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Case No. 2026-1478-BWD

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NATHANIEL BRADLEY, individually and in his capacity as a Director of DATAVAULT AI INC., Plaintiff,	:	
v.	:	C.A. No. 2026-1478-BWD
JEFFREY TIRMAN, KIMBERLY BRISKEY, DR. JEFFREY M. GILBERT, CHRISTOPHER HARDT, DAVID HOWITT, HELGE KRISTENSEN, SRIRAM PERUVEMBA, BRETT MOYER, and DATAVAULT AI INC., a Delaware Corporation, Defendants.	:	

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTIONS TO EXPEDITE PROCEEDINGS, FOR A TEMPORARY RESTRAINING ORDER AND FOR A STATUS QUO ORDER

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PRELIMINARY STATEMENT

Plaintiff Nathan Bradley ("Bradley") commenced this action solely pursuant to 8 *Del. C*. § 225 ("Section 225") (Complaint ¶1). In his Section 225 claim, Bradley contests his termination as an employee-at-will, Chief Executive Officer ("CEO") and President of defendant Datavault AI Inc. ("Datavault" or the "Company"), claiming he did not receive proper notice of a Special Meeting of the Board of Directors (the "Board"), where all eight of the defendant directors (the "Directors") voted in favor of his termination (Bradley attended and was the lone "no" vote). Bradley filed Motions to Expedite Proceedings ("Motion to Expedite"), for a Temporary Restraining Order (the "TRO Motion") and for a Status Quo Order (the "SQO Motion") (collectively, the "Motions").

The Company and the Directors, by their undersigned counsel, hereby oppose the Motions. Among other reasons, Bradley fails to set forth a colorable Section 225 claim because it is undisputed that he received proper and timely notice of the Special Meeting on October 30, 2026 (Exhibit ("Ex.") A hereto) and promptly forwarded the notice to his counsel (Ex. B hereto). Nor can Bradley show imminent or irreparable harm; rather, the Company could suffer irreparable harm if he obtains any of the relief he baselessly seeks.

In particular, on November 1, 2026, at a Special Meeting of the Board (the "November 1 Special Meeting"), all eight of the other Company Directors voted

unanimously to remove Bradley as CEO and President of Datavault due to their "concerns regarding the Company's financial condition, stock price performance, capital raising efforts, and Mr. Bradley's management of the Company, particularly his management of the relationship with Scilex Holding Company" (*see* Minutes of Special Meeting of the Board of Directors of Datavault held on November 1, 2026 (the "November 1 Minutes", Ex. C hereto, at p. 2)). At the November 1 Special Meeting, Bradley objected to the Notice, fully participated in the meeting, and was the sole director voting against his removal.

Bradley's claim that the Notice for the November 1 Special Meeting was improper clearly fails. The Company Bylaws (the "Bylaws") simply require 48 hours advance notice of the time and place of the meeting, which notice may be provided by electronic, verbal or other means, and the meeting may be held virtually (Ex. D hereto, at §§ 3.7, 3.5).

It is undisputed that Datavault's Chairman of the Board (the "Chairman"), Brett Moyer ("Moyer"), emailed the Notice of the Special Meeting (the "Notice") to the Board, including Bradley at his nate@vault.email address, at 4 pm Eastern on October 30, 2026, more than 48 hours before the November 1 Special Meeting was held at 5 pm Eastern (*see* transmittal email from Bradley's inbox and attached Notice annexed hereto as Ex. A). The Notice sets forth the time (November 1, 2026 at 5 pm Eastern) and place (Zoom platform) of that Meeting, and also includes the Zoom

link, Meeting ID and password for access thereto (Ex. A). Bradley received the Notice, forwarded it to his counsel that same day at 4:34 pm (Ex. B), and admitted that he did so at the November 1 Special Meeting (Ex. C p. 2).

Bradley and his counsel attended the November 1 Special Meeting, and Bradley fully participated. Bradley objected to the Notice, stated his reasons why he should be retained, and then voted against his removal. As set forth above, all of the other Directors voted in favor, and the Company terminated Bradley as CEO and President immediately, on November 1, 2026 (Ex. C pp. 2-3).

Nevertheless, in an abundance of caution and to accommodate Bradley's ill-founded objection to the Notice, the Board (including Bradley), right after the vote to remove him and before closing the November 1 Special Meeting at 5:56 pm, scheduled a second, follow-up meeting to further discuss Bradley's termination, with the follow-up Special Meeting to be held on November 3, 2026 at 6 pm Eastern (the time) by Zoom platform (the place), thereby providing the requisite 48 hours verbal notice (Ex. C p. 3). Bradley did not object to the second Special Meeting being scheduled at that time.

Bradley attended the follow-up meeting (the "November 3 Special Meeting") with his counsel, presented a prepared statement arguing why he should be retained, and the majority of the Board voted again to confirm, ratify and approve his removal (*See* Minutes of Special Meeting held on November 3, 2026 (the "November 3

Minutes"), Ex. E hereto at pp. 1-3).

Hence, notice was timely and proper, all of the other Directors voted to remove him as CEO and President, and subsequently a majority of the Directors ratified his removal, all at meetings Bradley and his counsel attended and in which he actively participated. Bradley may not agree with the Directors' decision to remove him, but that is not a colorable basis for a Section 225 action. Nor can he show imminent or irreparable harm. Accordingly, the Motions should be denied.

NATURE AND STAGE OF THE PROCEEDINGS

Bradley filed the Motions along with the original Complaint, and the Motions rely on and cite the Original Complaint. The TRO and SQO Motions seek substantially the same relief.

Subsequently, Bradley filed an Amended and Supplemental Complaint (the "Amended Complaint"), which he has not yet formally served, adding individual and derivative claims based on theories of fraud, conspiracy and/or breach of fiduciary duty seeking money damages (Amended Complaint Counts IV – VIII). These claims are not proper in a Section 225 proceeding and therefore are not addressed in this Opposition.[1] As Bradley did not re-file the Motions to incorporate

[1] *Genger v. TR Investors, LLC*, 26 A.3d 180, 199-200 (Del. 2011) ("[t]he purpose of a Section 225 action is to provide a quick method for the review of the corporate election process" and hence "[i]n a Section 225 proceeding, the court cannot go further and actually rescind a transaction procured through such unlawful behavior or award money damages to those harmed by that behavior. That type of ultimate relief can only be obtained in a plenary action in a court that has

the Amended Complaint, and as the Motions are based on and cite only to the Original Complaint, Defendants also refer and cite to the Original Complaint herein so as to line up with and address the points raised in the Motions.

STATEMENT OF FACTS

A. Bradley's Employment Agreement.

On or about December 31, 2024, Bradley and the Company (formerly known as WiSA Technologies, Inc.) entered into an Executive Employment Agreement (the "Employment Agreement"; Ex. F hereto). The Employment Agreement provides for the Company to employ Bradley (referred to as the "Executive") as CEO for an "unspecified term" "on an 'at will' basis" (Ex. F § 1). The Employment Agreement further provides that "[n]othing in the Company's policies, actions or this Agreement shall be construed to alter the 'at will' nature of Executive's status with Company, and *Executive understands that Company may terminate Executive's employment at any time for any reason or no reason*, provided that it is not terminated in violation of state or federal law" (Ex. F § 1) (emphasis added). The Employment Agreement also provides that Bradley shall perform duties "as the Board of Directors of the Company (the 'Board') may require from time to time" (Ex. F § 2).

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in personam jurisdiction over any necessary or indispensable parties" (internal citations and quotation marks omitted). Defendants will respond to those claims at the appropriate time.

In addition, the Employment Agreement provides that the Company may terminate Bradley for "Cause" as specifically defined in the Employment Agreement, or without "Cause" as defined therein (Ex. F § 8). The Employment Agreement requires arbitration of disputes between the Company and Bradley, providing that "any controversy between [the Company] and Executive involving the construction or application of any of the terms, provisions or conditions of this Agreement or the breach thereof shall be settled by final and binding arbitration by a single arbitrator to be held in Santa Clara, California, in accordance with the National Rules for Resolution of Employment Disputes of the American Arbitration Association ('AAA Rules') then in effect" (Ex. F § 15(a)).[2]

B. <u>The Company Bylaws</u>.

The Bylaws (Ex. D) provide for the appointment of a CEO and that the CEO's role is "subject to the control of the Board of Directors" (Ex. D § 5.6). The Bylaws further provide that the majority of the Board can remove any officer, including the CEO: "Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of

[2] As this is a Section 225 action narrowly focused on whether Bradley's removal as an officer was conducted properly in accordance with the Bylaws and Delaware corporate law, the Company and the Directors do not seek to compel arbitration of this Section 225 action. However, the Company's and the Directors' appearances and participation in this action are without prejudice to any and all of their rights to seek and compel arbitration with respect to any and all other disputes between the Company, the Directors, and Bradley, with all rights regarding arbitration reserved and not waived.

the majority of the Board of Directors at any regular or special meeting of the board . . .” (Ex. D § 5.4).

The Bylaws further provide that the Chairman may call special meetings: “Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two directors” (Ex. D § 3.7). The Bylaws call for the Chairman (or other person calling a special meeting) to provide “[n]otice of the time and Place of special meetings” to the Board. The Bylaws further provide for electronic notice to be submitted at least 48 hours in advance of the special meeting: “If the notice is delivered personally by facsimile, by electronic transmission, by telephone or by telegram, it shall be delivered at least forty-eight (48) hours before the time of the holding of the meeting”. The Bylaws also allow for verbal notice, providing that “[a]ny oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director . . .” (Ex. D § 3.7). The Bylaws allow for any and all business to be transacted at a special meeting: “Unless otherwise indicated in the notice thereof, any and all business may be transacted at the special meeting” (Ex. D § 3.7).

Further, Section 3.5 of the Bylaws, entitled “Place of Meetings; Meetings By Telephone” provides that the “Place” of the meeting may be virtual. In particular, the Bylaws provide that “[t]he Board of Directors of the corporation may hold

meetings, both regular and special, either within or outside the State of Delaware", and that the place of the meeting may be "by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting" (Ex. D § 3.5).

In addition, the Bylaws provide that attendance at a special meeting constitutes a waiver of any objection to notice, except when the person attends solely for the narrow "express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened" (Ex. D § 3.9).

C. The Directors, By The Chairman, Notice The Special Meeting, And Then Suspend Bradley Pending The Special Meeting.

In or about October 2026, the Directors (*i.e.*, the entire Board other than Bradley) began considering the termination of Bradley for numerous performance concerns, including their concerns regarding the Company's financial condition, stock price performance, capital-raising efforts and Bradley's management of the Company, particularly his management of the relationship with Scilex Holding Company ("Scilex") and its officers (Ex. C p. 2).

On October 30, 2026, after days of discussion and evaluation, the Directors definitively decided to notice a special meeting of the Board for purposes of considering whether to remove Bradley as CEO, President and employee of the

Company due to their concerns. The Directors also determined that it would be in the best interest of the Company and its stockholders to suspend Bradley from his positions pending the special meeting, primarily due to concerns about the damage Bradley might cause to the Company and its employees once he became aware that the Directors were considering removing him from his positions.

The Directors agreed that Moyer, as Chairman of the Board, would send the Notice of Special Meeting and, thereafter, the suspension notice. Thus, as directed and authorized by the Directors, Moyer, as Chairman, emailed the Notice of Special Meeting to the entire Board, including Bradley, at exactly 4 pm Eastern, more than 48 hours prior to the Special Meeting to be held on November 1, 2026 at 5 pm (Ex. A). Moyer emailed the Notice to Bradley at the email Bradley used for Company business, namely nate@vault.email (Ex. A).

The Notice sets forth the time (November 1, 2026 at 5 pm) and place (Zoom platform) of the Special Meeting, and provides the Zoom meeting link, Meeting ID and Passcode (Ex. A). Further, the Notice states that the "Purpose of Special Meeting" is "[t]o consider the adoption of resolutions to remove Nathaniel Bradley ('Bradley') from his Chief Executive Officer ('CEO') and employee positions with Datavault" (Ex. A). The Notice also sets forth the following Agenda: "At the Special Meeting, the Directors will discuss whether the immediate removal of Bradley as CEO and employee of Datavault is in the best interests of Datavault and its

stockholders due to mismanagement, performance issues and other conduct and considerations" (Ex. A).

Significantly, and as referenced above, 34 minutes after Bradley received the Notice, Bradley forwarded the transmittal email and the Notice to his counsel, Jacob Frenkel ("Frenkel") of Dickinson Wright (Ex. B).

Further, on that same day, October 30, 2026, at 4:15 pm Eastern (after sending the Notice of the November 1 Special Meeting), Moyer, as Chairman acting on behalf of and as authorized by the Directors, emailed Bradley a notice suspending his employment. In particular, in the transmittal email, Moyer wrote: "Please read the attached notice from the Board" (Ex. G p.1), attaching a suspension notice (the "Suspension Notice"; Ex. G p. 2). The Suspension Notice states that "[i]n the judgment of the Chairman and members of the Board, this suspension pending the Special Meeting is in the best interest of Datavault and its stockholders" (Ex. G p. 2). Six minutes later, at 4:21 pm Eastern, Bradley forwarded the email and Suspension Notice to his counsel, Frenkel (Ex. H hereto). At about 5 pm Eastern, and pursuant to the Suspension Notice and the decision of the Directors, the Company suspended Bradley's access to his work email accounts to avoid any attempt by Bradley to damage or disrupt the Company or its operations.

Subsequently, on October 31, 2026, Moyer heard second-hand that Bradley was telling others that he did not receive the Notice of the Special Meeting, so, in an

abundance of caution, Moyer re-sent the Notice and Suspension Notice to Bradley by WhatsApp on October 31, 2026 (Ex. I hereto).

D. At The November 1 Special Meeting, The Directors Vote To Terminate Bradley's Employment.

The Directors, Company Counsel, Bradley, and his counsel Frenkel all attended the November 1 Special Meeting. Bradley objected to the meeting on the grounds that he allegedly did not receive proper notice because, he argued, his work email accounts were suspended shortly after the Notice was delivered (Ex. C p. 2). However, Bradley subsequently admitted that he received and forwarded the Notice to his counsel Frenkel before his access was terminated (Ex. C p. 2) which, as set forth above, is precisely what occurred (Ex. B). The Directors determined that Notice was proper and proceeded with the Special Meeting (Ex. C p. 2).

At the November 1 Special Meeting the Directors discussed their concerns regarding Bradley's performance, and Bradley responded:

> The directors discussed their concerns regarding the Company's financial condition, stock price performance, capital-raising efforts and Mr. Bradley's management of the Company, particularly his management of the relationship with Scilex Holding Company ("Scilex") and its officers. Mr. Bradley was given the opportunity to address those concerns, including the decline in the Company's stock price, the status and timing of amounts and investments of capital that have purportedly been promised by Henry Ji and Scilex, and the basis for a potential funding source referenced during the Meeting. With regard to a potential funding source, the directors asked whether an investor had been identified, whether proof of funds was available and what terms had been proposed. Mr. Bradley did not directly respond to such questions.

(Ex. C p. 2).

Bradley was given a full opportunity to participate in the Meeting:

> Mr. Bradley and Mr. Frenkel were permitted to attend the Meeting. Notwithstanding his objections, Mr. Bradley remained present for the entirety of the Meeting, actively participated in the Meeting, stated his objections, asked questions, attempted to respond to the directors' concerns, presented his arguments in support of his continuing to serve as Chief Executive Officer of the Company, requested that the foregoing matters be recorded in the Minutes, and voted on the resolutions presented to the Board.

(Ex. C p. 2).

The Board voted 8-1 in favor of removing Bradley, with eight Directors in favor, and with Bradley the lone "no" vote. The Directors voted in favor of the following resolutions, among others:

> RESOLVED, that, pursuant to Section 5.4 of the Company's Bylaws and Section 142(b) of the Delaware General Corporation Law, the Board hereby removes Nathaniel Bradley from his positions as Chief Executive Officer and President of the Company and from any other officer position he may hold with the Company, and his employment with the Company is hereby terminated, in each case effective immediately; and
>
> FURTHER RESOLVED, that the Board has determined that the foregoing actions are advisable and in the best interests of the Company and its stockholders; . . . .

(Ex. C pp. 2-3).

However, in light of Bradley's objection to the Notice, and in abundance of caution, the Directors scheduled a subsequent meeting to further discuss Bradley's

termination:

> The Board next decided to hold a follow up special meeting on Tuesday, November 3, 2026, at 6:00 P.M. Eastern Time to be held by Zoom videoconference. Notice of that meeting, including the time (November 3, 2026 at 6 pm) and Place (Zoom videoconference), was then announced during the Meeting to all directors then present, including Mr. Bradley, more than 48 hours in advance of such meeting. The Board directed that remote-access information including the Zoom link subsequently be transmitted to each director in advance of that follow up special meeting.

(Ex. C p. 3). The November 1 Meeting was subsequently adjourned at 5:56 pm (Ex. C p. 3).

E. At The Subsequent November 3, 2026 Special Meeting, The Board Confirms and Ratifies Bradley's Removal.

As duly noticed, the Board held the November 3 Special Meeting at 6 pm by Zoom. Bradley and his counsel Frenkel were again in attendance. (Ex. E p. 1). The Directors gave Bradley more than ample time to speak, and he presented a prepared objection and opposition to the meeting and his removal. This time, he objected to notice on the grounds that, although he had 48 hours' notice of the time and place of the meeting, the Zoom link meeting invite was sent within the 48-hour window (which is precisely what the Directors directed at the end of the November 1 Special Meeting as set forth above) (Ex. E pp. 1-2; Ex. C p. 3). The Board proceeded with the meeting and a majority of the Board voted to confirm and ratify the November 1 Minutes, including Bradley's removal and "all actions taken pursuant thereto" (*i.e.*, his suspension):

> RESOLVED, that the Board hereby confirms, ratifies and approves the resolutions adopted by the Board on November 1, 2026, including the removal of Nathaniel Bradley from his positions as Chief Executive Officer and President of the Company and from any other officer position he may have held with the Company, and the termination of his employment with the Company, in each case effective as provided in such resolutions, and confirms, ratifies and approves all actions taken pursuant thereto;

(Ex. E pp. 2-3). Accordingly, Bradley ceased to be CEO, President or an employee of the Company on November 1, 2026.

F. <u>The Board Appoints A New CEO, Chairman And Other Officers</u>.

By Special Meeting on November 6, 2026 (the "November 6 Special Meeting"), the Board elected director Kimberly Briskey ("Briskey") as Chairman of the Board, and former Chairman and director Moyer as CEO and President, among other appointments. Bradley remains a director of the Board, although he was not nominated for re-election as a director when the stockholders vote at the next annual meeting. *See* Minutes of the Special Meeting held on November 6, 2026 (the "November 6 Minutes"; Ex. J hereto).

<u>ARGUMENT</u>

I. <u>THE MOTION TO EXPEDITE SHOULD BE DENIED.</u>

It is well settled that expedited proceedings are not a matter of right. *See, e.g., Ortsman v. Green,* 2007 WL 702475, at *2 (Del. Ch. Feb. 28, 2007) ("The court recognizes that there is no automatic right to expedition"). Rather, a plaintiff bears the burden of showing a '"sufficiently colorable claim'" and the '"possibility of

threatened irreparable injury, as would justify imposing on the defendants and the public the extra (and sometimes substantial) costs'" of expedited proceedings. *In re 3Com S'holders Litig.,* 2009 WL 5173804, at *1 (Del. Ch. Dec. 18, 2009) (quoting *Giammargo v. Snapple Beverage Corp.,* 1994 WL 672698, at *3 (Del. Ch. Nov. 15, 1994)); *Opportunity Partners L.P. v. BlackRock New York Municipal Bond Trust*, 2011 WL 1379066, at *2 (Del. Ch. Mar. 30, 2011) ("[t]he burden confronting a party seeking expedition is a familiar one; a colorable claim and irreparable injury").

The burdens of expedited proceedings, to litigants and to the Court, will not be imposed '"unless there is a showing of good cause why that is necessary.'" *In re SunGard Data Sys. Inc. S'holders Litig.,* 2005 WL 1653975, at *1 (Del. Ch. July 8, 2005) (quoting *Greenfield v. Caporella,* 1986 WL 13977, at *2 (Del. Ch. Dec. 3, 1986)). As explained more fully below, Bradley has not made the required showing of a colorable claim. Nor is there any reason for urgent action.

A. <u>No Colorable Claim</u>.

Bradley has not satisfied the requirement of establishing a colorable claim, for numerous reasons.

1. <u>The Notice Was Timely And Proper</u>.

Bradley's claims and the relief he seeks all stem from his claim that the Notice of the November 1 Special Meeting was somehow improper. This claim is not even close to colorable.

As set forth above, the Notice was entirely timely and proper and fully complied with Section 3.7 of the Bylaws, which Bradley concedes "governs special meetings of the Board, requiring that notice of the time and place of special meetings to be delivered electronically, personally, or by telephone at least forty-eight (48) hours prior to the meeting" (Complaint ¶ 39).

In particular, as directed and authorized by the Directors, Moyer, as Chairman of the Board, emailed the Notice to the entire Board, including Bradley, at 4 pm Eastern, more than 48 hours prior to the Special Meeting to be held on November 1, 2026 at 5 pm (Ex. A). Moyer emailed the Notice to Bradley at the email Bradley used for Company business, namely nate@vault.email (Ex. A).

The Notice sets forth the time (November 1, 2026 at 5 pm) and place (Zoom platform), and provided the Zoom meeting link, Meeting ID and Passcode (Ex. A). Further, the Notice states that the "Purpose of Special Meeting" is "[t]o consider the adoption of resolutions to remove Nathaniel Bradley ('Bradley') from his Chief Executive Officer ('CEO') and employee positions with Datavault" (Ex. A). Moreover, the Notice provides for the following Agenda: "At the Special Meeting, the Directors will discuss whether the immediate removal of Bradley as CEO and employee of Datavault is in the best interests of Datavault and its stockholders due to mismanagement, performance issues and other conduct and considerations" (Ex. A).

Significantly, and as referenced above, 34 minutes after he received the Notice, Bradley forwarded the transmittal email and the Notice to his counsel, Frenkel (Ex. B). Thus, Bradley clearly had proper and timely notice.

2. <u>Bradley's Claim That The Notice Was Defective Fails</u>.

In his Complaint, Bradley contends that the Notice is "defective" because (i) it "was sent after Bradley's company email credentials had been severed"; (ii) it was sent after he had been suspended; (iii) it cited "an inapplicable bylaw provision"; and (iv) it was accompanied by an "intentional information blackout" (Complaint ¶¶ 48-50). These arguments not only fail but are a gross misstatement of the indisputable facts and documentary record.

First, the Notice was not "sent after Bradley's company email credentials had been severed" (Complaint ¶ 50). Rather, Moyer emailed the Notice to Bradley on October 30, 2026 at 4 pm Eastern, and Bradley forwarded it to his lawyer at 4:34 p.m. that day (evidencing that his access was not "severed") (Exs. A and B). Indeed, Bradley admitted at the November 1 Special Meeting that he had access to his company email account when he received the Notice and forwarded it to his lawyer (Ex. C p. 2). Accordingly, Bradley clearly received the Notice while he had access to his email. While his email was cut off about an hour later, his lawyer already had the Zoom meeting link, which both used to attend the November 1 Special Meeting.

Second, Moyer did *not* send the Notice of the November 1 Special Meeting after the Suspension Notice, as Bradley repeatedly and erroneously alleges (*see, e.g.*, Complaint ¶¶ 48-49). Bradley tries to portray a scheme in which Moyer unilaterally suspended him and then rallied the Directors to remove him during that suspension. However, this was not the sequence of events.

Rather, as set forth above, the Board authorized Moyer as Chairman to provide the Notice of the November 1 Special Meeting for purposes of considering Bradley's removal, and to suspend Bradley shortly after the Notice was sent in order to protect the Company and its stockholders pending the meeting. That is precisely what occurred. Moyer emailed the Notice to Bradley on October 30, 2026 at 4 pm (Ex. A); Moyer, after he sent the Notice, sent the Suspension Notice on behalf of the Board at 4:15 pm that same day (Ex. G) and Bradley forwarded it to his counsel at 4:21 pm (Ex. H). Hence, Bradley was clearly not suspended when he received the Notice.

Third, while the Notice refers to Bylaw provision § 4.4, which may in fact be "irrelevant" as Bradley claims, this is a distinction without a difference and certainly does not render the Notice "defective". The Notice provides that it is sent pursuant to Bylaw § 3.7, which Bradley himself states "governs special meetings of the Board" (Complaint ¶ 39). The Notice fully complies with Section 3.7 as it was sent by the Chairman, provides notice of the time and place of the meeting, and was

electronically delivered over 48 hours in advance of the November 1 Special Meeting. Further, although not expressly required by the Bylaws, the Notice provides the specific purpose of the meeting: "To consider the adoption of resolutions to remove [Bradley] from his [CEO] and employee positions with Datavault", with the agenda for the Directors to "discuss whether the immediate removal of Bradley as CEO and employee of Datavault is in the best interests of Datavault and its stockholders due to mismanagement, performance issues and other conduct and considerations" (Exs. A and B).[3]

Fourth, and accordingly, there was no "information blackout". Bradley was well aware of the time, place, access information, purpose and agenda for the November 1 Special Meeting. He fully participated in that meeting.

3. To The Extent Bradley Is Contesting The Suspension Notice, That Claim Fails.

As an initial matter, to the extent Bradley is contesting the suspension of his duties, this claim has no place in this Section 225 action. In particular, Section 225 narrowly provides that "the Court of Chancery may hear and determine the validity of any election, appointment, *removal* or resignation of any director or officer of any corporation, and the right of any person to hold or continue to hold such office"

[3] While it was intended that the Notice reference Bylaw § 5.4 covering removal of officers as opposed to § 4.4, this is irrelevant as the Notice makes it abundantly clear that the purpose of the meeting was to consider the removal of Bradley as an officer.

(emphasis added). The suspension of duties is not a "removal" from "office". Indeed, Bradley remained CEO, President and a director during his 48-hour suspension and through the November 1 Special Meeting, until he was removed by all of the other Directors after discussion and consideration at that meeting (and he remains a director).[4]

Further, as set forth above, Bradley's Employment Agreement provides that his duties are determined by the Board (Ex. F § 2 (Bradley shall perform duties "as the Board of Directors of the Company (the 'Board') may require from time to time")). Similarly, the Bylaws provide that the CEO's role is "subject to the control of the Board of Directors" (Ex. D § 5.6). Hence, Bradley's role at the Company is determined by the Board.

Significantly, it was the Chairman of the Board and the other Directors who determined that Bradley's duties should be suspended pending the meeting. In particular, in the transmittal email sending the Suspension Notice, Moyer wrote: "Please read the attached notice *from the Board*" (Ex. G p.1 (emphasis added)). Further, the Suspension Notice states that "[i]n the *judgment of the Chairman and members of the Board*, this suspension pending the Special Meeting is in the best

[4] It should be noted that the suspension was only over the weekend and not during any business days.

interest of Datavault and its stockholders" (Ex. G p. 2 (emphasis added)). The Chairman and the Directors clearly had authority to suspend Bradley.

Moreover, it is clear that the Directors' determination to suspend Bradley pending the meeting is protected by the business judgment rule. *DSM Holdco, Inc. v. Demoulas*, 361 A.3d 70, 80-81 (Del. Ch. 2026) (when subset of board of directors formed an executive committee excluding CEO's remaining director ally and decided to suspend the CEO pending an investigation to protect the company, "[t]he directors acted in good faith when initially suspending and later terminating the CEO. The business judgment rule protects their decisions").

4. Bradley's Claim That He Is Not Being Treated As A Director (Count III) Fails.

Bradley's claim that this Section 225 action is necessary to address any purported removal of him as a director (Count III) clearly fails. Bradley was never removed as a director, and the Minutes make clear that he remains a director of the Company (Exs. C, E, and J). Indeed, Bradley himself states that he is a director (Complaint ¶ 6). Further, Bradley was not "blocked" from the Special Meeting held on November 6, 2026 as he claims (Complaint ¶ 10) – rather, he did not attempt to attend the meeting until 9:53 a.m., approximately 51 minutes after the meeting was called to order and when it was already in executive session (Ex. J p. 13). In any event, as Bradley was not removed as a director, there is no basis for a Section 225 action on this issue as there was no "removal".

Moreover, Bradley's contention that a funding proposal he brought to the Company was not presented to the Company prior to his removal as CEO and President is meritless. Aside from not being a basis for contesting his removal, the November 1 Minutes make clear that funding proposal was fully discussed:

> With regard to a potential funding source, the directors asked whether an investor had been identified, whether proof of funds was available and what terms had been proposed. Mr. Bradley did not directly respond to such questions and instead argued that the challenges facing the Company were the result of the impact of short sellers and Wolfpack Research, a firm known as an activist short-selling and financial research firm. He also stressed the strength of the Company's patent portfolio. No term sheet or proof of funds was presented during the Meeting.

(Ex. C p. 2). Bradley could present no term sheet nor proof of funds, begging the question of whether Bradley's funding source was genuine or just a last-ditch attempt to prevent his removal as CEO. *Id.*

5. The Board Ratified His Removal And All Actions Pursuant Thereto.

Even if the Notice was improper or defective (and it was not), any defect in the notice merely means that votes taken at the "improperly noticed [] Meeting are voidable and not void and are susceptible to cure by ratification." *Lofland v. Di Sabatino*, 1991 WL 138505, *3, *5 (Del. Ch. July 25, 1991) (despite notice not stating required "time and place" of meeting, causing a defect and the election results to be voidable, the defect was cured by ratification at the meeting); *Bighorn Ventures Nevada, LLC v. Solis,* 2022 WL 17948659, *6 (Del. Ch. December 23, 2022) ("that

the result of [an] improperly noticed meeting is voidable does not, however, mean a properly noticed meeting cannot be held or that the prior vote could not be ratified"). Further, "[a] ratification does not require the 're-doing' of the prior action . . . but rather merely the affirmation of the act." *Lofland*, 1991 WL 138505, at *4.

Hence, even if there were any issues with the Notice or November 1 Special Meeting, they were remedied and ratified at the November 3 Special Meeting. As set forth above, in light of Bradley's objections and in abundance of caution, the Board, at the end of the November 1 Special Meeting, scheduled a subsequent meeting to further discuss Bradley's termination, to take place on Tuesday, November 3, 2026, at 6:00 P.M. Eastern Time via Zoom videoconference, more than 48 hours in the future, with the Zoom link to be sent subsequently (Ex. C p. 3). Bradley was present when that November 3 Special Meeting was scheduled. He attended the November 3 Meeting, and when the Directors gave him another opportunity to speak, he did so. Indeed, he spoke for approximately 30 minutes, or until 6:37 pm, and "addressed the Board regarding matters relating to the Company and his continued service as Chief Executive Officer" (Ex. E p.2). The Board proceeded with the meeting, and the majority of the Board, by a 6-3 vote, confirmed and ratified the November 1 Minutes, including Bradley's removal and "all actions taken pursuant thereto" (*i.e.*, his suspension):

> RESOLVED, that the Board hereby confirms, ratifies and approves the resolutions adopted by the Board on November 1, 2026, including the

> removal of Nathaniel Bradley from his positions as Chief Executive Officer and President of the Company and from any other officer position he may have held with the Company, and the termination of his employment with the Company, in each case effective as provided in such resolutions, and confirms, ratifies and approves all actions taken pursuant thereto;

(Ex. E pp. 2-3).[5]

Bradley maintains that notice of the November 3 Special Meeting was improper on the grounds that the Zoom link meeting invite was sent within the 48-hour window, but that is precisely what the Board directed at the end of the November 1 Special Meeting when noticing the November 3 Special Meeting (Ex. C p. 3 ("[t]he Board directed that remote-access information including the Zoom link subsequently be transmitted to each director in advance of that follow up special meeting").

Further, there is no requirement under the Bylaws that a Zoom link be sent 48 hours in advance. All that is required is that the Chairman provide notice of the time and place, which the Chairman verbally did at the November 1 Special Meeting: November 3, 2026 at 6 pm by Zoom platform (Ex. C p. 3).

6. <u>Bradley Waived Any Objection To The Notices</u>.

Pursuant to Section 3.9 of the Bylaws, Bradley waived any objection to the notices for either of the Special Meetings because he did not merely "attend[] the

[5] Given Bradley's attempt to portray Moyer as the villain here, it is worth noting that Moyer was one of the three directors who voted "no" to ratification, along with Bradley and one other director (Ex. E p. 2). As set forth above, Moyer is now CEO of the Company (Ex. J).

meeting[s] for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened" (Ex. D § 3.9). While Bradley objected at the outset of each Special Meeting, he then fully participated, including by repeatedly stating his case on why he should not be removed, attempting to explain why the funding that he sourced was genuine, and voting. Hence, he did not appear solely for the express purpose of objecting to the meeting at the beginning of the meeting, and therefore waived any objection to notice. *Messina v. Klugiewicz*, 2004 WL 1043793, at *2 (Del. Ch. April 30, 2004) (plaintiff waived any objection to notice because he "did not attend [the meeting] for the sole purpose of objecting to lack of notice"); *Grossman v. Liberty Leasing Co., Inc.*, 295 A.2d 749, 754 (1972) (when plaintiffs attended the meeting and voted, they "waived any defect with respect to notice of the meeting").

7. <u>Bradley's New Claim Contesting the Officer Appointments Fails</u>.

In his Amended Complaint, Bradley also appears to be contesting the officer appointments at the November 6 Special Meeting, where the Board elected director Briskey as Chairman of the Board, and former Chairman and director Moyer as CEO and President, among other appointments (Ex. J). His claim is without basis.

First, as evidenced by the Notice of Meeting attached as Exhibit A to the November 6 Special Meeting ("Notice of November 6 Special Meeting"; Ex. J at Ex. A), Moyer emailed Bradley that Notice to his personal email

(nate@thedbq.com), along with emailing it to the other Directors, on November 4, 2026 at 8:40 a.m., providing the time and place of the Special Meeting (November 6, 2026 at 9 am by Microsoft Teams platform) and provided the Microsoft Teams link, Meeting ID and password (Ex. J at Ex. A).

Second, as set forth above, Bradley was not "blocked" from the November 6 Special Meeting as he claims (Complaint ¶ 10) – rather, he did not attempt to attend the meeting until 9:53 a.m., approximately 51 minutes after the meeting was called to order and when it was already in executive session (Ex. J p. 13). As demonstrated by the November 6 Minutes, the Chairman and the respective officers were elected by all the other Directors, with Bradley "Not Present" (Ex. J pp. 2-7).

Third, the November 6 Minutes demonstrate that the Board confirmed, ratified and approved the November 1 Minutes (for the second time), the November 3 Minutes, and the "removal of Nathaniel Bradley from his positions as Chief Executive Officer and President of the Company and the termination of his employment with the Company" (Ex. J at p. 2).

8. Bradley's Claim For Inequitable Manipulation Of Corporate Machinery (Count II) Fails.

For all the reasons set forth above, Bradley's inequitable manipulation of corporate machinery claim fails. Such a claim requires a showing that "management has attempted to utilize the corporate machinery and the Delaware law for the purpose of perpetuating itself in office; and, to that end, for the purpose of

obstructing the legitimate efforts of dissident stockholders" in a manner that is "contrary to established principles of corporate democracy". *Schnell v. Chris-Craft Industries, Inc*., 285 A.2d 437, 439 (Del. 1971).

Here, management is not seeking to "perpetuate itself in office". Rather, all eight of the other Directors voted to *remove Bradley from office*, and elected new officers. The Directors' status was not in question or in jeopardy. Nor did the Directors act to obstruct "dissident shareholders" or act in a manner contrary to "corporate democracy". To the contrary, the eight other Directors determined that the November 1 Special Meeting to consider Bradley's removal (and his suspension over the weekend) were necessary and voted to remove him at the duly noticed Special Meeting in which Bradley participated and was the lone "no" vote; the majority of the Board then ratified Bradley's removal and suspension at the November 3 Special Meetings; and all eight of the other Directors voted to ratify Bradley's removal once again at the November 6 Special Meeting. There was nothing inequitable about this conduct.

B. <u>No Irreparable Injury Nor Need For Urgent Action.</u>

To demonstrate irreparable harm, a plaintiff must establish that, absent expedition, he will suffer *"immediate,* discernible harm for which there is no adequate remedy at law." *Sonet v. Plum Creek Timber Co.,* 1998 WL 749445, at *2 (Del. Ch. Sept. 23, 1998) (emphasis added) (citation omitted). Expedited

proceedings should not be allowed if "the injury to Plaintiff is merely speculative or if the injury can be fully compensated after a full trial on the merits, either by an award of damages or by any other form of final equitable relief." *Id.*; *see also Steiner v. Puritan-Bennett,* 1994 WL 1751669, at *1-2 (Del. Ch. Dec. 6, 1994). It is well established that "the Court will deny a motion to expedite unless it can find some '*imminent circumstance* demanding immediate action.'" *Smollar v. Potarazu,* 2014 WL 6607074, at *1 (Del. Ch. Nov. 19, 2014) (quoting *Casale v. Bare,* 2009 WL 296262, at *2 (Del. Ch. Jan. 27, 2009)) (emphasis added).

Bradley does not come close to satisfying his burden of establishing immediate or imminent irreparable harm. The Company has already removed him as CEO, President and as an employee, and that removal occurred over two weeks ago. Hence, to the extent it is a "harm", it has already occurred and cannot be the basis for expedition, as it is not an "imminent circumstance demanding immediate action". *Id.* The Company continues to operate under the present leadership.

Further, Bradley's claim that he is being excluded from Board Meetings (Motion to Expedite ¶ 9) is without merit. As the Minutes of the Special Meetings held on November 1 and 3, 2026 demonstrate, he was invited to, attended and spoke at length in each one (Exs. C, E). Further, the notice of the November 6, 2026 meeting demonstrates he was invited to the meeting (Ex. J at Ex. A), but he did not attempt to attend until 53 minutes after the start of the meeting, when the meeting

was over (Ex. J p. 13) and J).

Further, while the Directors do discuss matters independently, it is perfectly proper for a subgroup of Directors to discuss matters independently from a former CEO who is adverse to them and whom they believe is harming the Company. *DSM*, 361 A.3d at 80-81 (2026) (nothing improper about directors "form[ing] an executive committee consisting of themselves so that the CEO's remaining director ally would not be party to their deliberations"). Indeed, directors are free to "confer outside of meetings, with each other or with officers or advisors", as "board's deliberations benefit from information that directors can gain from those discussions". *Id.* at 137-38. So long as directors do not take formal action during those discussions and continue to hold formal Board of Directors meetings allowing for discussion and deliberation, directors are free to "chat among themselves". *Id.* That is precisely what has occurred and is occurring here. It is not only proper but desirable, and should not be stopped or thwarted.

Bradley's claim that the Company is "forgoing a non-dilutive $90-$100 million financing facility structured by an Xchange Capital Corporation-led syndicate" (Motion to Expedite ¶ 9) is similarly without merit. As set forth above, the Board specifically considered and discussed this purported proposal, and Bradley could not even provide a term sheet or proof of funds. (Ex. C p. 2).

Further, the fact that the Company is struggling financially is by no means a reason to expedite proceedings. The Company's financial struggles are among the reasons eight of the nine directors of the Board voted to terminate Bradley as CEO and President in the first place (Ex. C pp. 2-3). The Board has now appointed a new CEO, a new Chairman of the Board, and other officers in an attempt to turn the Company around (Ex. J), and these Directors and officers should be permitted to proceed and focus on improving the Company's business and financial outlook, without the unnecessary expense and distraction of expedited proceedings.

Thus, Bradley points to no imminent irreparable harm, and his contention that the Company would be better off if he were reinstated as CEO and President is self-serving and speculative. *Sonet,* 1998 WL 749445, at *2 (expedited proceedings should not be allowed if "the injury to Plaintiff is merely speculative").

II. THE TRO MOTION SHOULD BE DENIED.

A. Legal Standard.

"The standard for a TRO is such that: a movant must demonstrate that [he] has stated a colorable claim; that the movant faces imminent, irreparable harm in the absence of a TRO; and that the balance of the equities favors temporary injunctive relief." *Billings v. Hickory Hollow Homeowners Association*, 2026 WL 524401, *5 (Del. Ch. February 20, 2026). When the relief a movant seeks "would upend, not preserve, [the] status quo", there is a "higher mandatory injunction standard" where

the movant must make a showing sufficient to support a grant of summary judgment, that is, mandatory injunctions should only issue with the confidence of findings made after a trial or on undisputed facts." *BlackRock Credit Allocation Income Trust v. Saba Capital Master Fund, Ltd*., 224 A.3d 964, 976-77 (Del. 2020) (internal quotation marks and citations omitted).

B. <u>Bradley Fails To Make The Requisite Showing For A TRO</u>.

For the same reasons Bradley's Motion to Expedite fails, his TRO Motion fails as well.

First, Bradley does not come close to demonstrating a colorable claim. Bradley's sole claim is "an action under 8 *Del. C.* 225 to determine whether Plaintiff was validly suspended and removed as CEO and President of Datavault" (TRO Motion p. 2). As set forth above, the Board validly voted 8-1 to remove him as CEO and President based on timely and valid Notice at the November 1 Special Meeting (Ex. C p. 3). This action was properly ratified at the November 3 Special Meeting (Ex. E p. 2) (and the November 6 Special Meeting as well (Ex. J p. 2).

Further, his attempt to contest his suspension in a Section 225 action is improper because it was not a "removal" under the statute – he remained CEO and President until the majority of the Board voted to remove him 48 hours later. In any event, as set forth above, pursuant to his Employment Agreement and the Bylaws, Bradley's duties are determined by the Board (Ex. F § 2 (Bradley shall perform

duties "as the Board of Directors of the Company (the 'Board') may require from time to time"; Ex. D § 5.6 (CEO's role is "subject to the control of the Board of Directors")). All eight of the Directors determined in their respective business judgment that he should be suspended pending the meeting given the danger of him harming the Company and its stockholders once he became aware that his removal was being considered (Ex. G pp. 1, 2). Further, this decision was ratified at the November 3 Meeting (Ex. E p. 2).

Second, Bradley cannot show any imminent irreparable harm whatsoever. As set forth above, he has already been removed as CEO and President, and the Company and its new leadership have been operating without him over two weeks. Further, his demand that the "Board must treat him as the director he is – with director notice, Board materials and equal participation" (TRO Motion p. 2) does not demonstrate any imminent irreparable harm. It is undisputed that Bradley remains a director of the Company, continues to receive notice of meetings and board materials, and has spoken and voted at the Special Meetings conducted on November 1 and 3 and 6, 2026 (Exs. C, E and J at Ex. A).

With respect to his request for the relief of "equal participation" as a director (TRO Motion p. 2), Bradley remains a director just like any director, with one vote, just like each director. But pursuant to the Bylaws majority rules, and the eight other Directors all agreed that it was in the best interests of the Company for him to not

be CEO nor President. Further, the Directors determined that the supposed financing opportunities Bradley purportedly brought to the Company are not real (Ex. C p. 2). Bradley has no right to try to prevent the other Directors from voting in the manner that each believes are in the best interests of the Company and its stockholders. Nor does Bradley have any right to be included in informal discussions among the other Directors. *DSM*, 361 A.3d at 80-81, 137-38 (nothing improper about directors "form[ing] an executive committee consisting of themselves so that the CEO's remaining director ally would not be party to their deliberations", with "free to confer outside of meetings, with each other or with officers or advisors"). Bradley continues to receive notice of formal Board meetings and formal Board materials, and continues to participate, to be heard, to have his points considered, and to vote in Board meetings. The Board meetings are by no means a "rubber stamp", as exemplified by the 6-3 vote at the November 3 Special Meeting (with Moyer and another director joining Bradley in voting "no" (Ex. E p. 2)). Bradley has been given those rights and will continue to have those rights unless and until the stockholders decline to re-elect him as a director at the 2027 Annual Meeting.

Third, Bradley cannot show that the balance of the equities favors temporary injunctive relief. The relief he seeks includes that the Company be ordered "not to undertake defined extraordinary transactions [defined by Bradley] without notice to Plaintiff and either his agreement or leave of Court", which would utterly hamstring

if not destroy the Company. For example, Bradley's Proposed Temporary Restraining Order, if entered, would prevent the Company from obtaining any "financing", entering into any "sale", or engaging in any "creditor restructurings" with a value "exceeding $100,000" without his agreement. It also would prevent the Company from engaging in any "reverse stock split" without his agreement (Proposed Temporary Restraining Order at ¶ 4).

As even Bradley makes clear in his Motions, the Company is in dire need of immediate capital to stay afloat. Further, the Company is in danger of NASDAQ delisting and may need to conduct a reverse stock split to raise the share price. These are decisions that should be made by the majority of the Board under the Company's Bylaws and Delaware law. Bradley is seeking to hold the Company hostage by obtaining veto power that could prevent the other eight Directors of the Board from taking any action they believe the Company sorely needs. Bradley has no right to anything close to the power he seeks, especially since the Directors removed him as CEO and President due to his poor performance. It is clear that Bradley's requested relief would harm if not destroy the Company and prevent the Directors from taking any action they believe to be in the best interest of the Company and its stockholders. The balancing of the equities clearly weighs in favor of the Company and the Directors.

Fourth, the status quo is that Bradley has been replaced as CEO and President,

the Company has a new CEO, President and Chairman of the Board, among other new officers, and he remains a director just like the other Directors, with the Board making decisions by majority vote. Hence, the relief Bradley seeks "would upend, not preserve, [the] status quo". *BlackRock Credit*, 224 A.3d at 976. Bradley therefore must meet the "higher mandatory injunction standard" and make a showing sufficient to support a grant of summary judgment, with this Court having the confidence of findings made after a trial or on undisputed facts. *Id.* Bradley does not come remotely close to meeting this standard. Hence, the TRO Motion should be denied.

III. THE STATUS QUO MOTION SHOULD BE DENIED.

A. Legal Standard.

"To find in favor of issuing a status quo order, [a movant] must 'demonstrate that (1) 'the order will avoid imminent irreparable harm'; (2) the movant has 'a reasonable likelihood of success on the merits' of [their] claim; and (3) the harm to the movant absent an order outweighs any harm from granting the order.'" *Billings*, 2026 WL 524401 at *7 (*quoting Soleimani v. Hakkak*, 2024 WL 2186292, at *3 (Del. Ch. May 15, 2024)). Again, when the relief a movant seeks "would upend, not preserve, [the] status quo", there is a "higher mandatory injunction standard" where the movant must make a showing sufficient to support a grant of summary judgment. *BlackRock Credit*, 224 A.3d at 977.

B. Bradley Fails To Make The Requisite Showing For A SQO.

For the same reasons the Motion to Expedite and the TRO Motion should be denied, the Status Quo Motion should be denied. *First*, the "reasonable likelihood of success on the merits" standard on the Status Quo motion is even higher than the "colorable claim" standard, and, as set forth above, Bradley can meet neither. *Second*, as also set forth above, Bradley can show no irreparable harm because, among other reasons, he has already been removed and replaced as CEO and President, and he remains a director.

Third, Bradley cannot show that "the harm to the movant absent an order outweighs any harm from granting the order". To the contrary, the relief he seeks in his Proposed Status Quo Order is substantially the same as that sought in his Proposed Temporary Restraining Order. For example, he is seeking to prevent the Company from raising any funds, restructuring any debt, or issuing a reverse stock split to aid its NASDAQ listing status, without his affirmative vote, thereby holding a one-director veto power over a nine-person Board that acts by majority. This would prevent the Company from taking necessary action and may cause untold harm to the Company and its stockholders, for no good or legitimate reason. Further, Bradley is seeking to "upend the status quo" and does not come close to meeting the stringent standard necessary for the Court to feel justified or confident that doing so would be correct. The SQO Motion should be denied.

CONCLUSION

For the foregoing reasons, the Motions should be denied.

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