



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CHARLIE JAVICE,)
)
 Plaintiff,)
)
 v.) C.A. No. 2022-1179-KSJM
)
 JPMORGAN CHASE BANK, N.A.,) PUBLIC VERSION FILED
 JPMORGAN CHASE & CO., and TAPD,) DECEMBER 23, 2022
 LLC,)
)
 Defendants.)

VERIFIED COMPLAINT FOR ADVANCEMENT

Plaintiff Charlie Javice, by and through her undersigned attorneys of record, for her complaint (“Complaint”) against JPMorgan Chase Bank, N.A. (“JPMorgan Bank”), JPMorgan Chase & Co. (“JPMC” and, together with JPMorgan Bank, “Chase”) and TAPD, LLC, formerly TAPD, Inc. (“TAPD” or the “Company”) and, together with Chase, the “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action to enforce Plaintiff’s right to advancement of legal fees, costs, and expenses, pursuant to (i) the Indemnification Agreement between Ms. Javice and TAPD, dated January 19, 2017 (the “Indemnification Agreement”), (ii) Article VIII of the Amended and Restated Bylaws of TAPD, Inc. (the “TAPD Bylaws”), (iii) Section 6.2 of the Agreement and Plan of Merger by and among JPMorgan Bank, Finland Merger Sub, Inc., TAPD, Inc., and Shareholder

Representative Services LLC, dated August 8, 2021 (the “Merger Agreement”), (iv) Article V of the Bylaws of JPMorgan Bank (the “JPMorgan Bank Bylaws”) and (v) Article IX of the Bylaws of JPMC (the “JPMC Bylaws”). A copy of each of the Indemnification Agreement, TAPD Bylaws, Merger Agreement, JPMorgan Bank Bylaws and JPMC Bylaws is annexed hereto as **Exhibit A**, **Exhibit B**, **Exhibit C**, **Exhibit D** and **Exhibit E**, respectively.

2. Ms. Javice is the founder and former Chief Executive Officer of TAPD, doing business as “Frank.” Ms. Javice built Frank to respond to an intractable problem in the United States: student loans and an intimidating financial aid process loom at the gate to higher education and all it promises. With Frank, Ms. Javice created a unique digital platform that explained financial aid to aspiring and current college students and their families, connected students to online courses as well as scholarship offerings, facilitated the financial aid application, and invited individuals of all backgrounds to imagine themselves pursuing—and affording—higher education. As more students and their families used Frank, Ms. Javice envisioned that Frank would be *the* place for college-bound students and their families to turn to for all their money needs; in turn, the knowledge and resources that students would access at Frank would empower them for decades as they obtained financial aid packages, built personal wealth and managed debt.

3. In 2021, JPMorgan Bank acquired TAPD with the entirety of the Frank business (the “Merger”). TAPD continues to operate following the Merger as a wholly owned subsidiary of JPMorgan Bank. Following the Merger, Ms. Javice continued to be involved with the Frank business as an employee of JPMorgan Bank, with the title Managing Director – Head of Student Solutions.

4. Then, in the spring of 2022, Chase commenced a series of groundless investigations into Ms. Javice’s conduct, prompting her to hire legal counsel. Following those investigations, in order to deny Ms. Javice the compensation owed to her (including \$8 million withheld from the Merger consideration and a \$20 million retention award), Chase manufactured a for-cause termination in bad faith.

5. For months, Chase worked to force Ms. Javice out of the Chase organization, and it has insisted (wrongly) that it can refuse her the resources and rights that she had pre-merger and for which she bargained when JPMorgan Bank acquired TAPD. That includes Defendants’ refusal to honor their obligations to advance her expenses.

6. Chase has agreed to advance Ms. Javice’s expenses incurred in connection with what it refers to as a “Covered Matter”—an internal investigation by JPMC’s Global Security & Investigations department into alleged violations

related to her employment (the “Initial Investigation”).¹ But other expenses are “covered”: Chase continued investigating Ms. Javice for pre- and post-Merger conduct, that investigation flowed from the Initial Investigation, and it reflects Chase’s attempt to pivot its focus from one set of false allegations to another when the first came up empty. (The second investigation is hereinafter referred to as the “Subsequent Investigation.”) During and following the Subsequent Investigation, Chase falsely accused Ms. Javice of misconduct in her dealings with JPMorgan Bank prior to and leading to the Merger and as an employee of JPMorgan Bank following the Merger. (The dispute between Chase and Ms. Javice regarding the allegations Chase raised in the Subsequent Investigation, together with any other potential or threatened claims related to Ms. Javice’s conduct prior to or in connection with the Merger as an officer of TAPD or following the Merger as an employee of JPMorgan Bank or an affiliate, constitute and are referred to herein as the “Dispute.”) In connection with the Subsequent Investigation and the Dispute, Ms. Javice has incurred considerable expenses and expects to continue to incur such expenses.

7. As detailed more fully herein, the Indemnification Agreement, Article VIII of the TAPD Bylaws, Section 6.2 of the Merger Agreement, Article V of the

¹ Defendants appear to have conceded that the allegations raised in the Initial Investigation were unfounded; they did not refer to these matters when they ultimately terminated Ms. Javice’s employment for cause.

JPMorgan Bank Bylaws and Article IX of the JPMC Bylaws obligate Defendants to advance to Ms. Javice her legal fees, costs, and expenses in connection with the Subsequent Investigation and the Dispute (defined below).

8. Ms. Javice's counsel submitted several letters presenting the grounds for her entitlement to advancement and enclosing invoices evidencing expenses Ms. Javice reasonably incurred. On November 14, 2022, Ms. Javice made formal written demands on Defendants for the advancement of expenses. To the extent required, she has agreed to repay moneys advanced if it were ultimately determined that she was not entitled to indemnification.

9. Defendants have engaged in delay tactics and have raised groundless arguments to evade their clear obligations to advance Ms. Javice's expenses in connection with the investigations and the Dispute they have imposed on her. More than 30 days following Ms. Javice's submission of her advancement demand and undertaking, Defendants have yet to advance her expenses, aside from limited advancement in connection with the Initial Investigation.

10. Accordingly, Ms. Javice now seeks an order requiring Defendants to advance all legal fees, costs, and expenses incurred by Ms. Javice in connection with the Subsequent Investigation and the Dispute, and awarding "fees on fees" incurred in connection with enforcing Ms. Javice's right to advancement, along with pre- and post-judgment interest.

PARTIES

11. Plaintiff Charlie Javice resides in Miami Beach, Florida. Ms. Javice founded TAPD, Inc., d/b/a Frank, and served as its Chief Executive Officer until its acquisition by JPMorgan Bank on September 14, 2021. Following the Merger, Ms. Javice served at JPMorgan Bank as a Managing Director and as Head of Student Solutions until November 4, 2022. Before the Merger, Ms. Javice also served as a member of the board of directors of TAPD, Inc., and she continued in that role after the close of the Merger.

12. Defendant JPMorgan Bank is a national banking association with U.S. branches in 48 states and Washington, D.C. and is the principal banking subsidiary of JPMC. Following the Merger, JPMorgan Bank employed Ms. Javice, from on or about September 14, 2021 until November 4, 2022.

13. Defendant JPMC is a financial holding company incorporated in Delaware. Through its subsidiaries, JPMC provides investment banking, commercial banking, financial transaction processing, asset management and other financial services.

14. TAPD, LLC is a Delaware limited liability company doing business as Frank that provides college financial planning and financial aid application resources and assistance services. Prior to April 1, 2022, when it was converted into a limited liability company, TAPD was a Delaware corporation, TAPD, Inc.

15. On or about August 8, 2021, JPMorgan Bank, Finland Merger Sub, Inc., a wholly owned subsidiary of JPMorgan Bank, TAPD and Shareholder Representative Services LLC entered into the Merger Agreement, whereby JPMorgan Bank acquired TAPD through the merger of Finland Merger Sub, Inc. with and into TAPD, with TAPD as the surviving company (previously defined as the “Merger”). *See* Ex. C.

16. The Merger was completed on September 14, 2021. Pursuant to the Merger, Finland Merger Sub, Inc. merged with and into TAPD, and TAPD continued following the Merger as the surviving company, as a wholly owned subsidiary of JPMorgan Bank. *See* Ex. C, Recitals, § 2.1.

JURISDICTION & VENUE

17. This Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 8 *Del. C.* § 145(k) and 10 *Del. C.* § 341.

18. Defendants have expressly consented to jurisdiction in the Delaware Court of Chancery. Pursuant to Section 20 of the Indemnification Agreement, TAPD agreed that “any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the “Delaware Court”), and not in any other state or federal court in the United States of America or any court in any other country,” has “consent[ed] to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or

proceeding arising out of or in connection with this Agreement,” has “waive[d] any objection to the laying of venue of any such action or proceeding in the Delaware Court,” and has “waive[d], and agree[d] not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.” Ex. A § 20.

19. Pursuant to Section 9.10 of the Merger Agreement, the parties to the Merger Agreement—including JPMorgan Bank and TAPD—“irrevocably submit[ted] to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware, or, if no federal court in the State of Delaware accepts jurisdiction, any state court within the State of Delaware) over all Related Claims,² and each party hereby

² The Merger Agreement defines “Related Claims” as “all claims or causes of action (whether in contract or tort, in law or in equity, or granted by statute or otherwise) that may be based upon, arise out of or relate to this Agreement, the Related Documents and any other document or instrument delivered pursuant to this Agreement or the Related Documents, or the negotiation, execution, termination, validity, interpretation, construction, enforcement, performance or nonperformance of this Agreement or the Related Documents or otherwise arising from the Transactions or the relationship between the parties (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with, or as an inducement to enter into, this Agreement or the Related Documents).” Ex. C § 1.1, Def. of “Related Claims.”

irrevocably agrees that all Related Claims may be heard and determined in such courts.” Ex. C § 9.10.

20. Each of the Indemnification Agreement and the Merger Agreement provides that it is governed by Delaware law. See Ex. A § 20; Ex. C § 9.9.

FACTUAL BACKGROUND

I. Ms. Javice Launches Frank

21. When Charlie Javice built Frank, she sought to address intractable problems facing students and their families in the United States. For many, higher education represents a path to longer-term prosperity, but college tuition is too high. As a result, the vast majority of students rely on financial aid, and yet the financial aid process can be inscrutable and intimidating. In 2017, Ms. Javice responded to these issues by creating a unique digital platform: a website that explained financial aid to aspiring and current college students and their families, connected students to online courses as well as scholarship offerings, facilitated the financial aid application, and invited individuals of all backgrounds to imagine themselves pursuing—and affording—higher education.

22. Ms. Javice’s vision was a success. Every year, more individuals visited Frank; soon, Frank’s site was a trusted source of information on financial aid as well as college enrollment, and its tools assisted students in navigating the higher-education labyrinth. In just a few short years, Frank attracted several million users,

hundreds of thousands of whom used Frank’s free financial aid tool to obtain college financial aid. Ms. Javice’s vision was that Frank would be *the* place for college-bound students and their families to turn to for all their money needs; in turn, the knowledge and resources that students would access at Frank would empower them for decades as they obtained financial aid packages, built personal wealth and managed debt.

23. Ms. Javice not only attracted a broad audience base, but she also built connections with a wide range of stakeholders across the financial services, education, and technology sectors. Investors, partners, and advisors believed both in TAPD’s mission and in Ms. Javice’s capacity and talent for big, bold projects—she was going to expand Frank’s reach, its profitability, and its future as the “Amazon for higher education,” and she would continue to tackle intractable problems.³ Ms. Javice’s skill in connecting with college-bound youth and in attracting an audience largely untapped by traditional financial establishments did not go unnoticed; by 2021, Frank became a target for acquisition by major banks and financial institutions.

³ Chelsea Adelaine Hassler, “How a 25-Year-Old Woman is Rebuilding the College Financial Aid Process, 1 Student at a Time,” PopSugar (May 27, 2018), available at <https://www.popsugar.com/news/Frank-FAFSA-Founder-CEO-Charlie-Javice-Interview-44518650> (quoting Charlie Javice).

II. JPMorgan Bank Acquires Frank

24. On or about August 8, 2021, JPMorgan Bank and TAPD entered into the Merger Agreement, whereby JPMorgan Bank's wholly owned subsidiary, Finland Merger Sub, Inc., would be merged with and into TAPD, making TAPD, the Surviving Company, a wholly owned subsidiary of JPMorgan Bank.

25. The Merger closed on September 14, 2021. The Merger process was quick—Chase pursued Frank aggressively when it learned that Frank was talking with one of its competitors. But over the course of one month, Chase committed considerable resources to the deal, involving hundreds of its employees in diligence, engaging outside counsel from a leading international law firm, and undertaking multiple rounds of meetings, conference calls, and even live “product demos.”

26. On September 21, 2022, JPMC announced in a press release that, following the Merger, Ms. Javice would continue to lead the Frank brand and would “join the firm as Head of Student Solutions on the Digital Products team”—making her one of the youngest ever Managing Directors in the organization.⁴ JPMC's co-Chief Executive Officer of Consumer & Community Banking stated, “We are excited to welcome Charlie and Frank to JPMorgan Chase, and look forward to

⁴ See September 21, 2021 JPMorgan Chase Press Release, <https://media.chase.com/news/jp-morgan-chase-acquires-frank>.

working together to empower students and their families to build a stronger financial future.”⁵

27. As the terms of the transaction reveal, Chase identified Ms. Javice as the driver of Frank’s success and as the center of Frank’s value proposition. JPMorgan Bank agreed to pay Ms. Javice a \$20 million dollar retention bonus, distributed over three years, *provided* she either remained employed at Chase or was terminated without cause. JPMorgan Bank also negotiated an “equity holdout” with Ms. Javice, whereby JPMorgan Bank retained approximately \$8 million dollars of the Merger consideration due her as a Frank stockholder, to be payable and due on the second anniversary of the acquisition, *provided* she remained employed at Chase; if she was terminated without cause prior to the second anniversary, the payment would be due within fifteen days of the termination. And JPMorgan Bank agreed to pay her handsomely, including with a performance-based bonus plan. Ms. Javice built Frank, she built connections with partners across sectors, and she is widely known to be an ambitious and effective problem-solver—forward-thinking, but highly sensitive to the complexity of social issues. By contrast, Chase has struggled to attract the younger and diverse customers that Ms. Javice could draw. Chase invested in Ms. Javice with the intent that she would fix that problem.

⁵ *Id.*

III. Chase Mismanages Its New Business

28. Although Chase made this commitment to Ms. Javice's and Frank's future at JPMorgan Bank, the integration did not go as planned. For some reason, the individuals who led JPMorgan Bank's diligence process and negotiated the transaction were not involved in the next phase of the business—the post-Merger integration of Frank at JPMC. A new team supervised the integration, and it evinced a limited and misguided understanding of Frank's value—as a brand that students and their families trust, and as a magnet for new, loyal customers. This new team persistently failed to recognize the initial business rationale for the acquisition: to harness Ms. Javice and Frank's acumen for attracting a young, diverse new audience to Chase's services.

29. Chase undermined Frank's value by pursuing poorly conceived business plans focused on monetizing student FAFSA® data and conducting direct marketing campaigns aimed at Frank's historical customers. The proposed business plans disregarded the regulatory environment in which the financial aid platform operated, failed to capitalize on Ms. Javice's past successes, and discounted the very skills for which JPMorgan Bank hired her. More specifically, the new team focused primarily on mining the personal information of Frank's legacy customers to blast them with marketing emails promoting consumer financial products, including credit cards and personal loans. The team pushed this plan despite legal restrictions

on the use of such data, *and* despite a pre-Merger diligence and negotiation process during which Frank and JPMorgan Bank discussed the restrictions and focused their goals, instead, on Ms. Javice's and Frank's power to attract *new* customers to Chase.

30. Ms. Javice was not silent about the problems with Chase's approach. She objected; in response, Chase turned on her. It worked to derail her performance by cutting her budget and staff, undermining her proposals, and demanding unreasonable and unviable actions. Chase took its efforts to derail Ms. Javice's success a step further when it accused her of misconduct (including for allegedly minor infractions), subjected her to overzealous internal investigations and fishing expeditions, and ultimately fired her, purportedly for cause.

31. Meanwhile, in the summer of 2022, the federal government announced several significant changes to student financial aid regulations, and the U.S. economy turned volatile, all of which may have necessitated renewed and astute strategic approaches for how to grow Frank. But Chase grossly mismanaged its investment from the start, and it decided it would rather walk the investment back than work on it further.

32. JPMorgan Bank placed Ms. Javice on administrative leave *the day before* the first vesting date for the \$20 million retention award. Motivated to avoid paying Ms. Javice her considerable remaining compensation and the retention and equity awards due her, JPMorgan Bank then terminated her in bad faith.

IV. The Investigations and the Dispute

33. As discussed, shortly after the close of the Merger, Chase began to interfere with Ms. Javice's ability to perform her employment obligations successfully. These interference attempts began in or about the fall of 2021 and continued through her suspension in September 2022 and termination in November 2022.

34. Starting in the spring of 2022, Chase subjected Ms. Javice to ongoing, multi-phase, iterative and harassing investigations regarding Ms. Javice's conduct prior and leading up to the Merger as an officer of TAPD and her conduct following the Merger as an employee of JPMorgan Bank. The first stage of these investigations, the Initial Investigation, was an internal review into post-Frank acquisition conduct conducted by Global Security." The Initial Investigation primarily focused on Ms. Javice's business expenses related to her contractually-mandated job duties, including to attend conferences and court potential partners for the Frank business. Chase also scrutinized Ms. Javice's use of her Frank email address (an email system that Chase owned) for Chase business purposes during the integration of the businesses.

35. As the probing of Ms. Javice continued, in the Subsequent Investigation and the subsequent Dispute, JPMC and its new outside legal team turned their attention to Ms. Javice's pre- and post-Merger representations to JPMorgan Bank

regarding Frank's business metrics. Chase has accused her, among other things, of misrepresenting metrics for TAPD's customer base prior to and leading up to the Merger; using falsified data to support this alleged misrepresentation; and then, following the Merger and during her employment at JPMorgan Bank, failing to disclose these alleged misrepresentations and continuing to misrepresent the Company's customer base.

36. By letter dated September 21, 2022, JPMC agreed to advance Ms. Javice's expenses reasonably incurred in connection with the Initial Investigation, including her attorneys' fees for the services of Mintz, Levin, Cohn, Ferris, Glosky and Popeo, P.C. ("Mintz"). While JPMC rightly acknowledged its obligation to advance fees to Ms. Javice, it artificially designated the later stages of its investigation as somehow beyond the scope of that obligation, taking the position that JPMC's agreement to advance expenses was only applicable to the Initial Investigation. JPMC refused to advance fees for the Subsequent Investigation, and for any counsel Ms. Javice retained other than Mintz without JPMC's prior written approval. JPMC indicated that it would "not advance any legal expenses in relation to [Ms. Javice's] actions before or after [her] employment with JPMC, or in connection with employment matters." JPMC also indicated that it would "only advance legal expenses that it considers reasonable in the circumstances and reserves the right to decline to pay or dispute following payment all or part of any claim for

the advancement of legal expenses to the extent that JPMC determines such expenses were not reasonably incurred.”

37. Beginning in 2022, Ms. Javice has incurred and continues to incur considerable expenses in connection with the ongoing matters relating to her service at TAPD and JPMorgan Bank. Those expenses relate to the Subsequent Investigation and the Dispute and are incurred by reason of Ms. Javice’s status as an officer of TAPD prior to the Merger and an employee of JPMorgan Bank following the Merger.

38. Defendants have refused to honor their obligations to pay Ms. Javice’s fees and expenses. By virtue of her former roles as officer of TAPD prior to the Merger, employee of JPMorgan Bank and director of TAPD, Inc. following the Merger, Ms. Javice is entitled to full-extent-of-the-law indemnification and mandatory advancement from Defendants. Ms. Javice’s entitlement to indemnification and advancement stems from multiple overlapping sources, including the Indemnification Agreement, the TAPD Bylaws, the Merger Agreement, the JPMorgan Bank Bylaws and the JPMC Bylaws.

V. The Indemnification Agreement

39. Pursuant to Section 1 of the Indemnification Agreement, TAPD agreed to “hold harmless and indemnify [Ms. Javice] to the fullest extent permitted by law.”

Ex. A § 1.

40. Section 5 of the Indemnification Agreement requires TAPD to provide advancement to Ms. Javice as follows:

Notwithstanding any other provision of this Agreement, *the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status* within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free and not conditioned on Indemnitee's ability to repay such advances.

Ex. A § 5.

41. The Indemnification Agreement covers the investigations to which Defendants subjected Ms. Javice as well as the Dispute. It defines "Proceeding" as follows:

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of

the fact that Indemnitee is or was an officer or director of the Company, by reason of any action taken by him or of any inaction on his part while acting as an officer or director of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

Ex. A § 13(f).

42. The Indemnification Agreement defines “Corporate Status” as describing “the status of a person who is or was a director, officer, employee, agent or fiduciary of the company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.” Ex. A § 13(a).

43. The Indemnification Agreement continues in effect following the Merger. The Indemnification Agreement provides that “[a]ll agreements and obligations of the Company contained herein shall continue during the period ending three years after [Ms. Javice] ceases to serve as an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise)

and shall continue thereafter so long as [Ms. Javice] shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof [to enforce the Indemnification Agreement]) by reason of [her] Corporate Status, whether or not [she] is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement.” Ex. A, § 10.

44. Furthermore, the Indemnification Agreement contemplates that it will continue following a “Change in Control” (see Ex. A §§ 6(b), 6(c)) and provides that “[n]o amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal.” Ex. A § 8(a).

45. The Merger Agreement did not alter any of the above. It provides that “[JPMorgan Bank] agrees that all rights of the Indemnitees [including Ms. Javice] to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Closing Date as provided in . . . any indemnification agreements or arrangements of any member of the Company Group with respect to Indemnitees that have been made available to [JPMorgan Bank] shall survive the Closing Date and shall continue in full force and effect in accordance with their terms.” Ex. C § 6.2(a).

VI. The TAPD Bylaws

46. The TAPD Bylaws also make clear that Ms. Javice’s fees and expenses are covered. Section 8.6 of the TAPD Bylaws in effect on the date of the Merger Agreement provides that “[e]xpenses incurred by a director or officer in defending or investigating a threatened or pending action, suit or proceeding shall be paid by [TAPD] in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by [TAPD] as authorized in this Article VIII.” Ex. B § 8.6.

47. Plaintiff requested a copy of the current (post-Merger) bylaws of TAPD, but Chase has not provided them. Nevertheless, the relevant indemnification and advancement provisions remain applicable post-Merger. The Merger Agreement provides that “[JPMorgan Bank] agrees that all rights of the Indemnitees [including Ms. Javice] to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Closing Date as provided in the respective Organizational Documents of each member of the Company Group as in effect on the Agreement Date . . . shall survive the Closing Date and shall continue in full force and effect in accordance with their terms.” Ex. C § 6.2(a). The “Organizational Documents” include, among other documents, the “certificates of

incorporation and the by-laws of [the Company].” *Id.* § 1.1, Def. of “Organizational Documents.”

48. Furthermore, the indemnification and advancement provisions in the current bylaws of TAPD cannot be less favorable to Ms. Javice than the corresponding provisions in the TAPD Bylaws in effect on the date of the Merger Agreement. The Merger Agreement provides that “[s]uch rights shall not be amended or otherwise modified in any manner that would adversely affect the rights of the Indemnitees [including Ms. Javice], unless such modification is required by applicable Law.” *Id.* The Merger Agreement further provides that, “[f]or not less than six (6) years after the Effective Time, unless otherwise required by applicable Law, the Organizational Documents of the Surviving Company and its Subsidiaries shall contain provisions no less favorable to the Indemnitees with respect to indemnification and advancement of expenses to, and exculpation of, directors, officers, employees and agents than are set forth in the governing documents of the Company in effect on the Agreement Date to the extent made available to Purchaser.” *Id.*, § 6.2(b).

VII. The Merger Agreement

49. Section 6.2(a) of the Merger Agreement requires Defendants to provide indemnification to former directors, officers, employees and agents of TAPD—including Ms. Javice—as follows:

From and after the Closing Date, *[JPMorgan Bank] shall, and shall cause the Surviving Company⁶ and its Subsidiaries to, indemnify, defend and hold harmless, to the fullest extent permitted under applicable Law, the individuals who on or prior to the Closing Date were directors, officers, employees or agents of any member of the Company Group⁷* (collectively, the “Indemnitees”) with respect to all acts or omissions by them in their capacities as such or as trustees or fiduciaries of any plan for the benefit of employees of the Company Group or taken at the request of any member of the Company Group at any time on or prior to the Closing Date.

Ex. C § 6.2(a) (emphasis added).

50. Section 6.2(a) of the Merger Agreement further requires JPMorgan Bank to provide advancement to former directors, officers, employees and agents of TAPD—including Ms. Javice—“to the fullest extent permitted under applicable Law”:

. . . [JPMorgan Bank] shall pay any and all reasonable and documented out-of-pocket legal and other fees, costs and expenses (including the cost of investigation and preparation) of any Indemnitee under this Section 6.2 as incurred to the fullest extent permitted under applicable Law, provided that the person to whom expenses are advanced provides an undertaking to repay such advances. [JPMorgan Bank] shall also pay all reasonable and

⁶ Pursuant to the Merger Agreement, TAPD was the Surviving Company following the Merger of Finland Merger Sub, Inc. with and into TAPD. Ex. C § 2.1.

⁷ The Merger Agreement defines the “Company Group” as “(a) prior to the Closing, collectively, the Company and its Subsidiaries and (b) from and after the Closing, collectively, the Surviving Company and its Subsidiaries.” Ex. C. § 1.1, Def. of “Company Group.”

documented out-of-pocket fees, costs and expenses, including attorneys' fees that may be incurred by an Indemnitee in successfully enforcing this Section 6.2.

Ex. C § 6.2(a) (emphases added).

51. Further showing the parties' intent to extend advancement and indemnification rights post-Merger, the limited carve-outs to Defendants' indemnification and advancement obligations under Section 6.2 of the Merger Agreement are conditioned on consistency with the Organizational Documents, including the TAPD Bylaws:

Notwithstanding anything to the contrary in this Agreement, nothing in this Section 6.2, including any clause or subsection of this Section 6.2, shall require Purchaser or any of its Affiliates (including, after the Closing, the Company Group) to either (i) indemnify or advance expenses to any Indemnitee in respect of any Losses, judgments, fines, claims, damages, Liabilities, and amounts paid in settlement, in connection with any actual or threatened Actions arising out of, relating to, or in connection with any breach of this Agreement or any Related Document, for which such Indemnitee is not entitled to indemnification or advancement of expenses pursuant to the Organizational Documents of the Company or pursuant to this Section 6.2, or, to the extent not inconsistent with the Organizational Documents of the Company and any applicable indemnification agreement, for fraud, breach of fiduciary duties, willful misconduct, or crime (in each such case to the extent committed by such Indemnitee), or (ii) maintain any provisions in the Organizational Documents of the Company Group or in any Contract with the Company that would require such indemnification.

Ex. C § 6.2(i).

VIII. The JPMorgan Bank Bylaws

52. Beyond the above, JPMorgan Bank’s own Bylaws extend advancement and indemnification rights to Ms. Javice in her post-Merger position as a Managing Director. Section 5.01 of the JPMorgan Bank Bylaws provides for indemnification “to the fullest extent permitted by applicable law”:

The Bank shall to the fullest extent permitted by applicable law as then in effect indemnify any person (the “Indemnitee”) who was or is involved in any manner (including, without limitation, as a party or a witness), or is *threatened to be made so involved, in any threatened, pending or completed investigation, claim, action, suit or proceeding*, whether civil, administrative or investigative (including, without limitation, any action, suit or proceeding by or in the right of the Bank to procure a judgment in its favor, but excluding any action, suit, or proceeding, or part thereof, brought by such person (including without limitation an action, suit or proceeding against the Bank or any affiliate of the Bank) unless consented to by the Bank) (a “Proceeding”) by reason of the fact that such person is or was a director, officer, or employee of the Bank, or is or was serving at the request of the Bank as a director, officer, or employee of another corporation, partnership, joint venture, trust or other enterprise against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding (or part thereof). Such indemnification shall be a contract right.

Ex. D § 5.01 (emphasis added).

53. The JPMorgan Bylaws further provide that “[e]ach Indemnitee shall also have the right to receive payment in advance of any expenses incurred by the Indemnitee in connection with such Proceeding, consistent with the provisions of applicable law as then in effect.” *Id.* The JPMorgan Bylaws further describe the advancement obligations and process—“[i]n furtherance, but not in limitation, of the foregoing provisions—as follows:

All reasonable expenses incurred by or on behalf of the Indemnitee in connection with any Proceeding shall be advanced to the Indemnitee by the Bank within 30 days after the receipt by the Bank of a statement or statements from the Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the expenses incurred by the Indemnitee. In addition, such statement or statements shall, to the extent required by law at the time of such advance, and otherwise except as may be determined by or under the authority of the General Counsel, include or be accompanied by a written undertaking by or on behalf of the Indemnitee to repay the amounts advanced if it should ultimately be determined that the Indemnitee is not entitled to be indemnified against such expenses. Notwithstanding the absence of such a written undertaking, acceptance of any such advancement of expenses shall constitute such an undertaking by the Indemnitee.

Ex. D § 5.05(a).

IX. The JPMC Bylaws

54. JPMC's Bylaws, too, provide Ms. Javice with advancement and indemnification rights. The JPMC Bylaws contain nearly identical indemnification and advancement provisions to the JPMorgan Bank Bylaws. The JPMC Bylaws provide for JPMC's indemnification and advancement obligations as follows:

[JPMC] shall, to the fullest extent permitted by applicable law as then in effect, indemnify any person (the "Indemnitee") who was or is involved in any manner (including, without limitation, as a party or a witness), or is threatened to be made so involved, in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative, or investigative (including without limitation, any action, suit or proceeding by or in the right of [JPMC] to procure a judgment in its favor, but excluding any action, suit, or proceeding, or part thereof, brought by such person (including without limitation an action, suit or proceeding against [JPMC] or any affiliate of [JPMC]) unless consented to by [JPMC]) (a "Proceeding") by reason of the fact that such person is or was a director, officer, or employee of [JPMC], or is or was serving at the request of [JPMC] as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding (or part thereof). Such indemnification shall be a contract right. Each Indemnitee shall also have the right to receive payment in advance of any expenses incurred by the Indemnitee in connection with such Proceeding, consistent with the provisions of applicable law as then in effect.

Ex. E § 9.01.

55. The JPMC Bylaws also provide—“[i]n furtherance, but not in limitation, of the foregoing provisions,” as follows:

All reasonable expenses incurred by or on behalf of the Indemnitee in connection with any Proceeding shall be advanced to the Indemnitee by [JPMC] within 30 days after the receipt by [JPMC] of a statement or statements from the Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the expenses incurred by the Indemnitee. In addition, such statement or statements shall, to the extent required by law at the time of such advance, and otherwise except as may be determined by or under the authority of the General Counsel, include or be accompanied by a written undertaking by or on behalf of the Indemnitee to repay the amounts advanced if it should ultimately be determined that the Indemnitee is not entitled to be indemnified against such expenses. Notwithstanding the absence of such a written undertaking, acceptance of any such advancement of expenses shall constitute such an undertaking by the Indemnitee.

Ex. E § 9.05.

X. Non-Exclusivity Provisions

56. Each of (i) the Indemnification Agreement, (ii) the TAPD Bylaws, (iii) the Merger Agreement, (iv) the JPMorgan Bank Bylaws and (v) the JPMC Bylaws provides standalone rights to indemnification and advancement independent of any of the other documents. Each of these documents contains a non-exclusivity

provision, which clarifies that each document does not curtail, override, or restrict any of the others.

57. The Indemnification Agreement provides that “[t]he rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of directors or otherwise, of the Company.” Ex. A § 8(a).

58. The TAPD Bylaws provide that “[t]he indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 8.1 and 8.2 of this Article VIII shall be made to the fullest extent permitted by law.” Ex. B § 8.7.

59. Pursuant to Section 6.2(g) of the Merger Agreement, the parties, including JPMorgan Bank and TAPD, “expressly agreed that (i) the Indemnitees to whom this Section 6.2 applies shall be third-party beneficiaries of this Section 6.2

and shall be entitled to enforce the covenants contained herein and (ii) the rights set forth in this Section 6.2 are in addition to, and not in substitution of, any other rights to indemnification or contribution that any Indemnitee may have.” Ex. C § 6.2(g).

60. The JPMorgan Bank Bylaws provide that “[t]he right of indemnification and advancement of expenses provided in this Article V shall not be exclusive of any other rights to which a person seeking indemnification and/or advancement of expenses may otherwise be entitled, under any statute, by-law, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in the person’s official capacity and as to action in another capacity while holding such office.” Ex. D § 5.04.

61. The JPMC Bylaws contain a nearly identical provision: “The right of indemnification and advancement of expenses provided in this Article IX shall not be exclusive of any other rights to which a person seeking indemnification and/or advancement of expenses may otherwise be entitled, under any statute, by-law, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in the person’s official capacity and as to action in another capacity while holding such office.” Ex. E § 9.04.

XI. Defendants Refuse to Honor Their Advancement Obligations

62. Over the course of the period from September 2022 through the date of this Complaint, Ms. Javice has taken all necessary actions to secure her right to advancement in connection with the Subsequent Investigation and the Dispute. To the extent required by law or contract, Ms. Javice has undertaken in writing to repay amounts advanced with respect to each of the investigations and the Dispute if it is ultimately determined she is not entitled to indemnification.

63. On September 30, 2022, Plaintiff's counsel at Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") sent a letter to Defendants' counsel expressing concern regarding treatment of Ms. Javice during her employment at JPMorgan Bank, expressing the view that Ms. Javice was entitled to indemnification and advancement, and requesting copies of applicable directors' and officers' insurance policies, Organizational Documents of the Company, and documents related to the Merger Agreement.

64. Plaintiffs' counsel at Quinn Emanuel raised the issue of Defendants' indemnification and advancement obligations to her again at a meeting with Defendants' counsel on October 11, 2022 and by letter on October 19, 2022. The October 19, 2022 letter attached invoices (from both Mintz and Quinn Emanuel) for legal services rendered to Ms. Javice in connection with the Subsequent Investigation and the Dispute—separate from the smaller advancement of Mintz's

legal fees and costs incurred by Ms. Javice in connection with the Initial Investigation.

65. On October 21, 2022, Defendants' counsel responded by letter, claiming (incorrectly) that, under the Merger Agreement, "TAPD contractually negotiated away the rights of its directors, officers and other employees to seek advancement or indemnification from JPMC for actual or threatened actions related to, arising out of, or in connection [with] the Merger Agreement."

66. Plaintiff's counsel responded on October 26, 2022 by letter, contesting Defendants' interpretation of the applicable provisions and analyzing the Merger Agreement and the other sources of Ms. Javice's indemnification and advancement rights to demonstrate that Ms. Javice is entitled to advancement.

67. On October 28, 2022, Plaintiff's counsel at Mintz sent a letter to JPMC's counsel disputing certain of the limitations on advancement of expenses related to the Initial Investigation that JPMC's counsel had articulated in a September 21, 2022 letter. Mintz also provided Ms. Javice's undertaking to repay the amounts advanced by JPMC in connection with the Initial Investigation in the event that it should ultimately be determined in accordance with Delaware law that she is not entitled to indemnification against such expenses.

68. On November 4, 2022, JPMorgan Bank terminated Ms. Javice's employment. In its letter providing notice of termination, JPMorgan Bank raised,

among other things, the allegations discussed above regarding Ms. Javice's conduct as an officer of TAPD prior to and leading up to the Merger and her conduct as an employee of JPMorgan Bank related to this conduct.

69. On November 14, 2022, Plaintiff's counsel sent a letter to Defendants' counsel enclosing Ms. Javice's formal advancement demand directed to the Company and a signed undertaking.

70. On November 21, 2022, Defendants' counsel responded by letter with several arguments, asserting (incorrectly) that Ms. Javice is not entitled to advancement. Defendants falsely stated that under the Merger Agreement, "Frank contractually agreed that Indemnitees are not entitled to indemnification or advancement if the actual or potential claims relate to the Merger Agreement."

71. On December 1, 2022, Plaintiff's counsel sent a letter to Defendants' counsel explaining, among other things, that Defendants' interpretation of the Merger Agreement was incorrect and that Defendants' arguments failed to consider other sources of indemnification and advancement rights for Ms. Javice, including the Indemnification Agreement, the TAPD Bylaws, the JPMorgan Bank Bylaws and the JPMC Bylaws. For the avoidance of doubt, Plaintiff's counsel enclosed a supplemental undertaking.

72. On December 16, 2022, counsel for Defendants responded by letter, continuing to insist on its interpretation of the Merger Agreement and refusing to acknowledge Defendants' advancement obligations.

73. Counsel for Ms. Javice have sent Defendants invoices through mid-November 2022 from Mintz and Quinn Emanuel covering unpaid fees and costs incurred in connection with the Subsequent Investigation and the Dispute totaling hundreds of thousands of dollars, all of which remain unpaid by Defendants. Ms. Javice continues to incur additional legal fees and costs, including but not limited to fees and costs incurred in connection with enforcing her advancement rights.

74. To date, Defendants have declined to advance any of the fees, costs, or expenses incurred by Ms. Javice in connection with the Subsequent Investigation or the Dispute. Instead, Defendants have used delay tactics to avoid their advancement obligations, including by sending lengthy letters that contain arguments regarding their incorrect interpretation of the Merger Agreement.

COUNT I
Advancement Pursuant to Section 5 of the Indemnification Agreement
(Against TAPD)

75. Plaintiff reasserts each and every allegation in the foregoing paragraphs as if fully set forth herein.

76. Pursuant to Section 5 of the Indemnification Agreement, TAPD must "advance all Expenses incurred by or on behalf of [Ms. Javice] in connection with

any Proceeding⁸ by reason of” Ms. Javice’s status as a “director, officer, employee, agent or fiduciary of the Company” within “thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses.” Ex. A §§ 5, 13(a).

77. TAPD was a Delaware corporation and thus authorized by law to advance “expenses (including attorneys’ fees) incurred by former directors and

⁸ The Indemnification Agreement defines “Proceeding” as including “any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was an officer or director of the Company, by reason of any action taken by him or of any inaction on his part while acting as an officer or director of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.” Ex. A §13(f).

officers or other employees and agents of the corporation” in “defending any civil, criminal, administrative or investigative action, suit or proceeding” or in accordance with rights to advancement of expenses under any “bylaw, agreement, vote of stockholders or disinterested directors.” 8 *Del. C.* § 145(e), (f).

78. Without in any way stating the truth or falsity of any of the alleged issues that are the subject of the investigations and the Dispute, each of the Subsequent Investigation and the Dispute constitutes a “Proceeding by reason of” Ms. Javice’s “status as a “director, officer, employee, agent or fiduciary of the Company.”

79. Ms. Javice is therefore entitled under the Indemnification Agreement to advancement of expenses incurred in connection with the Subsequent Investigation and the Dispute.

80. On November 14, 2022, Ms. Javice’s counsel sent a letter to counsel for Defendants enclosing a statement from Ms. Javice requesting advancement and undertaking to repay any expenses advanced if it shall ultimately be determined that she is not entitled to be indemnified against such expenses, along with invoices evidencing legal fees and expenses Ms. Javice incurred through that date in connection with the investigations and the Dispute.

81. To date, TAPD has not honored its advancement obligations under the Indemnification Agreement.

COUNT II
Advancement Pursuant to Section 8.6 of the TAPD Bylaws
(Against TAPD)

82. Plaintiff reasserts each and every allegation in the foregoing paragraphs as if fully set forth herein.

83. Pursuant to Section 8.6 of the TAPD Bylaws, “[e]xpenses incurred by a director or officer in defending or investigating a threatened or pending action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article VIII.” Ex. B § 8.6.

84. TAPD was a Delaware corporation and thus authorized by law to advance “expenses (including attorneys’ fees) incurred by former directors and officers or other employees and agents of the corporation” in “defending any civil, criminal, administrative or investigative action, suit or proceeding” or in accordance with rights to advancement of expenses under any “bylaw, agreement, vote of stockholders or disinterested directors.” 8 *Del. C.* § 145(e), (f).

85. Without in any way stating the truth or falsity of any of the alleged issues that are the subject of the investigations and the Dispute, each of the

Subsequent Investigation and the Dispute constitutes a “threatened or pending action, suit or proceeding.”

86. Ms. Javice is therefore entitled under the TAPD Bylaws to advancement of expenses incurred in connection with the Subsequent Investigation and the Dispute.

87. On November 14, 2022, Ms. Javice’s counsel sent a letter to counsel for Defendants enclosing a statement from Ms. Javice requesting advancement and undertaking to repay any expenses advanced if it shall ultimately be determined that she is not entitled to be indemnified against such expenses, along with invoices evidencing legal fees and expenses Ms. Javice incurred through that date in connection with the investigations and the Dispute.

88. To date, TAPD has not honored its advancement obligations under the TAPD Bylaws.

COUNT III
Advancement Pursuant to Section 6.2 of the Merger Agreement
(Against JPMorgan Bank)

89. Plaintiff reasserts each and every allegation in the foregoing paragraphs as if fully set forth herein.

90. Pursuant to Section 6.2 of the Merger Agreement, JPMorgan Bank must, and must cause TAPD and its subsidiaries to, “indemnify, defend and hold harmless, to the fullest extent permitted under applicable Law,” Ms. Javice, “with

respect to all acts or omissions by [her]” in her capacity as a director, officer, employee or agent of [TAPD] “at any time on or prior to the Closing Date.” Ex. C § 6.2(a). Section 6.2 of the Merger Agreement further obligates JPMorgan Bank to “pay any and all reasonable and documented out-of-pocket legal and other fees, costs and expenses (including the cost of investigation and preparation) of any Indemnitee under this Section 6.2 as incurred to the fullest extent permitted under applicable Law, provided that the person to whom expenses are advanced provides an undertaking to repay such advances.” *Id.*

91. JPMorgan Bank is a Delaware corporation and is thus authorized by law to advance “expenses (including attorneys’ fees) incurred by former directors and officers or other employees and agents of the corporation” in “defending any civil, criminal, administrative or investigative action, suit or proceeding” or in accordance with rights to advancement of expenses under any “bylaw, agreement, vote of stockholders or disinterested directors.” 8 *Del. C.* § 145(e), (f).

92. Without in any way stating the truth or falsity of any of the alleged issues that are the subject of the investigations and the Dispute, the Subsequent Investigation and the Dispute are “with respect to . . . acts or omissions by [Ms. Javice]” in her capacity as a director, officer, employee or agent of [TAPD] at “time[s] on or prior to the Closing Date.”

93. Ms. Javice is therefore entitled under the Merger Agreement to advancement of expenses incurred in connection with the Subsequent Investigation and the Dispute.

94. On November 14, 2022, Ms. Javice’s counsel sent a letter to counsel for Defendants enclosing a statement from Ms. Javice requesting advancement and undertaking to repay any expenses advanced if it shall ultimately be determined that she is not entitled to be indemnified against such expenses, along with invoices evidencing legal fees and expenses Ms. Javice incurred through that date in connection with the investigations and the Dispute.

95. To date, JPMorgan Bank has refused to honor its obligations under the Merger Agreement and has refused to advance expenses, other than expenses for the Initial Investigation.

COUNT IV
**Advancement Pursuant to Section 5.01 of the JPMorgan Bank Bylaws
(Against JPMorgan Bank)**

96. Plaintiff reasserts each and every allegation in the foregoing paragraphs as if fully set forth herein.

97. Pursuant to Section 5.01 of the JPMorgan Bank Bylaws, JPMorgan Bank

shall to the fullest extent permitted by applicable law as then in effect indemnify any person (the “Indemnitee”) who was or is involved in any manner (including, without

limitation, as a party or a witness), or is threatened to be made so involved, in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, administrative or investigative (including, without limitation, any action, suit or proceeding by or in the right of the Bank to procure a judgment in its favor, but excluding any action, suit, or proceeding, or part thereof, brought by such person (including without limitation an action, suit or proceeding against the Bank or any affiliate of the Bank) unless consented to by the Bank) (a “Proceeding”) by reason of the fact that such person is or was a director, officer, or employee of the Bank, or is or was serving at the request of the Bank as a director, officer, or employee of another corporation, partnership, joint venture, trust or other enterprise against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding (or part thereof).

Ex. D § 5.01. Section 5.01 of the JPMorgan Bank Bylaws further provides that “[e]ach Indemnitee shall also have the right to receive payment in advance of any expenses incurred by the Indemnitee in connection with such Proceeding, consistent with the provisions of applicable law as then in effect.” *Id.*

98. Without in any way stating the truth or falsity of any of the alleged issues that are the subject of the investigations and the Dispute, the Subsequent Investigation and the Dispute are “threatened, pending or completed investigation[s], claim[s], action[s], suit[s], or proceedings” brought “by reason of the fact that [Ms. Javice] is or was a director, officer, or employee of the Bank, or is

or was serving at the request of the Bank as a director, officer, or employee of another corporation, partnership, joint venture, trust or other enterprise.”

99. Ms. Javice is therefore entitled under the JPMorgan Bank Bylaws to advancement of expenses incurred in connection with the Subsequent Investigation and the Dispute.

100. On November 14, 2022, Ms. Javice’s counsel sent a letter to counsel for Defendants enclosing a statement from Ms. Javice directed to TAPD requesting advancement and undertaking to repay any expenses advanced if it shall ultimately be determined that she is not entitled to be indemnified against such expenses, along with invoices evidencing legal fees and expenses Ms. Javice incurred through that date in connection with the investigations and the Dispute. On December 1, 2022, Ms. Javice’s counsel sent a letter to counsel for Defendants enclosing a statement from Ms. Javice directed to JPMorgan Bank and JPMC requesting advancement and undertaking to repay any expenses advanced if it shall ultimately be determined that she is not entitled to be indemnified against such expenses.

101. To date, JPMorgan Bank has refused to honor its obligations under the JPMorgan Bank Bylaws to advance expenses, other than advancing expenses for the Initial Investigation.

COUNT V
**Advancement Pursuant to Section 9.01 of the JPMC Bylaws
(Against JPMC)**

102. Plaintiff reasserts each and every allegation in the foregoing paragraphs as if fully set forth herein.

103. Pursuant to Section 9.01 of the JPMC Bylaws, JPMC

shall, to the fullest extent permitted by applicable law as then in effect, indemnify any person (the “Indemnitee”) who was or is involved in any manner (including, without limitation, as a party or a witness), or is threatened to be made so involved, in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative, or investigative (including without limitation, any action, suit or proceeding by or in the right of [JPMC] to procure a judgment in its favor, but excluding any action, suit, or proceeding, or part thereof, brought by such person (including without limitation an action, suit or proceeding against [JPMC] or any affiliate of [JPMC] unless consented to by [JPMC]) (a “Proceeding”) by reason of the fact that such person is or was a director, officer, or employee of [JPMC], or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding (or part thereof).

Ex. E § 9.01. Section 9.01 of the JPMC Bylaws further provides that “[e]ach Indemnitee shall also have the right to receive payment in advance of any expenses

incurred by the Indemnitee in connection with such Proceeding, consistent with the provisions of applicable law as then in effect.” *Id.*

104. Without in any way stating the truth or falsity of any of the alleged issues that are the subject of the investigations and the Dispute, the Subsequent Investigation and the Dispute are “threatened, pending or completed investigation[s], claim[s], action[s], suit[s], or proceedings” brought “by reason of the fact that [Ms. Javice] is or was a director, officer, or employee of [JPMC], or is or was serving at the request of [JPMC] as a director, officer, or employee of another corporation, partnership, joint venture, trust or other enterprise.”

105. Ms. Javice is therefore entitled under the JPMC Bylaws to advancement of expenses incurred in connection with the Subsequent Investigation and the Dispute.

106. On November 14, 2022, Ms. Javice’s counsel sent a letter to counsel for Defendants enclosing a statement from Ms. Javice directed to TAPD requesting advancement and undertaking to repay any expenses advanced if it shall ultimately be determined that she is not entitled to be indemnified against such expenses, along with invoices evidencing legal fees and expenses Ms. Javice incurred through that date in connection with the investigations and the Dispute. On December 1, 2022, Ms. Javice’s counsel sent a letter to counsel for Defendants enclosing a statement from Ms. Javice directed to JPMorgan Bank and JPMC requesting advancement and

undertaking to repay any expenses advanced if it shall ultimately be determined that she is not entitled to be indemnified against such expenses.

107. To date, JPMC has refused to honor its obligations under the JPMC Bylaws to advance expenses, other than advancing expenses for the Initial Investigation.

COUNT VI

Award of Attorneys' Fees, Costs, and Expenses Incurred in Enforcing Plaintiff's Advancement Rights under the Indemnification Agreement (Against TAPD)

108. Plaintiff reasserts each and every allegation in the foregoing paragraphs as if fully set forth herein.

109. Under Delaware law, Plaintiff is entitled to an award of attorneys' fees, costs, and expenses incurred in connection with an action to vindicate Plaintiff's rights to advancement, including an interim order requiring interim advancement of expenses incurred in connection with the instant action during the pendency of this action.

110. Pursuant to Section 7(d) of the Indemnification Agreement, "[i]n the event that [Ms. Javice] . . . seeks a judicial adjudication of [her] rights under, or to recover damages for breach of, this Agreement, . . . the Company shall pay on Indemnitee's behalf, in advance, any and all expenses . . . actually and reasonably incurred by [her] in such judicial adjudication, regardless of whether [Ms. Javice]

ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.” Ex. A § 7(d).

111. Plaintiff brings this action to enforce her rights to advancement, including under the Indemnification Agreement. Plaintiff has repeatedly sought advancement from Defendants and has provided undertakings with respect to the investigations and the Dispute. TAPD has wrongfully failed to advance expenses to Plaintiff, in contravention of its obligations under the Indemnification Agreement.

COUNT VII
**Award of Attorneys’ Fees, Costs, and Expenses Incurred in Enforcing
Plaintiff’s Advancement Rights under the Merger Agreement
(Against JPMorgan Bank)**

112. Plaintiff reasserts each and every allegation in the foregoing paragraphs as if fully set forth herein.

113. Under Delaware law, Plaintiff is entitled to an award of attorneys’ fees, costs, and expenses incurred in connection with an action to vindicate Plaintiff’s rights to advancement, including an interim order requiring interim advancement of expenses incurred in connection with the instant action during the pendency of this action.

114. Pursuant to Section 6.2(a) of the Merger Agreement, JPMorgan Bank must “pay all reasonable and documented out-of-pocket fees, costs and expenses,

including attorneys' fees that may be incurred by [Ms. Javice] in successfully enforcing this Section 6.2." Ex. C § 6.2(a).

115. Plaintiff brings this action to enforce her rights to advancement, including under the Section 6.2 of the Merger Agreement. Plaintiff has repeatedly sought advancement from Defendants and has provided undertakings with respect to the investigations and the Dispute. JPMorgan Bank has wrongfully failed to advance expenses to Plaintiff, in contravention of its obligations under the Merger Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order:

- a. Requiring Defendants to pay—or cause to be paid—to Plaintiff all reasonable attorneys' fees and all costs and expenses incurred in connection with the Subsequent Investigation and the Dispute, together with pre- and post-judgment interest on such amounts.
- b. Declaring that Plaintiff is entitled to advancement for any future attorneys' fees, costs, and expenses incurred in connection with the Subsequent Investigation and the Dispute, and the entry of an order pursuant to *Danenberg v. Fittracks, Inc.*, 58 A.3d 991 (Del. Ch. 2012).

- c. Requiring Defendants to pay—or cause to be paid—to Plaintiff all attorneys’ fees, costs, and expenses incurred in connection with enforcing Plaintiff’s right to advancement under the Indemnification Agreement, TAPD Bylaws, Merger Agreement, JPMC Bylaws and JPMorgan Bank Bylaws, together with pre- and post-judgment interest.
- d. Declaring that Plaintiff is entitled to advancement for any future attorneys’ fees, costs, and expenses incurred in connection with enforcing her right to advancement under the Indemnification Agreement, TAPD Bylaws, Merger Agreement, JPMC Bylaws and JPMorgan Bank Bylaws, the entry of an order requiring Defendants to advance attorneys’ costs and expenses incurred during the pendency of this action to enforce Plaintiff’s right to advancement, and the entry of an order pursuant to *Danenberg v. Fittracks, Inc.*, 58 A.3d 991 (Del. Ch. 2012).
- e. Awarding Plaintiff her costs, expenses and disbursements in this action, including attorneys’ fees and other costs and expenses.
- f. Granting such other and further relief as the Court deems just and proper.

OF COUNSEL:

Alex Spiro*

Maaren A. Shah*

JP Kernisan*

QUINN EMANUEL

URQUHART & SULLIVAN, LLP

51 Madison Avenue, 22nd Floor

New York, NY 10010

(212) 849-7000

/s/ Michael A. Barlow

Michael A. Barlow (#3928)

Samuel D. Cordle (#6717)

ABRAMS & BAYLISS LLP

20 Montchanin Road, Suite 200

Wilmington, DE 19807

(302) 778-1000

Attorneys for Plaintiff Charlie Javice

* *pro hac vice* motion forthcoming

Dated: December 20, 2022