conveniens* grounds because Defendants have not met the high burden of showing an overwhelming hardship; Sinovac has already submitted to this Court's jurisdiction in prior related litigation; the Vivo Defendants are Delaware entities alleged to have engaged in serious corporate misconduct; Plaintiffs (including Sinovac's minority shareholders) would be severely prejudiced by being forced to litigate in Antigua; there is nothing unusual about the application of Antigua law here, particularly when the federal court in Massachusetts has already done so in a related dispute; there will be no difficulties with obtaining evidence and witnesses in Delaware; and the underlying events are dispersed in different locations rather than centered in Antigua.

II. THE COURT OF CHANCERY ERRED IN HOLDING THAT IT DID NOT HAVE PERSONAL JURISDICTION OVER THE INDIVIDUAL DEFENDANTS

A. QUESTION PRESENTED

Does the Court of Chancery have personal jurisdiction over Defendants Weidong Yin, Simon Anderson, Yuk Lam Lo, Meng Mei, and Nan Wang? Plaintiff raised this issue in briefing below. A1512-18(Opp. at 32-38).

B. SCOPE OF REVIEW

"The existence of personal jurisdiction is a mixed question of fact and law. [This Court] review[s] the trial court's factual determinations for clear error and its legal rulings *de novo*." *Eagle Force Holdings v. Campbell*, 187 A.3d 1209, 1228 (Del. 2018). Because "the facts are not in dispute," the Court of Chancery's holding that it "did not have personal jurisdiction over [the Individual Defendants] is reviewable *de novo*." *Plummer v. Sherman*, 861 A.2d 1238, 1242 (Del. 2004).

C. MERITS OF THE ARGUMENT

The Court of Chancery ruled, in a terse four-paragraph order, without holding oral argument, that "[n]o reasonably conceivable statutory basis exists for exercising jurisdiction in Delaware over Weidong Yin, Simon Anderson, Yuk Lam Lo, and Ming Mei." Ex. A. This ruling also applies to Defendant Nan Wang. Ex. D.

The primary basis for the court's dismissal was that although "the filing of earlier litigation by Sinovac" (*i.e.*, the Delaware Action, A1339-41(¶¶24-30)) was an "arguable Delaware act," it "was the Company's act. It does not subject the

individuals to jurisdiction." Ex. A. This ruling did not engage at all with the legal standard for personal jurisdiction or the factual allegations that support personal jurisdiction over the Individual Defendants.

The Individual Defendants' directing the Delaware Action and Sinovac's transactions with the Vivo Defendants each constitute a "single act" in Delaware under 10 *Del. C.* § 3104, under which "a single transaction is sufficient to confer jurisdiction where the claim is based on that transaction." *Lake Treasure Holdings v. Foundry Hill GP*, 2013 WL 6184066, at *2 (Del. Ch. Nov. 21, 2013); A1340(¶¶28-29). A court may exercise personal jurisdiction under Section 3104(c)(1) "over any nonresident who in person or *through an agent*[,] transacts any business or performs any character of work or service in the State." *Boulden v. Albiorix*, 2013 WL 396254, at *6 (Del. Ch. Feb. 7, 2013) (emphasis in original). Delaware courts have taken an "expansive view of what constitutes transacting business in Delaware." *Id.* at *6 n.59.

1. The Individual Defendants Transacted Business in Delaware

In ruling that the Delaware Action was not the Individual Defendants' action, the Court of Chancery ignored entirely the nature of that litigation. Sinovac did not file the Delaware Action to advance legitimate corporate interests, but rather to further the Individual Defendants' personal interests in their campaign to maintain control of Sinovac.

Sinovac filed the Delaware Action seeking "a declaration that the Sinobioway Consortium's actions leading up to the AGM made them 'Acquiring Persons,' causing a 'Trigger Event' under the terms of the Rights Agreement." A0715-16(Sinovac Brief at 9-10). The Company took this action under the direction and control of the Individual Defendants, at the expense of minority shareholders, as a key part of the Individual Defendants' efforts to maintain their seats on Sinovac's Board and override the vote at the 2018 AGM by increasing the Yin Group's share of Sinovac stock and decreasing the Sinobioway Group's share. A1360-61(¶¶100-02), A1370-71(¶¶121-23), A1379-84(¶¶141-53). Yin was Sinovac's CEO and Chairman, and led the Yin Group's efforts at the center of this action. *See, e.g.*, A1336(¶15), A1342(¶39), A1348-49(¶¶61-67), A1351-53(¶¶73, 76), A1368(¶117). Anderson, Mei, and Lo also directed Sinovac's misconduct—including the Delaware Action—because those actions center on their trying to maintain their seats on Sinovac's Board in order to maintain control of the Company and include their personal approval, through their roles on the Board, of transactions that diverted billions of dollars of the Company's assets to the Yin Group. *See, e.g.*, A1349(¶¶64-67), A1351-53(¶¶73-77), A1356(¶92), A1360-61(¶100), A1370-71(¶121), A1379-82(¶¶141-49), A1389-90(¶165), A1391-92(¶170), A1396-97(¶181), A1409-12(¶¶202-03, 207), A1420(¶228). Indeed, Sinovac's dispute with 1Globe focused on whether the vote at the AGM in 2018 ousted Yin, Anderson, Mei, and Lee as

Directors, as well as whether Fu was properly appointed shortly thereafter. A1360-61(¶¶99-100), A1379(¶142). The Individual Defendants have also received large payments in exchange for their support of the Yin Group. *See supra* at 12, 16. [7]

The Individual Defendants thus personally directed Sinovac to file the Delaware Action, which was a central part of their effort to maintain their positions in control of the Company in order to advance the Yin Group's interests. The Delaware Action could not have been filed without their authorization given their personal involvement in these activities. Moreover, Yin played a key role in Sinovac's claims in the Delaware Action. Sinovac's motion for partial summary judgment, which focused on the 2018 AGM, described in detail Yin's role as Chairman at that meeting. *See* A1712-13, A1725(Plaintiffs' Ex. 5 at 6-7, 19). Yin was also a Defendant in 1Globe's third-party complaint in the Delaware Action and the court issued a Hague Summons for service upon him. A1635-701(Plaintiffs' Exs. 3-4).

[7] The Court of Chancery's dismissal on personal jurisdiction grounds does not apply to Defendants Shan Fu and Kenneth Lee. Fu's Motion to Dismiss was pending, but not yet briefed, when the Court dismissed the case on *forum non conveniens* grounds. *See* Ex. E. Lee was not yet served with the Complaint. But the arguments above apply with equal force to Fu and Lee. They were the Board representatives of the Vivo Defendants (Fu) and SAIF (Lee), each of which received at least hundreds of millions of dollars in ill-gotten gains through Fu and Lee's acts as "imposter" Directors and improper efforts to maintain control of the Company. A1334-35(¶12), A1341(¶31), A1343-44(¶¶43, 45), A1349(¶64), A1360-61(¶100), A1370-71(¶121), A1379-81(¶¶142, 146), A1389-90(¶¶164-66), A1396-98(¶¶181-83).

Sinovac's claims in the Delaware Action also focused in detail on whether Defendants Anderson, Lo, and Mei were reelected at the 2018 AGM. *See* A1712 (Plaintiffs' Ex. 5 at 6 (noting "stockholders were asked to approve the re-election of the five-member board:" Yin, Lee, Anderson, Lo, and Meng)); A1644-46, A1658, A1661, A1663-64, A1687(Plaintiffs' Ex. 3 ¶¶16, 18, 21, Eighth Additional Defense, and Counterclaims ¶¶4 nn.2-3, 10, 14, 78) (Sinovac's Complaint and 1Globe's Counterclaims discussing their roles). Defendant Wang—the Company's CFO and longtime executive—also directed these actions. A1342(¶40), A1351(¶73), A1357(¶94), A1370-71(¶121).

These detailed facts strongly support the inference that the Individual Defendants transacted business in Delaware through their direction of the Delaware Action under Delaware's "expansive view of what constitutes transacting business in Delaware." *Boulden*, 2013 WL 396254, at *6 n.59; *see also AeroGlobal Cap. Mgmt. v. Cirrus Indus.*, 871 A.2d 428, 440 (Del. 2005) (defendant's use of its Delaware subsidiary to facilitate private equity investments sufficient); *Haisfield v. Cruver*, 1994 WL 497868, at *4 (Del. Ch. Aug. 25, 1994) (holding "complaint gives rise to the inference that [director defendants] wrongfully used Unisil's resources for a personal venture"); *Lake Treasure*, 2013 WL 6184066, at *3 (filing of UCC financing statement sufficient).

Yet additional acts that the Individual Defendants directed toward Delaware were Sinovac's dealings with the Vivo Defendants because those actions were similarly taken to advance the Individual Defendants' plan to maintain control of Sinovac. The Vivo Defendants are an integral part of Defendants' misconduct. *See supra* at 35-36. These types of dealings with Delaware entities to further the misconduct at issue constitutes Sinovac transacting business in Delaware. *See Lake Treasure*, 2013 WL 6184066, at *3; *LaNuova D & B, S.p.A. v. Bowe Co.*, 513 A.2d 764, 769 (Del. 1986); *Haisfield*, 1994 WL 497868, at *4. The Individual Defendants directing Sinovac to take these actions to advance that conduct in turn supports personal jurisdiction over them for the reasons explained above as to the Delaware Action. *See supra* at 39-42.

Lastly, Defendants Yin, Anderson, Mei, and Lo all adopted the Rights Agreement that contained a Delaware choice of law provision. A1340(¶26), A1349, A1351(¶¶67, 72). This adds to the overall inference of their transacting business in Delaware.

2. The Court Has Personal Jurisdiction Over the Individual Defendants Under the Conspiracy Theory of Jurisdiction

Alternatively, the Court has personal jurisdiction over the Individual Defendants because all of Sinovac's actions were taken as part of the plan by its Board, consisting of the Individual Defendants, to entrench the Yin Group's control of the Company and divert its assets to them. Personal jurisdiction over foreign

defendants exists under the "conspiracy theory of jurisdiction" because the "acts of one conspirator that satisfy the long-arm statute can be attributed to the other conspirators." *Microsoft Corp. v. Amphus, Inc.*, 2013 WL 5899003, at *13 (Del. Ch. Oct. 31, 2013) (citing *Hunter*, 449 A.2d 210). While this basis for jurisdiction is described as a "conspiracy to defraud," it is "not limited to that particular tort" and applies to other causes of action. *In re Tilray, Inc. Reorganization Litig.*, 2021 WL 2199123, at *19 (Del. Ch. June 1, 2021). The Court of Chancery did not consider this basis for personal jurisdiction. *See* Ex. A.

Defendants Yin, Anderson, Mei, and Lo were all crucial members of the scheme to control Sinovac by maintaining their status as Board members and they (as well as Defendant Wang) all approved of, and profited from, the transactions at issue to advance the Yin Group's interests. *See supra* at 39-43. These allegations satisfy all of the *Istituto* factors because the Individual Defendants all "engaged in a civil conspiracy aimed at . . . entrench[ing themselves] as a board majority." *Chandler v. Ciccoricco*, 2003 WL 21040185, at *8-10 (Del. Ch. May 5, 2003). The "remaining three elements of the *Istituto* test are also satisfied" because a "member of the conspiracy" committed "an act in the State in furtherance of that conspiracy," including by bringing the Delaware Action and transacting with the Vivo Defendants. *Id.* at *10; *see also Tilray*, 2021 WL 2199123, at *20 (holding filing of charter amendment in Delaware "was integral to the challenged transaction"); *Lake*

Treasure, 2013 WL 6184066, at *4 (holding "sufficient nexus" between UCC statement and conspiracy).

Under *Istituto*, individuals may conspire with a corporation that acts in Delaware, such as Sinovac. *See Matthew v. Fläkt Woods Grp.*, 56 A.3d 1023, 1029–30 (Del. 2012) (holding "Fläkt Woods allegedly conspired with Laudamiel and Capua," where a "critical step in the conspiracy was" a company's dissolution "effectuated by the filing of a certificate of cancellation in Delaware"). As an independent basis for conspiracy jurisdiction, Plaintiffs have also made "a *prima facie* case" that at least one of the Individual Defendants, including Yin, conducted the activities at issue in Delaware. *Chandler*, 2003 WL 21040185, at *8. *See supra* at 40-41.

CONCLUSION

Plaintiffs therefore respectfully request that the Court reverse the Court of Chancery's dismissal of this action on the grounds of *forum non conveniens* and its dismissal of Defendants Yin, Anderson, Mei, Lo, and Wang for lack of personal jurisdiction, and direct further proceedings consistent with that decision.

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