IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re: SHAWE & ELTING LLC	C.A. No. 9661-CB **CONFIDENTIAL FILING** **CD-ROM Version To Be Filed**
PHILIP R. SHAWE, derivatively on behalf of TRANSPERFECT GLOBAL, INC., and in his individual capacity, Plaintiff, v. ELIZABETH ELTING, Defendant, & TRANSPERFECT GLOBAL, INC., Nominal Defendant.	C.A. No. 9686-CB
In re: TRANSPERFECT GLOBAL, INC. ELIZABETH ELTING, individually and derivatively on behalf of TRANSPERFECT GLOBAL, INC., and TRANSPERFECT TRANSLATIONS INTERNATIONAL, INC., Plaintiff, v. PHILIP R. SHAWE, Defendant, & TRANSPERFECT GLOBAL, INC., and TRANSPERFECT TRANSLATIONS INTERNATIONAL, INC.,	C.A. No. 9700-CB

Nominal Parties.	)	
ELIZABETH ELTING, Petitioner, v. PHILIP R. SHAWE and SHIRLEY SHAWE, Respondents, & TRANSPERFECT GLOBAL, INC., Nominal Party.	)	C.A. No. 10449-CB

PHILIP SHAWE'S POST-TRIAL BRIEF

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Dated: March 31, 2015

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PHILIP SHAWE'S POST-TRIAL BRIEF

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Dated: March 31, 2015

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PRELIMINARY STATEMENT

The evidence at trial confirmed that TransPerfect Global, Inc. ("TPG" or the "Company") continues to thrive even as Elizabeth Elting claims that her dissatisfactions with co-CEO Philip Shawe amount to corporate "deadlock" so paralyzing that the drastic step of forced dissolution via judicial intervention is necessary and appropriate. Not only was there no credible evidence adduced at trial that Elting's so-called "deadlocks" have harmed the Company, there was undisputed evidence that TransPerfect continues to operate at the highest level, with record-breaking revenues and profits each of the past several years. The undisputed evidence—$470 million worth—proves that TransPerfect's longstanding management team continues to achieve success daily by winning new clients, retaining current ones, increasing employee retention, keeping morale high, and "stalking #1" Lionbridge for the lead in the growing translation industry. JX2187; JX2318; JX2365; Tr. 555:4-24 (Shawe); 1209:11-1210:20 (Hagerty); 517:12-16 (Elting); 1656:23-1657:3 (Geller).[1]

In her direct testimony at trial, Elting herself identified no harm to TransPerfect's business, customers or performance, either from deadlock or any other source. Instead, in response to a question from the Court (after Elting had

[1] The trial transcript is cited as "Tr. __." Transcripts from depositions are cited as "[Deponent] __."

omitted any mention of harm to the Company from her otherwise well-rehearsed narrative about her personal upsets), Elting struggled to articulate her claim that Company "culture" seems changed to her, based on unspecified comments from unnamed employees. Tr. 510:1-513:1. Out of 4,000 employees worldwide, Elting neither identified nor produced anyone who corroborates her account. The diverse group of senior managers who did testify contradicted the unattributed hearsay on which Elting's claims depend. They reported no downturn in the "passionate," "proud," "Type A" culture that has driven the Company's phenomenal success. Tr. 1129:7-14 (Obarski); 1234:2-1235:8 (Hagerty); 1264:19-1265:2 (Marrero); 1368:24-1369:6 (Sank); 1656:23-1657:3 (Geller). As for the heated email exchanges on which Elting and her counsel focused, senior sales leader Kevin Obarski explained that at TransPerfect, "[We] call it Monday." Tr. 1164:18-21.

Even assuming there had been some cultural shift or loss of morale from Elting's solitary perspective, her feelings cannot justify judicial intervention. Stockholder discontent differs from harm to the business. Under Delaware corporate law, the business comes first. *See Unocal Corp.* v. *Mesa Petroleum Co.*, 493 A.2d 946, 958 (Del. 1985). In this context, Elting's testimony that 2014 was "the worst year of my life," Tr. 213:15-16, matters far less than that 2014 was the best year of the Company's life, *see* JX2187; JX2318 at 19. Indeed, research

reveals no case in which a court has intervened to improve "morale," personal feelings, or anything so amorphous.

Neither Section 226 nor the Court's "inherent powers" justifies intervention except under narrowly defined circumstances. Section 226(a)(2) allows the appointment of a custodian to resolve director deadlock only upon proof of "irreparable injury" to "[t]he business of the corporation." 8 *Del. C.* § 226(a)(2); *see TecSyn Int'l Inc.* v. *Polyloom Corp. of Am.*, C.A. No. 11918, at 3-4 (Del. Ch. July 14, 1992) (TRANSCRIPT); *Hoban* v. *Dardanella Elec. Corp.*, 1984 WL 8221, at *1 (Del. Ch. June 12, 1984). A business that remains "profitable" and "operates reasonably well" "is neither suffering nor threatened with irreparable harm." *Miller* v. *Miller*, 2009 WL 554920, at *3 (Del. Ch. Feb. 17, 2009); *see Barry* v. *Full Mold Process, Inc.*, 1975 WL 1949, at *4 (Del. Ch. June 16, 1975) (no irreparable harm where directors' dispute "does not appear to imperil the receipt of income"). And while Section 226(a)(1) does not require proof of "irreparable injury," the decision whether to appoint a custodian is "committed to the Court's discretion" in light of the nature and extent of any harm to the corporation, and the likely impact of intervention itself. *Miller*, 2009 WL 554920, at *4. A custodian should not be appointed "if there is no current useful purpose in appointing a guardian or if there is no harm or foreseeable risk to avoid." *Id.*

With the Company having its best years ever, judicial intervention cannot be justified by the sundry operational disputes that Elting alone calls "deadlocks." The business' performance proves that the disagreements Elting presents are minor relative to the teamwork that drives TransPerfect's complex, global, technology-enabled services business as a whole. In the litigation as in the workplace, Elting has created a cottage industry of controversy over minutia, while all around her business booms.

The evidence confirms that beneath the day-to-day disputes that were quickly identified as "squabbles" by the New York court where Elting first sought recourse, unsuccessfully, *see Elting* v. *Shawe*, Index No. 651423/2014, Hr'g Tr. at 59:14-22 (N.Y. Sup. Ct. June 26, 2014), lies Elting's drive to "cash out" at a price to which her actual stock ownership does not entitle her, at the expense of the Company's growth and prosperity, its 4,000 employees, and its global business clientele. The record establishes that at least since October 2013, when Elting hired Kramer Levin ("Kramer") and a lawyer-turned-banker from Kidron, she launched a calculated plan to force the sale of the Company, or force Shawe to buy her shares at the highest possible price, by refusing to exercise her business

judgment and by manufacturing "deadlock" for purposes of litigation.[2] This plan built on Elting's earlier initiative, starting in 2012, to condition her "dual approval" (or unilateral disapproval) of a wide range of business decisions not on their merits, but on her self-interested demand for dividends or other personal agenda items. Elting's demands for distributions reached extraordinary heights in 2012 and thereafter, as a result of Elting's purchase of a mansion in the Hamptons that year. In April 2013, Elting bullied accounting staff into effecting a $9 million transfer of funds to help pay shareholders' taxes, over Shawe's objection based on the Company's cash flow constraints, where the LLC that Elting and he had established could have provided $8 million easily. By August 2013, Elting seized control over the payroll system, threatened to terminate anyone who got in her way, and used the bottleneck of "dual approvals" to extract more distributions and more operational control. In this way, Elting gained responsibility for four divisions Shawe had previously managed but agreed to relinquish in exchange for Elting's pledge to let the business run, and to consider potential acquisitions on the merits, not as a means to "retaliate." Tr. 650:6-20; JX322.

[2] Elting's litigation team adopted a "carrot and stick" strategy, JX401 at 3, with Mark Segall of Kidron acting as the "carrot" by helping Elting pursue a high-priced voluntary buy-out, and Kramer acting as the "stick" by using litigation threats to pressure the negotiation. Segall 36:13-38:2.

Once Elting had litigation support behind her, she upped her demands for distributions, plus a "buy/sell" mechanism, while she reneged on her pledges to let the business run. As Michael Sank testified, for example, in Fall 2013, Elting froze the pursuit of acquisitions, then threatened to freeze leases of needed office space, unless she received millions in distributions, and unless dangerously under-qualified bookkeeper Gale Boodram received another in a series of "loans" from the Company. Tr. 1312:21-1313:2, 1321:19-1325:14 (Sank) (discussing JX456 and JX589); *see* Trujillo 120:25-121:23 (discussing JX462).[3] In this same period, according to Kristyna Marrero, Elting threatened that "there will never be another merger" unless Marrero canceled a senior management event, known as the "Avengers" meeting, in deference to Elting's undisclosed personal scheduling preferences. Tr. 1268:16-1269:19 (discussing JX338). As Obarski testified, in

[3] Elting listed Boodram as her sole anticipated fact witness at trial, but did not call her to testify. As Elting acknowledged, a question had arisen regarding Boodram's immigration status, casting doubt on whether Boodram could lawfully be employed. Tr. 415:16-416:7. To the extent Elting had notice of Boodram's immigration issues, Elting was complicit in exposing the Company to serious legal and financial risk. Shawe remains at a severe informational disadvantage about Boodram's status, not having received disclosure that would likely shed more light. Shawe testified that his suspicions about impropriety in the Elting/Boodram relationship prompted him to investigate Boodram and Elting in late 2013 and early 2014. Tr. 732:8-733:1, 860:24-861:7; Shawe 1/20/2015 172:21-173:2. This topic will be separately addressed in Shawe's opposition to Elting's motion for sanctions.

March 2014, Elting refused to hire a critical technology expert to address malfunction in the TRI division, again citing reasons that had nothing to do with the merits. Tr. 1144:5-1147:12 (discussing JX597). That same month, Elting withheld routine raises from all employees in two departments led by senior managers Elting had threatened with termination, and retaliation, for challenging other hold-ups. Tr. 748:9-19 (Shawe); Trujillo 27:19-28:14, 330:18-331:20 (discussing JX1391).

Elting's conduct worsened when litigation began in earnest, precipitated by a payroll "crisis" Elting had manufactured to create the appearance of an emergency. *Elting* v. *Shawe*, Index No. 651423/2014 (N.Y. Sup. Ct.). When the New York court denied Elting's preliminary injunction application (and vacated the TRO Elting had improperly obtained) for lack of significant or material harm, Elting went even further. In June 2014 and thereafter, with the aid of her personal "advisors" and her husband, Elting took steps to sabotage the Company's relationships with Goldman Sachs ("GS"), Bank of America ("BofA") and Cushman & Wakefield ("Cushman"). With calculated risk to the Company's relationships, Elting aimed not only to pressure Shawe, but to create evidence Elting later would use in an effort to give this Court the misimpression that the

disputes she had manufactured were causing some palpable harm. *See infra* at C(3).

The trial record reflects that throughout, Elting pursued her agenda by deploying Boodram to carry out her instructions, in violation of fundamental internal control principles. Elting used Boodram to make unauthorized distributions, retract necessary employee raises, and pay Elting's housekeeper, personal lawyers and litigation consultant with Company funds. Elting then rewarded Boodram with bonuses, loans, loan forgiveness and raises. JX126; JX450; JX477; JX573; JX2080; Boodram Demo. 1; *see infra* at D, E. When Shawe protested, Elting used Shawe's intemperate emails reprimanding Boodram as the centerpiece of Elting's attempt to dispossess Shawe of office and ownership.

In her pursuit of extravagant distributions and exclusive control, it has been Elting not Shawe who has attempted a "squeeze out." Shawe's testimony, as well as the contemporaneous communications between him and Elting, reflect his repeated efforts to negotiate with her, invite her contributions, and respect her input. Among other things, over the past 14 months, Shawe has made a series of offers designed to give Elting choices that include managerial reform to assist the parties in continuing their business relationship or, alternatively, to make Elting's shares more saleable to a third party. At Elting's insistence, Shawe also offered to

purchase Elting's shares, on terms that the evidence shows are consistent with the value of her stock, taking into account that what she owns is a 50% interest in a valuable but illiquid enterprise. The offers include terms that, at Elting's option, would allow her to benefit from appreciation in Company value over several years if her bankers' projections of continued success are correct.

Elting has not meaningfully responded to any of these proposals. Elting's non-response reflects that her aim is not to improve management, but to extract as much money as possible from the Company on her way out the door. *See* Tr. 1385:8-1386:5 (Stone). Elting told this Court in her Pre-Trial Brief (and reiterated at trial) that she "does not 'want out' of this company," has "no exit strategy," but instead "wants to continue owning and running," the Company. *See* Elting Pre-Trial Br. at 6-7; Tr. 176:12-24, 223:19-22, 243:20-23, 245:12-20. The testimony and documentary evidence at trial establish, however, that Elting has on many occasions expressed to colleagues and friends her desire to cash out and stop working. S*ee* Tr. 538:8-12, 573:7-10 (Elting), 778:9-16 (Shawe); 1177:1-21 (Obarski); 1365:3-24 (Sank); 1413:2-20 (Stone); JX158 at 1; JX1081 at 2; JX2014 at 1; JX2147 at 1; JX2256 at 3; JX2325 at 2; JX2370 at 1. Even Elting's one-time "offer" to buy Shawe's shares only made sense as a disguised offer to sell, according to various bankers, including Elting's. Tr. 1624:9-1627:11

(LeBrun) (discussing JX2037). Elting's several petitions and amended petitions to dissolve the Company invariably include a plan of sale in which Elting is a potential seller, while Elting's motion for sanctions directly calls for the Company to be sold. *See, e.g.*, Br. in Supp. of Elizabeth Elting's Mot. for Sanctions Against Philip R. Shawe at 2; Pet. Ex. 26.[4] Elting's October 2014 application for appointment of a temporary custodian included as a desired outcome the termination of nearly all of the Company's senior managers, including its Chief Technology Officer, Chief Information Officer, Chief Operating Officer and Chief Financial Officer, and their replacement with "strangers" hired by the custodian. *See* Nov. 18, 2014 Hr'g Tr. at 88, 105, 139-40. Indeed, just weeks before trial, Elting propositioned top sales leaders Brooke Christian and Kevin Obarski: convince Shawe to "go hand-in-hand" with Elting and sell the Company to outsiders, which Elting said would so enrich the "top 10 people in the company" (including Christian and Obarski) that "they would never have to work again." Tr. 1176:18-1177:16 (Obarski).

As Obarski and others testified, Elting's current exit strategy conflicts with the parties' commitments and planning for the past 22 years.

[4] Elting's Third Amended and Supplemental Verified Petition for Dissolution and Appointment of a Custodian or Receiver, and Verified Complaint, is cited as "Pet. __."

Tr. 1177:22-1178:9 (Obarski). Those commitments always included a long-term approach to achieve a high rate of growth through investment in people, technology and global outreach. Tr. 515:7-15 (Elting); 536:18-537:9 (Shawe); 1310:1-1311:6 (Sank); JX2318 at 19. Their plan was not to give either founder incentives to cash out of the business. It was instead always to set aside their personal feelings, support each other as businesspeople, vote for each other as directors, work through differences and devote themselves to building a great company for the future. Tr. 560:20-561:5, 758:4-10 (Shawe); 1413:3-1416:4 (Stone). This plan worked to bring both founders phenomenal returns including, in just the past six years, over $157 million in combined tax and non-tax distributions to the three stockholders along with ownership of a burgeoning debt-free business. Elting Demo. 3; JX2049; JX2050-55; JX2348.

Consistent with that long-term approach, when in 2007 Elting and Shawe decided to consolidate their businesses under a newly incorporated Delaware holding company, they chose not to adopt a stockholder exit mechanism. *See infra* at 56-58. What Elting now asks is that the Court impose upon the parties a bargain they never struck. Courts properly decline those invitations. *See Blaustein* v. *Lord Baltimore Capital Corp.*, 2013 WL 1810956, at *18 (Del. Ch. Apr. 30, 2013), *aff'd*, 84 A.3d 954 (Del. 2014).

There is no dispute that the parties' personal relationship is a challenging one. It has been all along. Elting's trial testimony focused primarily on her personal dislike for Shawe, allegedly dating back to their broken engagement nearly twenty years ago. She testified that even now she feels "bull[ied]," "stalked," or "terrorize[d]" by Shawe, offering this as reason to appoint a custodian to sell the Company. Tr. 15:6-8, 108:3-5, 216:22. However, the same emails to which Elting points as highlights of Shawe's alleged bullying include her own frontal attacks on him as "clueless," JX159 at 2; JX312, and "the biggest idiot of all time," JX349. In the very exchanges in which Elting says she felt coerced, she tells Shawe "I'll give you 2 minutes" to approve multi-million dollar distributions. JX170; Tr. 296:3-297:9. Elting is even tougher behind Shawe's back, calling him a "scumbag," a "psychopathic liar," a "thief" and a "crook" in emails and conversations with various employees. Tr. 1285:17-1286:9 (Marrero); 1316:17-1317:12 (Sank); 1660:23-1662:12 (Geller); Van Lunsen 213:14-18; JX353; JX1024 at 18. Her emails use language at least as coarse as Shawe's, to berate Shawe and staff about trivia, such as giving Christmas gifts, or his wedding plans. Van Lunsen 85:11-87:8, 213:1-22; JX190; JX489; JX2014; JX2370. According to several witnesses, Elting more than holds her own with Shawe and others. Tr. 563:18-564:3 (Shawe); 1167:3-20 (Obarski); 1384:1-1385:7 (Stone).

Shawe bullies nobody. Tr. 1129:15-17 (Obarski); 1244:3-19 (Hagerty); 1265:14-18 (Marrero); 1662:15-23 (Geller). Shawe does not malign Elting. Tr. 1291:12-16 (Marrero). Shawe acknowledges Elting's strengths, and remembers that she and he have overcome relationship issues before. Tr. 560:17-561:5 (Shawe); JX43; JX2014.[5]

Based on the evidence, the Court should grant Shawe the circumscribed relief he seeks, and should decline to order the drastic changes Elting seeks. The Court should rule that Elting's pattern of sabotage, her refusal to exercise business judgment regarding corporate needs and opportunities, her implacable drive for cash distributions, her use of Company funds for personal expenses, her attacks on Shawe and other Company personnel, and her manufacture of "deadlocks" together violated her duty of loyalty to the Company.

[5] The Court has no doubt observed that Shawe uses colorful language. Elting's claims about feeling threatened, bullied or deceived often involve emails or statements with movie references that Elting or her counsel mistook for reality. Shawe's references to "code red," Tr. 1080:13-22; JX666, and to "missile key is turned," Tr. 797:1-4; JX159, for example, are based on quotes from "A Few Good Men" and "War Games," respectively. The "boast" of which Elting's counsel also accused Shawe on cross-examination, Tr. 1075:13-24, was not that Shawe's father was an "expert liar," or that Shawe is too; it was a quote from the 1993 film "True Romance," in which a hitman boasts that his "father was the world heavyweight champion of Sicilian liars. From growin' up with him I learned the pantomime." *See* Video. In the movies, turning a "missile key" is not "threatening," as Elting's counsel called it on Shawe's cross-examination, Tr. 797:7-9, because the whole point is that it takes two keys to launch.

See Shocking Techs., Inc. v. *Michael*, 2012 WL 4482838, at *8 (Del. Ch. Oct. 1, 2012); *see infra* at 58-60.

The Court should also rule that, by contrast, none of Shawe's alleged misconduct involves self-interest, bad faith or any breach of loyalty. *See infra* at II. For purposes of Section 226, the Court should determine that because the "squabbles" and disagreements pose no risk of material harm to the Company, they do not justify taking the countervailing risks inherent in inserting a custodian into the management of the business. Much less do they justify requiring the Company to be sold or putting Shawe to the choice between purchasing Elting's shares at an extravagant price that would saddle the Company with debt, or selling his own shares only to see the Company "flipped" to strangers. The Company is Shawe's life's work. It remains the priority for him and the other senior managers Elting says she wants to terminate *en masse* and replace with strangers. The record reflects no reason why the Court should force fundamental change in this "amazing" Company's formula for success. Tr. 1843:12.[6]

[6] In her sanctions motion, Elting urges the Court to disregard the merits, and to award Elting "relief" more draconian than any she sought in her petitions or than was ordered in *In re Scovil Hanna Corp.*, C.A. No. 664-N (Del. Ch. Apr. 20, 2006) (TRANSCRIPT), or other sanctions cases on which she relies. Shawe will demonstrate in his opposition to Elting's motion for sanctions that there is no basis for Elting's demands. The Court should not be diverted from assessing the merits (continued . . .)

STATEMENT OF FACTS

A. TPG's Business Is Flourishing

Despite Elting's attempts to manufacture disputes and force dissolution, the Company is more successful than ever. In 2014, revenues reached an all-time high, having grown 17% from $402 million to $471 million over the previous year. JX2123; JX2289; JX2189. Net profits rose more than 50% from $52.1 million in 2013 to $79.8 million in 2014. JX2123. These astonishing gains reflect dedicated efforts by thousands of employees in sales, technology and production. The Company has no debt, JX2123; Tr. 32:3-6 (Elting), and is poised to take the lead over its main industry competitor, JX2187; Tr. 554:14-556:22 (Shawe). Testimony from numerous witnesses confirms that the dispute between Shawe and Elting has neither adversely affected the Company's performance nor caused any loss of business. *See* Tr. 517:12-16 (Elting); 555:4-24 (Shawe); 1172:10-15 (Obarski); 1210:6-20 (Hagerty); 1368:24-1369:6 (Sank); 1656:23-1657:3 (Geller). Disagreement over a handful of choices does not stop

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(. . . continued)
fully and fairly, including, without limitation, Elting's own unclean hands, demonstrated in her pattern of preferring her personal interest to that of the Company, the lack of injury to the Company from Shawe's supposed misconduct, and the absence of a legal right to the remedies she seeks on the merits.

the Company from executing without incident on thousands of choices each day. Tr. 767:16-768:7 (Shawe); Trujillo 341:23-346:7; JX2125 at 5-6.

At trial, Elting testified at length about her own unhappiness, but she omitted any description of harm to the Company until the Court specifically asked how she could square her claim that the Company is being harmed with the fact that "the company's extremely profitable and it's grown in profitability." Tr. 513:2-8. In response, Elting conceded that "the numbers are strong." Tr. 513:9-11. She then alluded to supposed "morale" or "culture" issues she sensed from talks with unidentified employees about unspecified discomfort. Tr. 510:7-513:1. Elting did not square that sense with trial witnesses' testimony that morale and productivity at TransPerfect remain high. Nothing supports Elting's speculation that "eventually" a tangible loss will emerge. Tr. 513:9-21.

B. Shawe's and Elting's Respective Roles at the Company

1. Shawe Is Critical to TPG's Success

As Chief Technology Officer Mark Hagerty testified, Shawe is "involved [in] every aspect" of the business, including technology, production, accounting, marketing and sales. *See* Tr. 1214:21-1215:6, 1218:14-1219:13;

JX1034 at 2-3; *see also* Van Lunsen 78:20-79:17.[7] Shawe directly manages 18 of TransPerfect's 23 divisions. JX2125 at 8. Even for the five divisions not under his direct supervision, Shawe provides extraordinary leadership. For example, in early 2014 Shawe responded to an urgent need to manage a massive project in one of Elting's divisions. Described by Obarski as "an impossible task," Tr. 1127:17-18, this "Jones Day" translation project succeeded because Shawe personally mobilized employees from other divisions, recruited former employees, and cold-called interpreters himself. *See* Tr. 1127:16-1128:14 (Obarski), 1265:23-1266:10 (Marrero). Hagerty credits Shawe with innovative solutions in the Company's accounting division, including, for example, the Rapid Invoice Processing System (RIPS) that has allowed the Company to handle a massive increase in invoices in recent years. Tr. 1218:15-1219:2; *see also* Van Lunsen 21:24-29:7, 193:14:195:13. Shawe is also the driving force behind TransPerfect's technology, both as used internally and as sold to customers. JX2125 at 8-9; JX1032 at 6; Brazil 22:24-23:16. As Hagerty testified, Shawe "saw the importance

[7] Shawe intended to call Jonathan Van Lunsen, TPG's Accounting Manager, to testify at trial, but could not due to time constraints. Tr. 1833:23-1834:8. Time limitations prevented Shawe from presenting additional testimony from many witnesses who played a role in events frequently alluded to at trial. Tr. 1832:3-1836:4. Elting, by contrast, ended trial with plenty of time to spare but did not use it to respond to Shawe's case-in-chief or dispute the evidence of her misconduct related by those witnesses who did testify.

of using [TransPerfect's] technology internally and mandated that this is going to happen," a "huge success" for cost control and efficiency. Tr. 1210:21-1211:10. Shawe testified that this initiative dramatically increased profits as "the cobbler's kids finally have shoes." Tr. 537:2-9. According to Geller, TransPerfect "has transformed itself into . . . the most formidable competitor in the industry in large part due to new services and new technologies, the latter . . . being one of the most important things that Phil [Shawe] has done for the company." Tr. 1668:13-17. Sank explained that customers that rely on the Company for technology expand their use of its traditional translation services, meaning that technology drives far more than the 15 percent of the Company's revenue directly attributed to it. Tr. 1310:19-1311:9 (Sank).

The record confirms that cutting-edge technology offerings came from acquisitions made under Shawe's leadership. Tr. 1311:22-1312:16 (Sank). Shawe was responsible for the acquisition of eTranslate, by which the Company acquired its first flagship technology product, Project Director, and key personnel including Hagerty and Keith Brazil. Tr. 1133:5-9 (Obarski). Shawe also worked closely with the technology team to create OneLink, a software program that provided TransPerfect with "a significant competitive advantage . . . in the marketplace."

Tr. 1133:10-14 (Obarski). Sales for Project Director and OneLink generated $64 million in revenue in 2014. Tr. 1208:6-12 (Hagerty).

Shawe makes his leadership felt globally, through extensive travel and engagement with the Company's employees. Sank testified that he and Shawe personally opened TransPerfect's international offices, including offices in London and Paris. Tr. 1309:21-1310:6. Shawe makes it his business to visit every office regularly. Tr. 541:8-21. Obarski testified that Shawe devotes considerable time to meeting with and coaching employees, to help develop their careers. Tr. 1130:10-1131:3; *see also* Tr. 1317:15-19 (Sank); JX1034 at 2-3. Only Elting professed ignorance of what Shawe does at work. Tr. 34:17-18. The record overflows with praise for Shawe's engagement, leadership and integrity. *See* Tr. 1126:24-1127:7 (Obarski); JX1363 at 10; Tr. 1265:3-13 (Marrero); JX1032 at 4-5; Tr. 1318:13-19:19 (Sank); JX1362 at 6; Tr. 1668:5-10 (Geller); JX1030 at 4-7; JX1034 at 2-4 (Hagerty); Asmah 347:9-348:2; JX1039 at 6; Van Lunsen 181:17-182:4, 211:14-212:2; JX1037 at 1-2; Brazil 57:7-24, 145:18-146:25; JX1036 at 3-4; Ng 358:24-359:12; JX1042 at 6, 8; JX2125 at 9-12 (Hoffman Report).

2. Elting Is Not Marginalized but Simply Less Involved

Elting has principal responsibility for managing the Company's traditional translation services, but has little involvement in the Company's M&A strategy, in recruiting employees or building relationships with them, or in the technology that drives the Company's success and future prospects. Tr. 1212:20-1214:13 (Hagerty); 1309:3-16 (Sank); JX1034 at 3; JX1036 at 5; JX1042 at 7; Trujillo 193:3-7. Geller testified that Elting "was absent from the company" for a period of 4 to 5 years and did not attend important sales events, including senior sales managers meetings. Tr. 1667:2-14. Geller and Hagerty testified that Elting has never visited their offices in San Francisco and Cupertino, respectively. Tr. 1670:20-23 (Geller); 1213:2-3 (Hagerty). Not a single witness said that Elting is making a meaningful contribution to the Company. *Cf.* Brazil 64:12-17; Hagerty 221:19-22; Van Lunsen 218:6-219:13 (discussing JX1037). As Obarski delicately put it at trial, "Liz allows us the opportunity to solve the problem on our own." Tr. 1129:18-21.

Elting claims that Shawe has "attempt[ed] to marginalize [her] and make her an outsider at the Company she founded." Pet. at 35. The only pre-litigation evidence Elting offered to support this claim is her own non-attendance at a 2013 senior managers' or "Avengers" meeting. Tr. 95:18-97:2. Both trivial

and inaccurate, Elting's account omitted that Shawe offered to charter a plane to get Elting to the meeting and, when that effort failed, arranged for her participation by videoconference. *See* Tr. 1268:16-1269:19 (Marrero); 1157:20-1159:16 (Obarski).

Any loss of influence or respect experienced by Elting is the product of her own conduct and litigation-driven attacks on the Company's leadership. Hagerty 250:22-51:11; Ng 296:2-298:22; Asmah 253:19-255:14 (discussing JX800). Elting has monitored employees' emails over their objections, publicly denounced and denigrated Shawe and other respected senior managers, publicly threatened to fire six senior managers, withheld employee compensation, generated negative publicity, endangered customer business, and petitioned to remove Shawe from office, impose a custodianship, and dissolve the Company. *See, e.g.*, Tr. 206:15-23 (Elting); Elting 20:20-24, 63:13-17, 75:11-13, 83:16-84:17; Tr. 1164:23-1166:7 (Obarski); JX963; Hagerty 332:3-333:25; Asmah 260:7-261:8; Ng 241:18-242:17; Pet. ¶¶ 142, 171-95, 202-21. Hagerty first learned that Elting wants him terminated when he read it in her court papers. Tr. 518:23-519:6 (Elting); 1236:9-1237:10 (Hagerty). Elting created highly visible staff shortages in the finance and accounting groups by refusing to permit hiring unless everyone hired, no matter how junior, reported directly to Elting. Khan 224:11-18,

237:23-244:9; Trujillo 339:9-342:11 (discussing JX1111); Van Lunsen 184:24-185:18. Understandably, employees expressed concern about Elting's chosen course. Hagerty 226:7-229:5 (discussing JX967); JX1034 at 4, 6-18 (Hagerty Aff.); JX1032 at 9 (Marrero Aff.); JX1362 at 8 (Sank Aff.); JX1037 at 2 (Van Lunsen Aff.); JX1036 at 7 (Brazil Aff.); JX1039 at 6 (Asmah Aff.); JX1042 at 12-17, 19 (Ng Aff.).

Elting treats as "insubordination" certain senior manager's reactions to Elting's attacks on them and the Company they serve, or the give and take among people who have grown accustomed over the years to speaking freely. *See, e.g.*, Tr. 1233:2-1235:13 (Hagerty) (discussing JX853); *see also* Bill George, *How IBM's Sam Palmisano Redefined the Global Corporation*, HARV. BUS. REV. (Jan. 18, 2012) (according to Palmisano, the former CEO of IBM, the technology industry requires "a high-performance, in-your-face, speak-your-mind culture"). As Obarski explained when asked about Obarski's "in-your-face" emails with Shawe (several of which Elting tried to portray at trial as Shawe threatening Obarski), "That's just the way we talk to each other." Tr. 1164:18-21.

3. Consistent with Her Disengagement from the Business, Elting Is a Seller Not a Buyer

Elting claims that, putting her dissatisfaction with senior management aside, she does not "want out" of the Company but instead is being "squeeze[d]"

out by Shawe. Elting Pre-Trial Br. at 6, 14; Tr. 176:12-20; 243:20-23. For years, however, Elting has expressed her desire to exit the business, or "cash out." Tr. 538:8-12, 778:9-16 (Shawe). For example, in February 2011, Elting emailed Shawe that his wedding plans made her feel "sickened beyond repair" and "ready to exit this situation." JX2014 at 1. A few months later, Elting told Shawe, "I think I need to take some serious time off. . . . I think it's time for me to cash out." JX2370 at 1. In April 2012, Elting asked Stone to draft a buy/sell agreement to facilitate her departure. JX2151. In January 2014, Elting demanded that Shawe propose an "exit strategy." JX2256 at 3. Multiple trial witnesses testified that Elting regularly told them and others that she "wants out." S*ee* Tr. 1177:2-21 (Obarski); 1365:3-9 (Sank). Elting told friends the same thing. *See* JX1081 at 2.

More recently, the parties' 2014 mediation exclusively focused on Elting's desire for an offer from Shawe to allow her to exit the business. Tr. 778:20-781:7 (Shawe); JX2360. Shawe testified that at the mediation "[t]here was no mention of [Elting] being a buyer . . . [and] there was no lack of clarity." Tr. 780:24-781:7 (Shawe). Elting did not deny that it was during this mediation, solely at Elting's request, that Shawe made his first offer to buy her shares, or that

the very next day Elting turned around to sue Shawe. JX2360; JX893.[8] Elting did not deny that, soon thereafter, she told Sank she would welcome a formal employee buy-out offer. *See* Tr. 1364:16-1365:9. She did not deny that on the eve of trial, she called on Obarski and Christian to convince Shawe to sell the Company to a third party and share the profits so that they would "never have to work again." Tr. 1176:18-1177:21 (Obarski).

Against this background, there can be no doubt that Elting's June 2014 "offer" to buy out Shawe for $300 million was really aimed at driving up the price at which she will sell; no rational buyer would have *doubled* Shawe's opening bid nor would she have insisted on paying all cash rather than offering to negotiate terms. Tr. 1624:9-1625:2 (LeBrun). As Elting's own Goldman Sachs bankers commented, the only way her offer "makes sense is if Liz is really a seller," and she just "needed to show him a bid she'[s] . . . ready to hit." JX2037.

C. The Parties' Disputes

1. "Dual Approvals"

[8] The parties entered into confidentiality agreements in October 2013 in the course of settlement discussions (JX431 at 13), and in April 2014 in the course of mediation (JX1396 at 1). Elting breached both agreements repeatedly. *See* Pet. ¶¶ 4, 18, 39 & Exs. 5 & 7.

Elting testified that her disputes with Shawe intensified in 2012 when, according to Elting, Shawe began threatening to withhold non-tax distributions in order to obtain independence for the divisions he managed, by removing a requirement of "dual approvals" over various decisions. Tr. 65:18-66:18. The opposite is true. It was Elting who in 2012 unilaterally initiated a "dual approval" requirement—contrary to their practice for the prior 20 years—and began insisting that all Company decisions, no matter how routine, require "dual approvals" from the co-CEOs. Tr. 623:1-625:2, 659:9-11, 1021:21-24, 1113:4-1115:15 (Shawe); 1168:13-1170:1 (Obarski); 1328:11-17 (Sank); 1389:1-10 (Stone); Van Lunsen 113:4-16; JX2325.

In the words of Chief Sales Officer Brooke Christian in response to Elting's "dual approval" demand in late 2012, "I have been under [the] impression for I don't even know how long that offers for [TPT] go to Liz and offers for TDC and T[DM] to Phil. If I am wrong and that has not been the case, I apologize. But every approval I have seen for probably five years followed this pattern." JX2325. Christian's memory tracks the Company's organizational history as legally separate corporations, with one providing document translation services, primarily under Elting's leadership, and the other providing translation technology and translation of content bound for a computer screen, primarily under Shawe's

leadership, from 1999 to 2004. Tr. 531:9-533:4-23, 1113:1-17 (Shawe); 1388:8-24.

Elting's new "dual approval" demand coincided with her new desire for outsized distributions to support an increasingly lavish lifestyle. *See* Geller 88:10-23. Prior to 2012, dividends generally were made twice each year, and never exceeded $2.5 million annually. Elting Demo. 5; JX2049-55. In early 2012, however, Elting wanted to purchase a mansion in the Hamptons, and Shawe agreed to non-tax distributions totaling $22 million ($11 million to Elting) by September 2012 to help her buy her "dream house." Tr. 313:22-314:19 (Elting); 591:24-592:22 (Shawe). Elting demanded even more by November 2012, using her "dual approval" rule to leverage Shawe to pay her in exchange for routine business decisions. *E.g.*, Tr. 1114:8-1115:15 (Shawe); JX170; JX17. Elting received $17 million in non-tax distributions in 2012, more than six times the amount she had received in any prior year. Elting Demo. 5; JX2049-55.

2. Elting's Demand for Distributions as the Price for Approving Business Matters

Every employee witness at trial testified to having observed Elting threatening to withhold approval of, or refusing to approve, beneficial business decisions — including acquisitions, leases, new hires, employee compensation and internal controls reform — solely as a means to gain personally through non-tax

distributions or increased power. *See, e.g.*, Tr. 1313:8-21 (Sank); 1269:2-14 (Marrero); 1149:6-21 (Obarski); 1658:7-1659:8 (Geller); 1245:4-1246:2 (Hagerty); *see also* Tr. 1386:6-13 (Stone); Hagerty 250:2-251:23. Elting offered no contrary evidence and conceded that Shawe, in contrast, has never once demanded a distribution or other personal benefit in exchange for approving a business decision. Tr. 302:16-303:2.

a. Elting's Demand for Distributions as the Price for Continuing the MotionPoint Litigation

From 2010 to 2013, Shawe directed TransPerfect's involvement in a successful patent litigation against competitor MotionPoint Corp., in which the Company both vindicated its right to sell OneLink, one of its flagship technology products, and prevailed on infringement claims against MotionPoint. *See* Tr. 608:2-613:17 (Shawe); *see generally TransPerfect Global, Inc.* v. *MotionPoint Corp.*, 2014 WL 6068384 (N.D. Cal. Nov. 13, 2014). In November 2012, at a "key juncture" in the MotionPoint case, Tr. 1386:6-13, Elting wrote to Shawe that unless she received immediate distributions "there's about to be no company," and she would halt work by Kasowitz, TransPerfect's litigation counsel. JX170. When Shawe responded that this would "lose [the Company] the ability to sell the proxy product," Elting replied: "I'll give you 2 minutes to decide. I won't call [Kasowitz] if you agree that we each take $ out immediately.

If you don't the [MotionPoint] suit is over." *Id.*; *see* Tr. 1386:6-13 (Stone). The next day, Shawe wrote: "We can move some money to the LLC . . . but please find a way to stop the double-approvals on everything. It's bad for morale." JX175. Elting responded: "It's 5 million each to our personal accounts or it's over. . . . Make your decision now." *Id.*

b. Elting's Demand for Distributions as the Price for Approving M&A Transactions

Acquisitions have driven TransPerfect's growth and success. *See* Tr. 536:18-537:9, 542:23-543:11, 548:13-551:16 (Shawe); 1310:19-1312:16 (Sank); 1133:4-9 (Obarski); 1207:23-1208:5 (Hagerty). Since 2009, the 20 or so businesses acquired by TransPerfect accounted for between 15% and 20% of TransPerfect's revenue, JX1333 at 11-12; Tr. 1310:19-1311:9 (Sank), and the beneficial impact of these acquisitions extends far beyond those direct revenues, *supra* at 17-18. Elting recently acknowledged the importance of M&A to TransPerfect, JX2372 at 2, and admitted that "certainly sales and revenues would be much greater if we could make acquisitions." Tr. 516:10-12.

At trial, Elting did not deny that, despite the importance of acquisitions, she has regularly delayed or disapproved them, solely in order to use them as leverage to extract distributions from the Company. *See* Tr. 301:20-302:15 (Elting); JX194. That pattern yielded a provision in the

"August Agreement" that "[n]o one will use an acquisition to retaliate against the other." JX322; Tr. 677:14-678:12 (Shawe). Within a month of signing the August Agreement, however, Elting suspended all M&A activity because she did not like the way the September 2013 "Avengers" meeting had been handled. Tr. 1312:21-1313:21 (Sank); 212:21-213:4, 516:16-517:4 (Elting); JX340. Elting threatened Marrero that "there w[ould] never be another merger" unless Marrero canceled the meeting. JX338; Tr. 1269:2-14 (Marrero); 590:7-21 (Shawe). According to Sank, Elting then froze further acquisition activity, cutting off several potential deals that were in the M&A pipeline. Tr. 1312:21-1313:2, 1314:9-1316:8; JX340; JX345; JX354.

In October 2013, just as TransPerfect was set to finalize its already-agreed acquisition of Vasont, Tr. 97:19-99:16 (Elting), Elting announced that she had engaged Kramer as counsel and would not allow the Vasont acquisition to go forward unless Shawe agreed to further non-tax distributions beyond the $1 million just distributed on October 3. JX371; Tr. 689:4-24 (Shawe); 459:24-460:12 (Elting); Elting Demo. 2; JX436; JX2049. After a meeting and exchange of emails with Kramer, Shawe acquiesced, and on November 14 Elting received another $2 million, giving her a total of $7 million in non-tax distributions in 2013. Elting Demo. 2; JX2049.

In December 2013, Elting again announced that all M&A activity was "on hold," again until Shawe agreed to a schedule for further distributions. *See* JX2275. Elting also told Sank that acquisitions were "on hold" unless he "persuaded Phil" to approve a $15,000 loan to Gale Boodram. Tr. 1323:9-19 (Sank); JX456. In February 2014, Sank asked for Elting's approval to make an offer for a translation firm that focuses on legal and oil and gas clients. JX589 at 4-5; Tr. 1323:20-1324:9 (Sank). Elting responded, "Until Phil lives up to his written agreement with me, we are shut down on any further M&A growth at this company." JX589 at 2; Tr. 1324:10-21 (Sank).

Elting's refusal to consider M&A opportunities on the merits since mid-2013 has cost TransPerfect the opportunity to grow and compete in an evolving marketplace. *See* Tr. 1341:2-4 (Sank). Missed opportunities included CLS, since acquired by Lionbridge, TransPerfect's largest competitor. *See* Tr. 1325:23-1326:11 (Sank). TransPerfect also missed opportunities to acquire a $56 million a year company in Sweden and a "unique opportunity" to acquire Ji2, one of only two "discovery companies" in Japan. *Id.* at 1326:12-1328:2 (Sank).

Elting has not disputed that she cost the Company the chance to pursue those acquisitions without regard to merit. Instead, Elting contends that her freeze reflects her refusal "to invest another penny with Phil," Tr. 212:21-213:6, or

to bring another company into a "dysfunctional" environment, Tr. 516:24-517:4. These rationales cannot be reconciled with the fact that Elting was perfectly happy to allow acquisitions to proceed, so long as Elting got paid for signing off.

c. Elting's Demand for Payment as the Price for Approving Office Space the Company Needs

On December 2, 2013, Roy Trujillo, the Company's Chief Operating Officer, asked Elting to sign leases for much-needed space in Pune, India and Miami, Florida. *See* JX462; Trujillo 120:8-121:21. Elting refused, stating, "[N]ot approved, this is not approved, its leverage, what else do you have." *Id.* That same day, Elting told Shawe that the Pune lease, and various other items including acquisitions, were on hold until Shawe again met with her "advisors" about further distributions. JX2141; Tr. 675:6-20, 719:4-22, 731:9-17 (Shawe). Elting simultaneously told Sank that she would not approve the Pune lease and would put a "hold" on acquisitions unless Shawe agreed to a loan for Gale Boodram of $15,000. JX456; Tr. 1321:13-1323:19 (Sank) ("Do not ask me again until you have persuaded Phil on the Gale thing. Also, acquisitions are on hold . . . ."); JX1362 at 3.[9] Elting then refused to approve leases in Colorado and Luxembourg,

[9] Elting denied having made the statement to Trujillo, Tr. 468:8-17, but not having made substantially the same statement in emails to Shawe and Sank on the same day. JX2141; JX456. Elting's denial that she told Trujillo what she told (continued . . .)

JX513; Trujillo 100:4-17 (discussing JX1391), and in London, where the office was so cramped that people had to work in the kitchen, JX993. In response to the London lease request, Elting forwarded the email to her husband, Michael Burlant, and her litigation team, cynically asking: "How should I handle? What about we require a buy sell agreement (for the good of the company) in order to move forward?" *Id.* Burlant—TransPerfect's real estate broker at Cushman—responded that a colleague from Cushman had "reached out to [him] last week" and he had "put him off." *Id*. The delay orchestrated by Elting and Burlant kept London personnel in cramped conditions for at least six months. Tr. 663:24-664:16 (Shawe).

d. Elting's Demand for Distributions as the Price for Hiring New Employees

TransPerfect's growing business requires steady hiring, promotions and compensation of employees. *See* Tr. 32:17-33:10 (Elting); 535:9-19 (Shawe); 1790:1-2 (Hoffman). As her price for approving that growth, Elting repeatedly demanded that she be paid first. On March 12, 2013, for example, Elting refused to approve a promising sales hire "until the dividend happens." JX227;

(. . . continued)
others is not credible. Elting compounds the wrong by seeking to terminate Trujillo for his allegedly "disrespectful" reaction to Elting's use of "leverage." Tr. 206:18-207:16 (Elting).

Tr. 316:9-319:15 (Elting). Shawe promptly agreed to a $1 million distribution, and, on that basis, asked Elting also to approve a necessary hire for a TransPerfect subsidiary. JX2340; Tr. 322:11-323:17. Elting replied: "At this juncture it needs to be 3.5 million each." JX2340; Tr. 323:18-21. The next day, Shawe approved $4 million in distributions ($2 million to Elting), and again asked Elting to approve the outstanding hires. JX233; Tr. 330:18-334:14. Now Elting demanded "6 million to proceed." JX233.; *see also* JX234. Shawe again reached out to Elting, seeking a broader "peaceful resolution" and asking her what distribution parameters would satisfy her. JX245. At Elting's request, Shawe then offered a distribution of $6 million *each* in addition to $2 million per quarter. *Id.* When asked if that "nail[ed] it down," Elting responded "No." *Id.*; Tr. 338:23-340:1 (Elting).

Elting likewise interfered with the hiring of technology expert Chris Patten, whose skills were urgently needed at TRI, a translation call center for which Elting has management responsibility. In the fall of 2013, Elting had approved hiring Patten, but Patten declined. Tr. 1144:11-16 (Obarski); Patten 31:10-15. In February 2014, after costly outages at TRI, Shawe persuaded Patten to reconsider and join TransPerfect. Tr. 1137:24-1138:7, 1144:22-1146:11 (Obarski); Patten 116:15-117:9, 123:4-124:6. Obarski urged Elting to approve

Patten's hire, warning that not hiring him "w[ould] put the whole business in danger." JX597; Tr. 1147:13-1148:2. Elting refused, stating, "[W]e won't be making any hires of this magnitude until Phil and I iron out larger, company-wide matters." JX597; Tr. 1146:24-1147:12.

To meet TRI's urgent need, Shawe hired Patten personally and put him to work. Tr. 661:12-18 (Shawe); Shawe 2/4/15 at 563:27-35. Elting cites this as purported misconduct by Shawe, and continues to refuse to move Patten onto the Company payroll, despite Obarski and Christian's pleading with her that "this is the guy you want to stand next to you in the fox hole," and "[a]nyone anywhere close to the business knows that he is more critical to it than any other person." JX2033; Tr. 1154:4-1155:21 (Obarski). At trial, Elting acknowledged that she does not know what value Patten adds or whether he is doing a good job because she has "never spent time with [him]" and "do[esn't] know much about [him]." Tr. 495:21-500:11.

3. Elting's Sabotage of Valuable TransPerfect Business Relationships

In June 2014, Elting's "emergency" application for a preliminary injunction removing Shawe from all functions at TPG's New York subsidiary TPI was denied by Justice Schweitzer, principally on the ground that the parties' "squabbles" caused the Company no significant or material harm. *See Elting*

v. *Shawe*, Index No. 651423/2014, Hr'g Tr. at 59:14-22. This ruling took away from Elting the temporary restraining order she had improperly obtained in early May 2014, based on misrepresentations for which she would later be sanctioned by Justice Schweitzer. *See Elting* v. *Shawe*, Index No. 651423/2014, Order (N.Y. Sup. Ct. Dec. 22, 2014) (Dkt. No. 665). It meant that the disputes and "deadlocks" Elting had manufactured as of June 2014 did not yield her the control she sought. Elting therefore set about creating the appearance of more "deadlocks" and appearance of "irreparable harm" that she could present to this Court when seeking a second bite at the apple.

a. Goldman Sachs

In June 2014, TransPerfect was in the process of negotiating a significant contract with Goldman Sachs ("GS") to perform translation services for its Asia business. Tr. 227:11-15 (Elting). At the same time, Elting was working with GS bankers on developing her "offer" to buy out Shawe. Tr. 225:5-229:18 (Elting); JX982. When GS inquired into the significance of Elting's having commenced the New York action, Segall responded that, contrary to Elting's allegations, Elting's lawsuit has "nothing to do with the very strong underlying health of the business," and that "[t]he dissolution proceeding is simply the motion that had to be filed . . . to force the buy/sell process to begin in earnest." JX982.

Segall went on to say that he was "of two minds on how to proceed" – either reassure GS it could continue doing "business as usual" with TransPerfect, or "use this commercial matter with Goldman as a way to move the ball forward" in pursuit of Elting's buy/sell agenda. *Id.*

The Elting team chose the latter option. First, Segall asked GS to send Elting an email, which she could then distribute internally, to the effect that GS would not continue negotiating the commercial relationship until it had "confidence that the [buy-out] process is moving forward," along with three years of audited financial statements. *Id.* When GS sent the email to Elting as requested, JX1019, Elting distributed it, as planned, to Shawe and several Company employees as purported evidence that having audited financial statements would benefit TransPerfect, and that she and her team were "waiting for Phil to agree" to an audit and a deal. *Id.*; *see also* JX2036.

Elting denied approving Segall's email to GS, Elting 2/5/15 452:16-455:24, but Segall testified, more credibly, "I did not send this out on my own." Segall 163:19-25. In any event, Elting acknowledged she read Segall's email on the same day it was sent and admitted she never told Segall it was inappropriate. Tr. 237:22-24, 526:7-9.

Segall did not testify at trial, because Elting refused to make him available. There is no basis to believe that Segall was, as Elting speculated at trial, just aimlessly "writing words that—that [GS] could use to—to communicate how they feel." Tr. 233:9-14. Elting's failure to make her banker available to testify, along with her claim that virtually everything he did from the time he was first retained was part of her litigation strategy, supports an inference and finding that Segall put TransPerfect's relationship with GS at risk for Elting's litigation purposes, while acting as Elting's agent and with her knowledge. Feb. 20, 2015 Telephonic Conf. Tr. at 62:7-65:4.

b. Bank of America

In the same period, Elting made similar mischief with BofA, a current TransPerfect client that was also being consulted by Elting about financing a theoretical buyout of Shawe's interest in TPG. Tr. 256:18-22 (Elting). On June 5, Bryan Cohen, the BofA vendor-manager responsible for TransPerfect business, contacted TransPerfect expressing concerns about Elting's lawsuit. Cohen 17:12-18:12; JX971. After performing an on-site review of the Company in August, however, Cohen recommended closing out the TransPerfect "issue" because it was clear that TransPerfect is "a stable and strong company." JX1263; Tr. 261:11-20.

A few weeks later, however, Cohen mysteriously reversed course and sent an email demanding that TransPerfect provide three years of audited financials, wrongly stating that they were required by Section 10 of BofA's contract with TransPerfect. JX1159. Just minutes before Cohen sent this request, he sent the same TransPerfect addressees a separate email alerting them that he was doing so at Elting's "request" in order "to help things along with the 'issue.'" JX1160. At his deposition, Cohen testified that Elting told him that audited financials were the "key" to getting her dispute with Shawe resolved, and that Elting's personal investment banker at BofA had told Cohen that Elting needed audited financials to obtain financing. Cohen 48:10-18, 200:3-20. Cohen also confirmed that BofA had previously approved TransPerfect as a vendor without audited financial statements. Cohen 95:8-97:12; 227:21-228:2.

In her motion to appoint a temporary custodian, Elting represented that she had "recently learned [that] numerous customers require and specifically demand 'audited' financial statements," citing the email she had obtained from Cohen as an example and attesting to its validity. Br. in Support of Elting's Motion for the Appointment of a Temporary Custodian at 12-13; Elting Aff. ¶ 7 & Ex. 8.

At trial, Elting acknowledged that she "likely" told Cohen that having audited financial statements would help to resolve the dispute with Shawe, Tr. 259:14-19, but denied that she had asked Cohen to send the email demanding audited statements, Tr. 184:14-21; 263:2-264:13. Both Elting and Cohen admitted that BofA's contract with TransPerfect does not, in fact, require audited financials. Tr. 266:5-15; Cohen 67:19-68:6; JX502 ¶ 10. Neither could explain the coincidence of their common misstatement.

c. Cushman

As discussed above, in June 2014 Elting suggested that to gain leverage in buyout negotiations with Shawe, Burlant delay Cushman's response, as TransPerfect's real estate broker, to the Company's request for help in getting badly needed office space in London. *See supra* at C(2)(c). In addition, in September 2014, Cushman vice-chairman Dale Schlather instructed Cushman employees to "squash" Cushman's translation business with Translations.com. JX2059; JX1201; Schlather 111:9-113:7. When Schlather was informed that his

instruction had been carried out, he immediately notified Burlant, and Burlant thanked him. JX1201.[10]

D. Elting's Exploitation of Boodram to Obtain Unilateral Control of Certain Operations, and to Fund Personal Expenditures

Over the more than 15 years Gale Boodram worked at TransPerfect, Elting insisted that Boodram be given responsibilities far exceeding her skill level and proper internal control standards, while simultaneously rewarding Boodram with generous compensation and loans. Hired as a bookkeeper, Boodram served an unsuccessful stint as TransPerfect's Controller, Tr. 1400:1-15 (Stone); Boodram 40:2-11, then was demoted from that role in 2005 after Nil Shah, an independent consultant, issued a report criticizing her competence and warning that her role raised "serious questions about internal controls and pose[d] a significant risk to the company." JX897 at 4-5; *see also* Tr. 1400:6-17 (Stone); Stone 397:16-398:3; Van Lunsen 187:3-193:8, 202:3-210:24. Shah noted that Boodram "thinks she reports to Liz." JX897 at 5.

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[10] Shawe has been prejudiced by pre-trial rulings that denied him further discovery regarding Elting's and Burlant's improper use of both TransPerfect's and Cushman's business to advance the couple's personal interests. For present purposes, because Elting has interposed the Cushman relationship as an area of "deadlock" or alleged misconduct by Shawe, while asserting "spousal privilege" and other immunities from disclosure as a shield, the Court should resolve any evidentiary issue regarding Cushman in Shawe's favor. *See, e.g.*, *Grunstein* v. *Silva*, 2012 WL 5868896, at *1 (Del. Ch. Nov. 20, 2012).

Despite her demotion, Boodram retained an inappropriate level of authority and control over payroll and disbursements from Company accounts, all without appropriate backup. *See* Tr. 1400:23-1408:4 (Stone); JX2286. At trial, Stone testified that "Gale is a good bookkeeper, but her performance is problematic because she's very difficult to work with," "was personally responsible for bills being paid late," and "[t]his problem has been going on for years." Tr. 1401:1-13. Sank testified that, for over ten years, he has found Boodram incompetent, "dysfunctional," unable to manage people effectively, and "[n]ot at all" appropriately used by Elting. Tr. 1319:20-1321:12; *see* JX1362 at 1-2. Van Lunsen, who worked under Boodram before she was demoted and is now the Company's Accounting Manager, described Boodram as "abrasive" and a "terrible manager." Van Lunsen 187:17-188:2. Discovery revealed that Boodram has serious debt problems, including tax liens arising out of a payroll impropriety. JX2080; JX2327; Boodram 396:4-398:12. After trial, Boodram was terminated because she refused to provide documentation establishing that she is eligible to work under U.S. immigration laws. *See* Tr. 415:16-416:10 (Elting); Shawe's Opp'n to Mot. for Sanctions.

Elting has consistently fought to keep Boodram in control of payroll and other payables, despite the efforts of Shah, Stone, and others to address the

internal control concerns and potential for "collusion," as Stone defined it, arising from Boodram's role. *See, e.g.*, Tr. 1401:17-1408:4 (Stone); JX84; JX2286; JX789; JX352; JX417; JX1033 at 3-6. This alarming situation culminated in Boodram's unauthorized transfer of millions of dollars in April 2013, prompting Shawe to investigate Boodram and Elting's dealings. In September 2013, despite repeated warnings, Boodram implemented a further unauthorized distribution and continued to commandeer payroll. JX341. In October 2013, Shawe asked Elting to agree to transition some of Boodram's payroll duties to Fiona Asmah and Jasmina Pasic. Tr. 111:5-17 (Elting); JX417; JX399; JX2284. Elting insisted that Shawe approve a $15,000 loan to Boodram in return. Tr. 701:21-702:16 (Shawe); 1316:17-1317:9 (Sank); JX354; JX2047; JX573. Shawe approved the loan, but Elting never transitioned Boodram's role. Tr. 702:9-703:2 (Shawe); JX573; JX768; JX789; Shawe 2/4/15 at 593:25-598:25; *see also* Tr. 1401:1-1404:24 (Stone) (summarizing multiple failed attempts to transition Boodram's role). Elting kept solely to herself and Boodram a TPG checkbook, and had statements sent only to her home. Tr. 787:5-788:6 (Shawe). Throughout, Elting rewarded Boodram with an outsized salary, plus loans totaling $85,000 that Elting has permitted Boodram to repay (and on some occasions fail to repay) on a schedule of Boodram's choosing. Tr. 412:9-414:19 (Elting); JX1385.

Boodram carried out Elting's decision to use corporate funds to pay Kramer and Kidron in October 2013 for their work advising Elting on potential litigation against Shawe. JX450; JX477; JX378. Boodram was the subject of Kramer's several emails in late 2013, sent to wide audiences of TransPerfect employees, denigrating Shawe's authority, propping up Boodram's access to Company funds and property, and threatening suit against Shawe and the Company on Boodram's behalf. JX405; JX2141. Boodram's continued access, and her use of it to curb other employees' access, permitted Elting to implement raises in 2014 that discriminated against all employees in departments run by senior managers Elting deems too loyal to Shawe, to reverse a "supplemental" payroll that Shawe had authorized to equalize all departments, and to manufacture a false payroll "crisis" that launched litigation. Boodram's further access to her computer was the principal subject of Kramer's "emergency" application in New York. *See, e.g.*, Verified Compl. ¶ 3, *Elting* v. *Shawe*, Index No. 651423/2014 (May 8, 2014) (Dkt. No. 2). Until her recent involuntary departure, Boodram continued to exercise control over payroll and the processing of checks, based only on Elting's instructions. JX399; JX415; Asmah 376:2-379:21.

E. Elting's Misappropriation of Corporate Funds

1. Elting's Unauthorized $21 Million Distribution in April 2013

As a Subchapter S Corporation, it has always been the Company's practice to make distributions to its stockholders to cover their personal taxes attributable to the Company's income, with each tax distribution jointly approved by Shawe and Elting. Tr. 623:7-12, 1109:17-24 (Shawe); 1482:15-1483:2 (Stone); JX273. In April 2013, Shawe and Elting's tax liability was an unprecedented $21 million. Tr. 75:3-8 (Elting); 1393:12-17 (Stone). Shawe was concerned that paying that amount from the Company would leave it without sufficient working capital. He therefore proposed that some of the money come from the LLC, which held roughly $8 million at the time. JX266; JX274; JX280; Tr. 76:5-13 (Elting); 1031:5-24 (Shawe); 1393:19-1394:7 (Stone). Elting resisted and, without deliberation, discussion or Shawe's consent, caused at least $9 million in Company funds to be transferred to a TPG account from which she could make payments to tax authorities without Shawe's signature. JX271; JX591. Elting accomplished this, with Boodram's help, by threatening to fire a distraught Lora Trujillo unless she made the transfer and then by forcing another Finance Department employee, Jasmina Pasic, to improperly use the password of a third employee, Fiona Asmah.

JX2279; JX1364; Asmah 158:10-161:4; Tr. 81:16-83:1 (Elting); 1394:11-1395:21 (Stone).

Elting did not dispute these facts at trial, but contended that her actions were justified because Shawe was "trying to block" the payment of the taxes. Tr. 350:19-351:3. This assertion is unsupported by any evidence, and makes no sense in light of Shawe's proposal to use LLC funds, and his personal interest in getting his own taxes paid. *See* Tr. 613:19-614:13 (Shawe).

Just as Shawe feared, Elting's unauthorized distribution resulted in a "cash squeeze," delays in payments to key vendors and numerous vendor complaints. Tr. 614:14-615:17 (Shawe); 1397:180-1398:5 (Stone); JX290; JX2377. The cash squeeze lasted through the next estimated tax payment date, June 15, 2013. Tr. 1398:11-1399:8 (Stone); JX299.

Elting testified that she believes employees somehow conspired to "make it look like" there was a cash squeeze when there was none. Tr. 358:1-9. Elting, however, could not recall speaking to anyone other than Boodram on this subject, Tr. 356:1-357:7, and no evidence or witness supports Elting's conspiracy theory.

2. Elting's Misuse of Company Funds to Pay Her Personal Lawyers and Financial Advisor

Elting admits that in late 2013 she used TPG funds to pay approximately $144,000 to her attorneys at Kramer as well as approximately $15,000 to Kidron, the financial advisor that Kramer misleadingly presented to Shawe on October 30, 2013 as a resource for him and the Company, but now describes as a litigation consultant of Elting's from October 9, 2013 on. *See* Tr. 58:12-19 (Elting); JX450; JX477; JX378. At trial, Elting said that that these payments were not improper because "the plan all along was to true it up in January, just three months after." Tr. 58:16-19. Stone and Shawe both testified, however, that personal expenses should never be run through the business and deducted as part of the "true up" process, which only applies to "unagreed-on" business expenses that are properly deductible. Tr. 741:7-742:4 (Shawe); 1377:13-23 (Stone).[11] To obtain Stone's initial support for treating the Kramer and

[11] Shawe and Elting use the term "unagreed-on" business expenses to refer to expenses that were deductible for tax purposes but which the two had not agreed upon. For example, if Shawe held a team-building event and Elting did not agree, it would be treated as "unagreed-on" and Elting would get a compensation "true-up" at year end. Tr. 741:14-22 (Shawe); 1376:8-12 (Stone). When Shawe charges personal expenses to his company credit card, he reimburses the Company directly for those expenses by personal check. Tr. 743:21-744:20 (Shawe); 1377:24-1378:18 (Stone); JX2165. Thus, those expenses are not part of the true-up process and are not deducted as business expenses. If a personal (and (continued . . .)

Kidron fees as business expenses, Elting had told Stone that she retained Kramer and Kidron to help draft an operating agreement for the good of the Company. Stone 171:13-172:8. Stone did not object to these payments being run through the Company, based on Elting's claimed non-adversarial purpose, and, in any event, it was not Stone's role to make that determination. Tr. 1376:21-1377:3 (Stone).

Elting knew or must have known, however (if there is any truth to what she now affirmatively asserts), that her lawyers and financial advisor were preparing for litigation from the outset. *See* Segall 46:11-24, 262:8-12. Elting therefore must have known then that she could never properly claim these payments were business expenses. Elting disclosed neither the bills nor any innocent intention about them to Shawe, who only learned about the source of payments months later, when it struck him as a fraud requiring investigation. JX487; Tr. 720:8-18, 722:4-7, 724:17-24 (Shawe). Elting's shifting stories about Kramer and Kidron lack credibility, expose the Company to tax and legal liability, and require her to repay the Company in full.

(. . . continued)
therefore non-deductible) expense were trued up by an adjustment to the other party's compensation, as Elting suggests, the result would not meet Subchapter S requirements because the payment of the personal expense would amount to a distribution while the compensation adjustment would not.

3. Elting's Misuse of Company Funds to Pay Her Personal Housekeeper

Elting testified that her housekeeper, Mohanee Jadunath, was paid by the Company from 2000 through 2013. Tr. 36:16-37:1, 52:2-53:22. At the time she was removed from the payroll, Jadunath's salary was almost $60,000 per year. JX126; JX129; JX192. While these payments were reportedly "trued up" through 2012, like Elting's payments to Kramer and Kidron, they should not have been part of the true-up process in the first place because they were not proper business expenses. *See* fn. 11, *supra*.

At trial, Elting testified that Stone recommended that Jadunath be paid by the Company. Tr. 60:13-16. Elting offered no support for this statement except JX375, which relates not to Jadunath, but to a *Kramer* bill. *See* Tr. 60:13-23. There is no basis, evidentiary or legal, for Elting's 13-year misuse of Company funds to pay her housekeeper.

F. Shawe's Actions Caused No Harm to the Company

At trial, Elting testified that Shawe engaged in "abusive" or "bullying" behavior and sowed disrespect for Elting among employees. Tr. 97:3-18, 107:23-108:7, 169:15-172:2, 187:2-188:3, 199:9-200:17, 217:2-17. Every witness asked about the issue disagreed emphatically with Elting's portrayal of Shawe as a "bully." *See* Tr. 1126:22-1129:17 (Obarski); 1214:14-1219:13,

1244:3-7 (Hagerty); 1265:3-1266:10 (Marrero); 1317:10-1319:19 (Sank); 1374:2-1375:10, 1385:2-7 (Stone); 1661:19-1662:23 (Geller); *see also* Van Lunsen 212:3-213:22. Elting presented no witness to corroborate her bullying claims. Boodram, the only person who allegedly felt physically threatened by Shawe, demonstrated at her deposition that all Shawe did was gently wag his finger at her. Boodram 403:12-15, 405:20-406:6 (video).

After admitting at her deposition that Shawe had never physically threatened her, Elting 1/29/2014 107:2-5, Elting pretended at trial that her deposition testimony was mistaken, because she did not understand the meaning of the term "physically threatened." Tr. 426:12-428:6. At her deposition, however, she specifically said: "Yeah, I know what physical means. I don't recall him physically threatening me, no." Elting 107:12-15. Elting's pleadings confirm that when Elting alleges "bullying" or "abuse," she means intemperate email, not physical threats. The New York court rejected Elting's request for intervention on the basis of intemperate email, for lack of material harm. *See Elting* v. *Shawe*, 2014 WL 3899212, at *1 (Aug. 4, 2014) (Dkt. No. 524). Where, as here, there is no evidence whatsoever that supposedly "abusive" email caused harm to the corporation, no intervention could be warranted.

Nor does the evidence support Elting's claim of harm from disrespect for her that she imagines Shawe fostered among employees. To be sure, employees have questioned Elting's decision to monitor employees' emails, publicly denounce and threaten to fire respected senior managers, withhold employee compensation, and sue to dissolve the Company. *See, e.g.*, Tr. 1164:23-1166:7 (Obarski); Hagerty 332:3-333:25; Asmah 260:7-261:8; Ng 241:18-242:17. Elting's decision to litigate so antagonistically has had some negative effects.[12] It was in an effort to mitigate some of those negative effects that on September 9, 2014 Shawe issued a press release describing the New York Court's denial of Elting's preliminary injunction motion. Contrary to Elting's assertion, Shawe's aim was not to "embarrass and humiliate" Elting, but rather to mitigate damage to the Company caused by negative publicity. Tr. 1009:22-1010:22 (Shawe). During her direct examination, Elting identified no fallout from the release. She named no "sales people" from whom she alleges she "got reports" of uncertainty. Tr. 200:14-201:6. Cognizant of this Court's ruling,

[12] As Shawe's opposition to Elting's motion for sanctions will explain in further detail, it was not Shawe but Elting's counsel who cost Elting access to documents she sought by subpoenas directed at but never properly served on employees.

Shawe will not issue further press releases on behalf of the Company without Elting's consent. Tr. 762:11-13.

Similarly, it was as a "reply to all" (in response to a "litigation hold notice" Elting had sent to 109 employees four months after litigation had begun) that Shawe attached Stone's April 4, 2014 memorandum regarding alleged "collusion" between Elting and Boodram on internal control issues. JX1146. Shawe acknowledged at trial that his was "tit-for-tat" for the hold notice that Elting had sent. Tr. 1008:12-18; Shawe 1/26/15 275:16-276:2. In light of its odd timing, Shawe viewed Elting's hold notice as an attack on the dozens of employees who had submitted affidavits in New York opposing Elting's application to remove Shawe.[13] Shawe 1/26/15 275:11-23; Tr. 105:16-18. Indeed, 82 of the 109 employees to whom Elting sent her hold notice had submitted affidavits. *See* JX1146; *see also* Aff. of Philip R. Shawe in Further Supp. of Mot. for Status Quo Order, filed on July 25, 2014, Ex. 37. There is no evidence that any recipient

[13] Elting testified at trial that "many" unnamed employees told her that they would submit affidavits on her behalf, but she wanted to keep them "out of this litigation . . . because I don't feel like that's a nice thing to do to the employees." Tr. 511:7-11, 521:16-24. Elting's sentiment would be admirable if it were not demonstrably false: it was Elting, after all, who attempted to subpoena 32 Company employees, deposed 10 of them, and publicly threatened to fire at least six of them.

of Shawe's response to Elting's hold notice expressed negative feelings about Elting as a result. Elting presented no evidence of any harm from the response.

G. Improperly Manufactured Deadlocks

The evidence confirms that the day-to-day "squabbles" alleged as "deadlocks" by Elting have already been resolved or could easily be, and threaten no meaningful harm to business.

Hiring: Despite Elting's "freeze" on accounting and finance hires, and her refusal to put Patten on payroll, the Company's staffing needs continue to be met through interdepartmental "loans" of employees consistent with Company policy, past practice and needs. Tr. 738:4-16 (Shawe); 1127:16-1128:14 (Obarski); 1265:19-1266:4 (Marrero); Khan 149:5-17, 224:11-18, 237:23-244:9; Trujillo 342:23-346:7; JX1111; JX1375 at 13. Boodram's recent departure may improve payroll processes so that work-arounds like these become unnecessary. As discussed below, rulings that reduce Elting's incentives to interfere with the Company's growth, or that bar self-dealing specifically, would resolve most disputes over hiring.

Firing: Elting confirmed at trial that it was only once litigation started that she decided she wanted to fire most of the Company's senior management, including but not limited to the CFO, COO, CTO, and CIO, because

she considers them all "defiant and very disrespectful," but only "a couple of them [] not competent."[14] Tr. 206:15-208:1. Shawe does not disagree that any incompetent employee should be terminated. As for the highly competent senior managers Elting is also targeting, there can be no harm to the Company from maintaining the status quo, in which these employees contribute to the Company's continued success. *See, e.g.*, Tr. 1134:17-1136:1, 1136:9-21 (Obarski) (describing Hagerty and Ng as "critical" employees); 529:20-530:8, 542:23-543:12 (Shawe). On the other hand, terminating respected and competent senior leadership would likely cause a cascade of departures among their reports, their reports' reports, and others. Tr. 586:106 (Shawe). If Elting retains any continued interest in the Company's future, even for purposes of selling her shares, her desire to fire senior leadership seems likely to cool.

Mergers and Acquisitions: As discussed *supra* at C(2)(b), Elting admits that she alone froze M&A, first in order to force distributions and later in order to curtail investment in the Company's growth. There is no dispute that acquisitions generally benefit the Company. Tr. 35:12-23 (Elting). A ruling that self-interested stifling of the Company's growth violates Elting's duty of loyalty

[14] At her deposition, Elting added Asmah, Van Lunsen, Yoffe and Brazil to her black list. Elting 1/29/14 63:15-16, 83:16-84:11.

would resolve any dispute over further acquisitions. The Company's successful history of acquisitions before Elting stopped considering their merits strongly suggests that no true "deadlock" would remain once Elting is required to discharge her duties.

Expense True-Ups: Elting asserts that Shawe's refusal to "true up" expenses since she retained counsel in 2013 constitutes a deadlock. Elting Pre-Trial Br. at 41. Elting created this alleged deadlock by improperly attempting to "true up" personal expenses. *See supra* at E(2-3). A straightforward ruling that Elting must reimburse the Company for personal expenses would resolve any dispute over them.

Replacing the Head of Human Resources: Shawe has proposed formally appointing Elisa Yoshihara, the acting head of Human Resources, as Robert DeNoia's successor. Tr. 762:14-763:5; JX1264. Elting has praised Yoshihara's 13 years of experience and "subject matter expertise in HR laws covering more than 30 countries." JX1218 at 19. Still, if Elting prefers to hire someone else, Shawe will cooperate. Tr. 762:14-763:5; JX1264.

Boodram's Role: Elting asserted "deadlock" over whether Shawe can terminate Boodram. Pet. ¶ 142. Boodram's termination for immigration reasons, with Elting's consent, makes Boodram's role at the Company moot.

The Company's Payroll Provider: Shawe has agreed that ADP may remain as the Company's payroll administrator, so long as proper controls are in place. Tr. 761:14-762:6.

The Company's Outside Accountant: Shawe is willing to hire another accounting firm to serve alongside Gerber & Co. Tr. 767:6-15.

The Company's Outside Law Firm: Shawe has agreed not to retain Kasowitz or the former Kasowitz lawyers to whom Elting objects. Tr. 766:23-767:2.

Hiring a PR Firm: Shawe has proposed that the current head of the Company's public relations, Ryan Simper, select qualified candidates from which to choose either by agreement or at random. JX1264. Elting has not responded to the offer.

Stockholder Meeting: After this litigation started, Elting called for a shareholder meeting to elect directors, and for the first time stated an unwillingness to vote for Shawe. For many years, Shawe and Elting served, and now continue to serve, as holdover directors, with no impact on business. JX29 at 3. In light of past practice, understandings, and common sense, a ruling that the recent non-election will not result in dissolution or custodianship would return the parties to

the positions they deemed agreeable for over 20 years, while reasonable alternatives are explored.

Distributions: With the exception of the dispute over the process employed in April 2013, distributions for tax payments have always been made by mutual consent, and remain mutually agreeable. Tr. 623:7-12, 1109:17-24 (Shawe); Tr. 1482:15-1483:2 (Stone); JX273. As discussed below, Shawe also has offered reasonable assurances about non-tax distributions, in amounts Elting previously indicated she sought. JX245 at 2; JX3029 at 1; JX2004 at 15, 21, 29-30.

H. Shawe Has Proposed Fair Terms for Elting to Remain Involved in the Company's Future, or to Exit If She Prefers

Shawe has made a series of reasonable, good-faith offers, ranging in value from $150 million to up to $223.4 million (nominal value), based on Elting's own projections. Tr. 559:4-15; JX870; JX892; JX1189; JX1312; JX1338; JX2003; JX2004. Shawe's experts confirmed at trial and in their reports that Shawe's buy-out offers are reasonable, not the "low ball" offers Elting alleges. *See supra* at III(E). In fact, as Elting's expert, Timothy Coleman, conceded at trial, "there is never an inadequate offer. You don't have to accept it and it doesn't relate to valuation." Tr. 1567:11-16.

Beginning in February 2014, Shawe also has proposed several stockholder agreements. JX1338; JX2003; JX2004; JX3029. These proposals were designed to minimize the overlap in the co-CEO's management responsibilities and also to address Elting's claim of deadlock surrounding tax and non-tax distributions. The proposals would divide management of the Company along the lines the August Agreement contemplated, would create separate shared services departments, and would assure payment of tax distributions and a specified level of non-tax distributions quarterly. JX3029; JX2004 at 15, 21, 29-30. The current proposal also provides Elting with additional liquidity options. *See* JX2004 at 20.

Although Elting has reportedly not attempted to market her shares to third-party buyers, Shawe has undertaken to cooperate fully in allowing any prospective buyers to conduct necessary due diligence. JX1353; JX2004 at 19. [15] To that end, despite Shawe's belief that audited (as opposed to reviewed) financials are a waste for a debt-free, private company that has managed without them for over 20 years, *see* Tr. 1671:22-1672:2, 1672:20-24 (Geller), he has agreed to an audit in furtherance of a closing on a sale of Elting's shares. *See*

[15] Segall testified that he put together an offering memorandum, but never shared it with potential investors. 198:3-199:6, 211:12-18.

Tr. 580:20-582:13; 759:14-760:13 (Shawe); JX1312 at 3. He has also been offering for months that an outside audit firm be retained to assess the Company's internal control deficiencies, and then propose the scope and cost of a full audit. Tr. 760:14-761:12 (Shawe); JX2071. This sequencing is appropriate, among other reasons, because failure to correct internal control deficiencies risks not getting a "clean" audit. *Id*.

I. Despite Opportunities to Do So, Elting and Shawe Did Not Adopt a Stockholder Exit Mechanism

When Elting and Shawe restructured TransPerfect in 2007 by consolidating their businesses under newly incorporated Delaware holding company TPG, they were experienced entrepreneurs and were advised by sophisticated corporate counsel. *See supra* at 56-58. They adopted standard form Delaware by-laws and certificate of incorporation, but chose not to agree on a method by which either of them might exit the business, the price or pricing formula for one to buy out the other, or any restriction on sales of their stock to third parties. JX28; JX29; Tr. 845:4-846-10 (Shawe); 1412:16-1413:1 (Stone).

Since then, Shawe and Elting have from time to time discussed entering an agreement that would provide for a contractual exit mechanism. For example, the parties explored buy-sell agreements in May 2010, with the assistance of Stone, and in 2012, with the assistance of McDermott Will & Emery.

JX124; JX144; JX2159. These proposed agreements remained unsigned, not for lack of agreement over the pricing mechanism, but for lack of perceived need. *See* Tr. 576:9-11 (Shawe); 1413:13-1416:4 (Stone).

Elting does not dispute that throughout these discussions, she and Shawe were committed above all else to a long-term strategy for growth, not to achieving maximum value upon a sale. As Stone explained it,

> in numerous conversations with [Elting and Shawe], their goal was to drive this company to a billion dollars of revenues. Their goal was to make sure that the Company was always in a position to do so. . . . [T]hey didn't want to leave either shareholder burdened by debt which would prevent that. So neither one of them had a primary concern of leaving the most amount of money to their heirs. Their primary concern was making sure the company was in the best possible position to grow.

Tr. 1414:6-17; *see also* Tr. 577:24 (Shawe) ("[O]ne of the things that we did not want to do is make it hard on the remaining partner to run the business. . . . [N]either Liz nor I had a great desire to leave our heirs with an incredible fortune that would make it tough for the continuing partner in the business."); *TransPerfect Global, Inc.* v. *MotionPoint Corp.*, 2012 WL 2343908, at *3 (N.D. Cal. June 20, 2012 (purpose of prior version of McDermott draft shareholders' agreement was "to provide for the company's long-term survival and ongoing operations").

Unsurprisingly, the valuations that Elting and Shawe discussed during these negotiations were far lower than those Elting proposes now. For example, the May 2010 agreement provided that the buyout value would be based on a Total Enterprise Value ("TEV") of .75x trailing 12 months' revenues, if sold while the stockholder was living, and 1x trailing 12 months' revenues upon death. JX2159. Similarly, the valuation mechanism used by McDermott in March 2012 was the lesser of 20% trailing 12 months' sales or $50 million. JX124 at 3. These relatively low valuations also are consistent with how Shawe and Elting each have reported the value of their interest in TPG on their respective Statements of Assets and Liabilities for purposes of the Company's line of credit. JX37; JX38; JX162; JX163; JX2257; JX2083. As Stone explained, "[t]hey didn't mind a low valuation for the company. Their primary concern was leaving the Company in the best possible position to grow." Tr. 1416:1-4.

ARGUMENT

I. Elting Breached Her Fiduciary Duties and Acted Inequitably

The fiduciary duty of loyalty imposes on a director "an affirmative obligation to protect and advance the interests of the corporation" and requires a director "absolutely [to] refrain from any conduct that would harm the corporation." *Shocking Techs.*, 2012 WL 4482838, at *8 (quoting *BelCom, Inc.*,

v. *Robb*, 1998 WL 229527, at *3 (Del. Ch. Apr. 28, 1998), *aff'd*, 725 A.2d 443 (Del. 1999) (TABLE)). Thus, "a director may not allow his self-interest to jeopardize his unyielding obligations to the corporation and its shareholders." *BelCom*, 1998 WL 229527, at *3. A director also has a duty of care to exercise "informed business judgment" in assessing whether to pursue business opportunities available to the corporation. *McMullin* v. *Beran*, 765 A.2d 910, 921 (Del. 2000).

As set out above in sections C(1-2), D, and E, Elting engaged in a pattern of conduct that is both self-interested and an abdication of her duty to exercise business judgment. The pattern included refusal to approve acquisitions, leases, new hires, lawyers' fees for patent litigation, and internal control reforms. The pattern extended to causing a cash squeeze at the Company as a result of an abrupt $21 million transfer to pay personal taxes where LLC funds were available for that purpose. It also encompassed payments to Elting's personal attorneys, financial advisor, and housekeeper using Company funds.[16] The pattern developed into outright sabotage of TransPerfect business with GS, BofA and Cushman. All of this violated Elting's fiduciary duties. *See Shocking Techs.*, 2012 WL 4482838,

[16] This conduct was also a waste of corporate assets. *See, e.g.*, *Sutherland* v. *Sutherland*, 2009 WL 857468, at *1 (Del. Ch. Mar. 23, 2009).

at *4 (by "effectively link[ing] his personal goal of a revised board structure to his ability to interfere with [company]'s short-term funding efforts" director breached fiduciary duty).

At trial, Elting did not dispute that she followed this pattern, or claim that the pattern aimed to advance the Company's interest in any way. Instead, Elting asserted a perfect right to trade Company opportunities for personal gain whenever she views Shawe as withholding distributions, *see, e.g.*, Tr. 300:7-18, or otherwise out of line, *e.g.*, Tr. 461:17-462:4. Research reveals no case excusing self-interested conduct by a director or officer on the basis that she feels mistreated by a fellow director or officer. To the contrary, under Delaware law, a director like Elting is "not free to ignore an acquisition proposal for reasons extraneous to a good-faith, informed business judgment." *Chrysogelos* v. *London*, 1992 WL 58516, at *6 (Del. Ch. Mar. 25, 1992).

Elting also has wrongly asserted that her refusal even to consider acquisitions is appropriate because she "do[es]n't want to invest another penny with Phil." Tr. 213:5-6. Under Delaware law, however, a corporate decision to make an acquisition or otherwise expend corporate funds is not a new investment by the stockholder. When the Company faces decisions as to whether to invest *its* money, Elting had (and has) the directorial duty to put the Company's interests

first, and to exercise good-faith business judgment about the expenditure of corporate funds and the pursuit of corporate opportunity. "Occasionally . . . a director's interests as a shareholder conflict with the company's interests. When such a conflict arises, the director must ignore her personal interests as a shareholder and attend to the corporation's interests." *Freedman* v. *Rest. Assocs. Indus., Inc.*, 1990 WL 135923, at *6 (Del. Ch. Sept. 21, 1990).

II. Shawe Neither Acted Inequitably Nor Breached His Fiduciary Duties

Unlike Elting, Shawe considered distributions with care consistent with his duty to deploy Company funds for Company purposes including acquisitions, organic growth, employee compensation and other business. Shawe recognized his duty to consider distributions not solely from his own perspective or Elting's, but in light of the interests of the Company as a whole. *See Gabelli & Co.* v. *Liggett Grp., Inc.*, 479 A.2d 276, 280 (Del. 1984). "[C]orporate directors do not owe fiduciary duties to individual stockholders; they owe fiduciary duties to the entity and to the stockholders as a whole." *Klaassen* v. *Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013). "It is settled law in this State that the declaration and payment of a dividend rests in the discretion of the corporation's board of directors in the exercise of its business judgment." *Gabelli*, 479 A.2d at 280; *see also Baron* v. *Allied Artists Pictures Corp.*, 337 A.2d 653,

658-59 (Del. Ch. 1975) (same). There is no breach of fiduciary duty with respect to non-payment of dividends unless there is fraud or a gross abuse of directorial discretion. *Baron*, 337 A.2d at 659.

Here, Elting presented no evidence to support her claim that Shawe has abused directorial discretion or in any way sought "to force Elting into . . . financial distress." Pet. ¶ 207. Elting received $30 million in non-tax distributions over the last six years. She received $17 million after taxes the year she acquired her Hamptons dream house. Elting Demo. 2, 5; JX2049; JX2050-55; JX2348. She received another $7 million after taxes the year she started down the path of litigation. *Id.* Even if greater distributions might have advanced some short-term personal interest of Elting's, Shawe violated no duty by acting also to "protect and advance the interests of the corporation" from Elting's suddenly insatiable demand for cash. *Shocking Techs.*, 2012 WL 4482838, at *8 (quotations omitted). *See Freedman*, 1990 WL 135923, at *6.

The rest of the conduct for which Elting criticizes Shawe relates to actions that Shawe took in order to minimize harm to the Company in the face of Elting's misconduct. Motivation matters in assessing fiduciary duty breach, and if properly motivated to protect the corporation, a director's conduct is not necessarily a breach of the duty of loyalty even if it departs from past practices or

even by-laws. *See Midland Grange No. 27 Patrons of Husbandry* v. *Walls*, 2008 WL 616239, at *10 (Del. Ch. Feb. 28, 2008) (departure from sale procedures required by corporation's bylaws did not violate fiduciary duty, where "decision was motivated by a genuine concern that strict adherence to the by-laws" was not in the best interest of the company).

Here, Elting takes issue with Shawe's decisions to authorize raises to employees in departments against which Elting had discriminated and to authorize hiring to fill staffing shortages created by Elting's misconduct. Even if these decisions had departed from prior practice, they would not constitute a breach of duty because, unlike Elting, Shawe acted to pay the Company's employees and meet its staffing needs, not to pay himself or meet personal needs. *See supra* at F. Likewise, even if Shawe departed from prior practice when he issued a press release and replied to all who had received Elting's September 2014 litigation hold notice, those missteps breached no duty to the Company because Shawe's aim was to reassure the Company's customers and employees about the litigation Elting had launched. Tr. 1008:7-18 (Shawe); Shawe 1/26/15 275:11-276:2. From none of these alleged missteps did Elting present evidence of harm to the Company.

III. A Custodian Should Not Be Appointed Under § 226 (a)(1) or (2) or the Court's Equitable Powers, and, in Any Case, the Company Should Not Be Dissolved

Elting seeks appointment of a custodian pursuant to 8 *Del. C.* § 226(a)(1) and (a)(2), or pursuant to the Court's equitable powers, in order to dissolve or sell the Company. This radical relief is inconsistent with both this Court's Section 226 jurisprudence and the approach taken by this Court and others at common law.

Delaware courts have historically disfavored judicial intervention in a solvent but "deadlocked" corporation. Thus, while the common law permitted the appointment of a receiver for a solvent corporation *pendente lite*, "a remedy directly analogous to the appointment of a custodian under Section 226," *see* Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 8.09, at 8-203 (2014), this relief was considered "drastic," and not justified by "[m]ere dissensions among corporate stockholders." *Salnita Corp.* v. *Walter Holding Corp.*, 168 A. 74, 75 (Del. Ch. 1933); *see Drob* v. *Nat'l Mem'l Park, Inc.*, 41 A.2d 589, 597 (Del. Ch. 1945) ("in the absence of fraud or of gross mismanagement causing conditions of great exigency, the only remedy of the dissatisfied stockholder is to sell his stock for what it will bring"). Other courts, too, recognize that "bickering" and "quarreling"

among management are not grounds for judicial intervention in prospering companies. *See, e.g.*, *Johnston* v. *Livingston Nursing Home, Inc.*, 211 So. 2d 151 (Ala. 1968); *Dorf* v. *Hill Bus Co.*, 54 A.2d 761, 763 (N.J. 1947). *See also Elting* v. *Shawe*, 2014 WL 3899212.

Since the enactment of Section 226 in 1949 and its amendment in 1967, this Court has remained reluctant to intervene in the affairs of solvent corporations. *TecSyn International Inc.* v. *Polyloom Corp. of America*, for example, teaches that "while Section 226 vests discretion in this Court to appoint a custodian, our law has established a very high standard for the exercise of that discretion because the appointment of a custodian is a drastic remedy." C.A. No. 11918, at 4; *see also Barry*, 1975 WL 1949, at *2 (appointment of custodian is "radical" and should only be granted "grudgingly," because "judicially sanctioned interference with the internal affairs of a corporation is an exceedingly delicate matter"). As the Delaware Supreme Court explained in *Giuricich* v. *Emtrol Corp.*, when the 1967 amendment to Section 226 authorized the appointment of a "custodian" rather than a "receiver," this was "more than a mere change of semantics. The clear change in terminology was accompanied by a limitation on the powers of the appointee. . . . A 'custodian' appointed under the present § 226 has the 'standby' powers of a receiver, but the Statute specifies that

'the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets except when the court shall otherwise order . . . .'" 449 A.2d 232, 237 (Del. 1982) (footnote omitted). Thus, while it is difficult to justify any judicial interference in the affairs of a profitable company, dissolution is even more extraordinary. Elting has offered no justification for dissolution in this case.[17]

A. Elting's Petition to Appoint a Custodian Under § 226(a)(1) Should Be Denied

Section 226(a)(1) provides that the Court of Chancery may appoint a custodian where "[a]t any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors." 8 *Del. C.* § 226(a)(1). As explained *supra* at G, Elting manufactured

[17] Equitable dissolution is only warranted upon a showing of "gross mismanagement, positive misconduct by corporate officers, breach of trust, or extreme circumstances showing imminent danger of great loss to the corporation which, otherwise, cannot be prevented." *Carlson* v. *Hallinan*, 925 A.2d 506, 543 (Del. Ch. 2006) (internal quotations omitted). For the same reasons discussed below with respect to Elting's Section 226 claims, her request for equitable dissolution should be denied. *See Weir* v. *JMACK, Inc.*, 2008 WL 4379592, at *2 (Del. Ch. Sept. 23, 2008) (granting summary judgment *sua sponte* because "JMACK is a solvent company that is in the midst of its most successful year as an organization," and "[t]herefore, the radical remedy of dissolution would be inappropriately applied in this case").

this claim by demanding a stockholder meeting for no purpose other than to demonstrate deadlock, and then breaking from the longstanding practice of voting for each other as directors, as Shawe had continued to offer. JX2258 at 1; JX2290.

For good reason, even when 226(a)(1)'s stockholder deadlock requirement is technically satisfied, the decision whether to appoint a custodian is "committed to the Court's discretion." *Miller*, 2009 WL 554920, at *4 & n.15. That is, the Court's discretion to decline to appoint a custodian on equitable grounds applies under Section 226(a)(1), just as under 226(a)(2). *See Stephanis* v. *Yiannatsis*, 1994 WL 198711, at *4 (Del. Ch. May 9, 1994), *aff'd*, 653 A.2d 275 (Del. 1995) (denying appointment of custodian under 226(a)(1) because it would be "inequitable" to "reward" petitioner when he had delayed in seeking one and a custodian might interfere with the business). Even aside from the bar of inequitable conduct, the Court's exercise of discretion under Section 226(a)(1) should take account of the same considerations Section 226(a)(2) deems important: a custodian should not be appointed "if there is no current useful purpose in appointing a guardian or if there is no harm or foreseeable risk to avoid." *Miller*, 2009 WL 554920, at *4. The same reasoning should apply even more forcefully to the more draconian step of a forced sale of the Company, or any step toward stripping Shawe of ownership. *See infra* at II(D).

The Court should also not appoint a custodian merely because Shawe and Elting disagree on various issues, or because their relationship has been contentious, much less because Elting has had "the worst year of [her] life." Tr. 213:15-16. The "appointment of a custodian is not a desirable default for every corporation where the shares are equally divided between groups that have serious differences." *Miller*, 2009 WL 554920, at *5. Dissolution is not an appropriate remedy for personal acrimony that has not significantly affected the business, even where that acrimony "included secretly taped telephone conversations" and "expletive-laden rantings, in which the parties call each other cheats, liars, and losers." *See In re Silver Leaf, L.L.C.*, 2005 WL 2045641, at *8 (Del. Ch. Aug. 18, 2005) (in dissolving an LLC on other grounds, court did "not find the parties' personal animosity pertinent to the legal issues"); *Schindler* v. *Niche Media Holdings, LLC*, 772 N.Y.S.2d 781, 784-85 & n.3 (N.Y. Sup. Ct. 2003), *abrogated on other grounds by Tzolis* v. *Wolff*, 884 N.E.2d 1005 (N.Y. 2008) ("essentially no likelihood of success on the merits" of LLC dissolution claim where dispute seemed "less a case of 'looting' . . . than one of personal animosity . . . in which intemperate accusations have been exchanged").

B. Elting's Petition to Appoint a Custodian Under § 226(a)(2) Should Be Denied

Under 8 *Del. C.* § 226(a)(2), the Court may appoint a custodian where "[t]he business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division."

In an effort to cash out of the Company at a higher price than she could get by selling her shares, Elting has both manufactured and exaggerated accounts of deadlock. Because these "deadlocks" are either resolved, immaterial or contrived by Elting, *see supra* at G, they do not prove that the Company's directors are "so divided" that they cannot manage the business. In addition, as shown below, Elting did not prove any real harm to the Company, nor that Shawe's conduct amounts to a "squeeze out" entitling her to equitable relief.

1. Elting Did Not Prove That the "Business of the Corporation" Is Suffering or Is Threatened with Irreparable Harm

Far from "suffering" or being "threatened with irreparable injury" due to director deadlock as 8 *Del. C.* § 226(a)(2) requires, TPG is, and promises to remain, an enormously successful, profitable and growing business. *See supra* at A. The testimony of numerous employees, at trial and by deposition, establishes

that the Company has not lost customers or business as a result of the dispute; to the contrary, Elting and Shawe recently projected 15% growth in revenue for 2015. *See supra* at A.

In amending Section 226 in 1967 to provide a remedy for director deadlock, the drafters adopted the "irreparable injury standard," a "familiar equity principle." Ernest L. Folk, III, *The Delaware General Corporation Law: A Commentary and Analysis* 271-72 (1972) (internal quotations omitted). This standard has traditionally been applied in the context of requests for injunctive relief, an "extraordinary" remedy requiring that the petitioner show "that to refuse the injunction would be a denial of justice." *State* v. *Del. State Educ. Ass'n*, 326 A.2d 868, 872, 875 (Del. Ch. 1974).

In the 226(a)(2) context, courts decline to interfere absent real, concrete harm to the business, such as "imminent corporate paralysis." *Giuricich*, 449 A.2d at 239 n.13; *see Barry*, 1975 WL 1949, at *4 (no irreparable harm where the dispute between directors did "not appear to imperil the receipt of income from the present licenses"). For example, in *Miller*, Vice Chancellor Noble refused to appoint a custodian under Section 226(a)(2), finding that although "successful future operation of [the business] has been placed in doubt" by the stockholders' inability to elect directors, the business remains "profitable" and "operates

reasonably well," and therefore "is neither suffering nor threatened with irreparable harm." 2009 WL 554920, at *1, *3.

According to Ernest Folk, who was retained by the Revision Committee to make recommendations for the 1967 amendments that created Section 226(a)(2), those amendments aimed to "broaden[] the remedial jurisdiction of the Court of Chancery in order to prevent *substantial and inescapable loss of going-concern values* through the corporation's inability to carry out managerial functions or elect successor directors." Ernest L. Folk, III, *The New Delaware Corporation Law* 35 (1967) (emphasis added). Thus, to warrant relief, the harm to the business must be financial, as opposed to cultural. *See TecSyn*, C.A. No. 11918, at 4, 7; *Barry*, 1975 WL 1949, at *4. The harm must flow from "inability" to carry out managerial functions or to elect directors, not obstructive unwillingness to do so. *See, e.g.*, *Millien* v. *Popescu*, 2014 WL 656651, at *2 n.17 (Del. Ch. Feb. 19, 2014) (plaintiff's attempt to "create a deadlock by refusing to consider any issue" was "not the type of conduct that should support the appointment of a custodian").

Because the appointment of a custodian under Section 226(a)(2) requires a showing of irreparable harm to "[t]he business of the corporation," *see Miller*, 2009 WL 554920, at *3-4, personal harms to a stockholder do not justify

relief. To distinguish personal from corporate harm, Delaware's jurisprudence on derivative versus direct claims provides useful guidance: "If the nature of the injury is such that it falls directly on the business entity as a whole . . . the claim is derivative." *Metro. Life Ins. Co.* v. *Tremont Grp. Holdings, Inc.*, 2012 WL 6632681, at *8 (Del. Ch. Dec. 20, 2012) (quotations omitted). By contrast, if the stockholder's claimed injury is "independent of any alleged injury to the corporation," it may be brought directly. *Id.* (quotations omitted).

Classic examples of claims that must be brought directly (because they do not involve injury to the corporation) include those asserting the right to vote, the right to receive dividends, and the right to own and alienate shares. *Allen* v. *El Paso Pipeline GP Co.*, 90 A.3d 1097, 1105 (Del. Ch. 2014). *A fortiori*, such direct claims also do not injure "[t]he business of the corporation," for purposes of Section 226. Elting's claims that she has been deprived of bigger distributions, or greater returns on a sale, are personal, not corporate. *See Allen*, 90 A.3d at 1105; *In re Radiology Assocs., Inc. Litig.*, 1990 WL 67839, at *14 (Del. Ch. May 16, 1990) ("Claims for dividends or distributions are individual rather than derivative in nature."); s*ee also Wells Fargo & Co.* v. *First Interstate Bancorp.*, 1996 WL 32169, at *8 (Del. Ch. Jan. 18, 1996) ("claims are quite obviously individual as they affect the right to vote or the personal right to determine if one will sell or not

one's investment"); *Reeves* v. *Transp. Data Commc'ns, Inc.*, 318 A.2d 147, 150 (Del. Ch. 1974) (claim that management's refusal to transfer and reissue stock deprived plaintiff of opportunity to sell her shares at considerably higher price was direct because refusal involved no corporate injury). Thus, the non-declaration of dividends does not injure the business of a corporation, but rather gives it extra cash on hand, or capital to invest. Similarly, the business of the corporation is not affected by the price one shareholder offers to pay another for her shares, even if it could be characterized as a "low ball offer." Again, a company is not damaged by extra cash on hand.

Nor do assertions, like Elting's, that employees have been disrespectful to her, Tr. 207:10-15, 512:7-10, she has been bullied, Tr. 108:3-4, or she feels marginalized, Elting Pre-Trial Br. at 34-35, constitute injury to the business of the Company. Even if true, personal discomforts do not constitute "irreparable injury" *to the Company*. *See Gonseth* v. *K & K Oil Co.*, 439 S.W.2d 18, 27 (Mo. Ct. App. 1969) (stockholder failed to demonstrate irreparable injury supporting dissolution where "the actions to which [she] objects . . . are matters which affected her personally, not matters which have injured the corporation"); *see also Unocal*, 493 A.2d at 958.

As discussed above, when asked at trial how her disagreements with Shawe were hurting the Company, Elting responded that the disputes had "greatly damaged the culture of TransPerfect" for some unnamed employees. Tr. 510:1-17. This amorphous hearsay, unsupported by concrete evidence, should not doom a successful business. *See Tanyous* v. *Banoub*, 2008 WL 2233741, at *1 (Del. Ch. May 22, 2008). Generalized concerns about "the integrity and efficiency" of management do not constitute the "type of injury contemplated by § 226(a)(2)." *Id.*

Apart from personal dissatisfaction, Elting merely asserts disputes over management decisions that pose no "real, palpable" harm to the business. *Miller*, 2009 WL 554920, at *4. Where, as here, the evidence demonstrates a "schism" between the shareholders on such issues as the company's strategy in litigation with a third party and the co-signing of checks, but no "financial issue that jeopardizes or places in jeopardy the ability of [the] Corporation to operate," management disputes do not satisfy Section 226(a)(2). TecSyn, C.A. No. 11918, at 4, 7.

In her motion for appointment of a temporary custodian, Elting cited only one Section 226(a)(2) case in which this Court appointed a custodian without agreement of the parties. *See Hoban*, 1984 WL 8221. In *Hoban*, however, the

Court appointed a custodian only after finding that the company was "threatened with irreparable injury" because it had "an immediate need to make new financing arrangements" and the two directors were so divided "that the required vote for action necessary to [the company's] survival cannot be obtained." *Id.* at *2-3. The situation in *Hoban* was thus the antithesis of that here, where Elting has failed to show any real harm to the Company, let alone immediate financial harm that threatens to destroy it. As Justice Schweitzer held less than a year ago, "the series of *contretemps*" between Shawe and Elting "have never resulted in material damage. . . ." *Elting* v. *Shawe*, 2014 WL 3899212.

Far from demonstrating legitimate current disputes that threaten TransPerfect's ability to profitably operate, the trial record now establishes that the true threat to the Company is Elting's litigation strategy, including her refusal to compromise on relatively routine decisions, refusal to exercise business judgment, and other acts of sabotage, in pursuit of greater personal wealth. This Court's case law is clear – "refusing to consider any issue" is "not the type of conduct that should support the appointment of a custodian." *Millien*, 2014 WL 656651, at *2 n.17; *Moore* v. *C.H.M. Enters., Inc.*, 1983 WL 102620, at *2 (Del. Ch. Nov. 9, 1983) (refusing to appoint a custodian because "[a]ny inability of the corporation to service its debts" was "due to the acts of the plaintiff"). A party seeking a

custodian must not be allowed "to obtain through an 8 Del. C. § 226 action . . . what he could not obtain otherwise through proper directorial or shareholder conduct." *Balch Hill Partners, L.P.* v. *Shocking Techs., Inc.*, 2013 WL 588964, at *3 (Del. Ch. Feb. 7, 2013). Here, as in *TecSyn*, the "core" of the dispute is not the various "deadlocks" Elting alleges, but the "inability to reach agreement on the terms and the price" Elting can obtain for her shares. C.A. No. 11918, at 5. Here, as in *TecSyn*, it is "wrong-headed" to use litigation over custodianship "to try to fashion a way of cutting the Gordian knot in this negotiation over the sale of the business." *Id.* at 12.

2. Elting Is Not Being "Squeezed Out" of Her Ownership Position

The record evidence disproves Elting's claim that Shawe has engaged in a "squeeze-out strategy," designed to force her to sell at an "unfair price," or inflict "constant pain," so as to necessitate appointment of a custodian to dissolve (*i.e.*, sell) the Company. Pet. ¶¶ 4-6; Elting Pre-Trial Br. at 7. As detailed above with respect to Shawe's conduct and any alleged deadlocks, the record reflects no unmanageable operational issues and further reflects that Elting's tax obligations have been met and she has received generous after-tax distributions. *See supra* at G. Elting has several options for addressing her concerns, such as: (i) remaining a stockholder and part of management by pursuing compromise

management proposals; (ii) withdrawing from management but holding her shares (and, if she wishes, accepting Shawe's proposed path to liquidity that will permit her to keep her investment and borrow $50 million on favorable terms); (iii) selling her stock to Shawe; or (iv) selling to a third party. *See supra* at H. The availability of all these choices demonstrates that Elting's position is not remotely analogous to that of a minority stockholder in a freeze-out merger.

C. The Court Should Not Appoint a Custodian with the Authority to Participate in Management of the Company

Appointing a custodian with the authority to participate in Company management would risk grave damage to TPG's business. This Court has rightly observed that despite the litigation and drama, TPG is an "amazing company" with "amazing employees." Tr. 1843:12-13. The recipe for this success—particularly in a company still run by its entrepreneurial founders—is always something of a mystery. The insertion of an outsider to make critical management decisions can have unforeseen consequences for all concerned.

For this reason, the Court has recognized that "[i]f a custodian is appointed, then her powers should be tailored as narrowly as possible because judicially-supervised interference with the ordinary operation of a corporation should be kept to a minimum." *Miller*, 2009 WL 554920, at *4; *see also Giuricich*, 449 A.2d at 240. Here, the risks of interference are readily apparent.

As Shawe's expert Creighton Hoffman testified, the Company's success is due in large part to its longstanding relationships with large customers, and, if a custodian were appointed, there would be "very little upside" and "tremendous downside" for these customers in continuing those relationships. Tr. 1801:19-1803:8. Customers could "move to another vendor" within "two, three months" of an appointment, for fear it might be "fatal" for them "to stay on." *Id.*[18] Appointment of a custodian may have "a negative impact on various aspects of the business, including employee retention and recruiting; customer retention and new customer sales; and relationships with vendors, contractors, creditors and other stakeholders." JX2125 at 5. These risks persist notwithstanding the Company's financial success, because "[c]reditors and the public may not perceive the difference between a custodian and a liquidating receiver or bankruptcy trustee," threatening "potential negative impact on the corporation's credit standing and public image." *Id.* (quoting Harry J. Haynesworth, *The Effectiveness of Involuntary Dissolution Suits as a Remedy for Close Corporation Dissention*, 35 CLEV. ST. L. REV. 25, 28 (1987)).

[18] Elting incorrectly asserted at trial that customers cannot easily move their business away from TransPerfect because they are locked into exclusive long-term contracts, Tr. 513:9-21. As Shawe testified, TransPerfect does not have exclusive contracts with its customers. Tr. 771:10-18; JX2246-2252 (master service agreements with customers).

As TransPerfect's Hagerty put it:

> I don't know that a custodian knows our industry. I don't know that the custodian would understand how to grow the company. I don't know that a custodian would understand what's in the best interest of our company. So I don't believe that a custodian could run the company as well as it has been run up until now with the leadership of Phil and Liz together over these past 15 years.

Hagerty 340:6-16.

D. If the Court Does Appoint a Custodian, It Should Not Grant the Custodian the Authority to Dissolve the Company or Force a Sale of Shawe's Stock

If appointed, a custodian should not be authorized to sell the Company, or otherwise impose a "buy/sell" process that requires Shawe to pay Elting more in order to preserve his ownership than a third party would pay to acquire her shares. Either alternative would, from Shawe's perspective, amount to dissolution, because either would operate to divest him of his ownership interest and his right to continue in the business to which he has devoted his career.

The statute explicitly *discourages* dissolution: "[T]he authority of the custodian is to *continue the business of the* corporation and *not to liquidate its affairs and distribute its assets*, except when the Court shall otherwise order." 8 *Del. C.* § 226(b) (emphasis added). "Thus, the powers of a custodian are not as unlimited as the powers of a receiver appointed under the general equitable powers

of the court, or under the forerunner to the present § 226(a)(1)." *Giuricich*, 449 A.2d at 237. Delaware courts refuse to exercise their discretion to dissolve solvent companies where other measures "milder" than dissolution are available. *See VTB Bank* v. *Navitron Projects Corp.*, 2014 WL 1691250, at *5 (Del. Ch. Apr. 28, 2014).

As set out above, Elting has proven neither relevant deadlock nor injury to the business of the corporation that would support dissolution of this thriving Company or setting its 4,000 employees adrift. The drastic remedy of forced sale is unnecessary where, as set out *supra* at H, III(B)(2), Elting has other reasonable (and so far unexplored) choices for sale, negotiation or continued investment in the Company.

Nor should Shawe be forced to purchase Elting's shares in order to preserve his own interest, or be forced to sell his shares and enter into a non-compete agreement as Elting's sanctions motion demands. This case is not analogous to *Fulk* v. *Washington Service Associates, Inc.*, a Section 273 case in which the Court forced a sale between the two stockholders because of the inequitable conduct by one of the parties in connection with the potential sale of their company. 2002 WL 1402273, at *5-6 (Del. Ch. June 21, 2002). Unlike in *Fulk*, Shawe has not threatened to leave the Company and compete against it; nor

has he encouraged any employee to do so; nor has he done anything to hinder Elting from selling her shares to a third party. In contrast to Mr. Long's egregious conduct in *Fulk*, Shawe has not contacted any of the banks with whom Elting has met to secure financing; nor has he discouraged the banks or any potential buyer from working with Elting based on the specter of future competition by Shawe; nor has he done anything remotely like Long's attempt to prevent the company from documenting key proprietary information for use by a prospective buyer of the business. *Compare Fulk*, 2002 WL 1402273, at *2-5. To the contrary, Shawe remains eager to work with any third-party investor willing to purchase Elting's shares, has agreed to make all Company information available to a prospective buyer, and is willing to enter into the proposed Stockholder Agreement with any new stockholder. *See* JX2004. Because Shawe has not obstructed Elting's efforts to exit the Company, none of the remedies imposed in *Fulk* are appropriate or relevant to this case.

E. Elting Is Not Entitled to Obtain Appraisal Value for Her Shares, and the Fair Market Value of What She Owns Is Far Less than Appraisal Value

If Elting no longer wants to remain involved in the Company, and the Court wishes to facilitate her exit, the logical remedy is for a custodian, if appointed, to assist with the orderly disposition of Elting's shares to a willing

buyer. Not only would it be inequitable to force Shawe to sell his shares in the Company that has been his life's work, Tr. 552:2-4, but a forced sale of the entire Company would award Elting a benefit to which she has no right. This is because a forced sale of the entire company would produce for each stockholder a price far closer to a *pro rata* share of TEV than would a sale of any one stockholder's fractional interest. *See* JX2124 at 5. Since Elting wants to be a seller in any event, there is no disadvantage to her if the Company as a whole is sold; and she would reap the higher price that a sale of only her illiquid 50% interest would not command. Shawe, however, does not want to sell, as he values his long-term role in the Company far more than the monetary advantage of immediate sale. Shawe should not have to forgo his ownership rights in order to give Elting a windfall for which she never bargained. *Nixon* v. *Blackwell*, 626 A.2d 1366, 1380-81 (Del. 1993); *Blaustein*, 2013 WL 1810956, at *17; *Ueltzhoffer* v. *Fox Fire Dev. Co.*, 1991 WL 271584, at *8 (Del. Ch. Dec. 19, 1991), *aff'd*, 618 A.2d 90 (Del. 1992) (TABLE).

The same unfairness would arise if, as in the *Fulk* case, Shawe were forced into a "buy/sell" process whereby he was required to choose between selling to Elting or buying from her at a price she sets. Elting can afford to set a very high price in that process because, as demonstrated at B(3) above, she wants

to exit the Company, which she can do by selling the whole Company to a third party at a whole company price (including for example a control premium) as part of the process of buying Shawe's shares. The mechanism would therefore, in effect, require Shawe to buy out Elting at her fractional share of TEV, even though she has no right to obtain such a price as a matter of law or contract.

1. Elting Never Negotiated an Exit Mechanism

As discussed *supra* at 56-58, when the TransPerfect business was restructured in 2007 under Delaware law, neither Shawe nor Elting sought a separate stockholder agreement or bylaw providing for a contractual exit option or buy/sell process. Tr. 1412:16-1413:1 (Stone). As this Court recognized in *Blaustein*, a stockholder should not be able "to acquire—through fiduciary principles—an additional right [to liquidity] that she was unable to obtain through an arms-length negotiation with the [other stockholders]." 2013 WL 1810956, at *17. In arriving at this conclusion, Vice Chancellor Noble noted that decisions of the Court of Chancery and the Delaware Supreme Court over the last 15 years have repeatedly recognized that even a controlling, majority stockholder has no "fiduciary duty to buy back a minority stockholder's shares." *Id.* at *16. This is consistent with the Supreme Court's recognition in *Nixon* that it "would be inappropriate judicial legislation for this Court to fashion a special

judicially-created rule for minority investors when the entity does not fall within those [closely held corporation] statutes, or when there are no negotiated special provisions in the certificate of incorporation, by-laws, or stockholder agreements." *Nixon*, 626 A.2d at 1380-81; *see also Ueltzhoffer*, 1991 WL 271584, at *8 (holding that even minority stockholder "rights do not include the right to be paid for their proportionate interest in the total assets of the company").

Similarly, in *In re Scovil Hanna Corp.*, C.A. No. 664-N (Del. Ch. Apr. 20, 2006) (TRANSCRIPT), Vice Chancellor Strine refused to alter the rights the parties had negotiated by imposing a non-compete on Scovil, even though this would have maximized the value of the company in a sale pursuant to 8 *Del. C.* § 273. Vice Chancellor Strine left open the possibility that Hanna could "pay Mr. Scovil an amount of money for a non-compete," but ruled that if Scovil and Hanna "weren't smart enough or didn't want to tie themselves up as business partners by imposing non-competes," the Court would not do so. *Id.* at 35-36. Thus, even under the reasoning of *Scovil Hanna*, Elting lacks a basis to impose a buy/sell mechanism on Shawe, or otherwise obtain through judicial fiat the forced purchase or sale of shares that is not provided for in the certificate of incorporation, by-laws or a stockholder agreement.

2. There Is No Evidentiary Basis on Which the Court Can Assume That If Elting Had Negotiated a Buy/Sell Agreement, It Would Have Valued Her Shares at Half of TEV

In the years after the formation of TPG, Shawe and Elting discussed from time-to-time the possibility of entering some type of buy/sell agreement. *See supra* at 56-58. Nothing in those discussions suggests that the parties ever intended that either of them would have the right to sell shares at their "appraisal" or whole company value. To the contrary, the history of those negotiations strongly suggests that if the parties had finalized a buy/sell agreement, Elting would have received far less than she now claims her interest is worth. *See* JX2159 (proposing value based on .75x trailing 12 months' revenues); JX124 at 3 (proposing to value a 50% interest at the lesser of $50 million or 20% trailing 12 months' revenues); *supra* at 56-58.

This is not surprising. When parties choose to enter into a stockholder agreement with a buy/sell mechanism, the relative importance they ascribe to investment return, control and liquidity drives the bargain they strike with respect to consideration to be paid upon exit. *See* Am. Bar Ass'n, *Model Joint Venture Agreement Checklist* 15-20, *available at* http://apps.americanbar.org /buslaw/newsletter/0049/materials/book.pdf. The prior negotiations between Elting and Shawe reflect their mutual intention to prioritize the future success of

the business above maximizing their personal financial gain. *See supra* at 56-58; Tr. 1412:16-1413:1 (Stone); JX124; *MotionPoint*, 2012 WL 2343908, at *3. As Shawe testified, the lack of a buy/sell arrangement has helped the Company remain intact and thrive during difficult times. *See* Tr. 574:17-575:7, 576:12-577:5. Thus, if the Court were to fashion a remedy requiring a transaction, it would have no evidentiary basis for assuming that it should involve a buy/sell provision granting Elting, at her option and on demand, a *pro rata* share of the TEV of TransPerfect.

3. Elting's Ownership of a 50% Interest in an Illiquid Company Does Not Entitle Her to a Cash Payout of 50% of Appraisal Value

Just as Elting has no contractual right to half of the TEV for her illiquid shares, Elting likewise is not entitled to half of the TEV or appraisal value of the Company either under or by analogy to 8 *Del. C.* § 262. The appraisal remedy created by Section 262 calculates an artificial share value that reflects public policy unique to freeze-out mergers. *See Agranoff* v. *Miller*, 791 A.2d 880, 888 (Del. Ch. 2001). This statutory remedy was created to protect minority stockholders denied their common-law right to stop a merger, a rationale wholly inapplicable to this case where there is no merger, there is no "squeeze out," and the stockholders have the alternatives of holding their shares or selling to a third

party. *See Applebaum* v. *Avaya, Inc.*, 812 A.2d 880, 893 (Del. 2002). Given the unique policy reasons justifying the appraisal remedy's departure from the fair market valuation standard, courts have been extremely hesitant to extend it outside of the statutory criteria of Section 262. For example, Delaware courts have refused "to import into the limited partnership context all the artificial complexities of our corporate appraisal jurisprudence." *Gelfman* v. *Weeden Investors, L.P.*, 859 A.2d 89, 125 (Del. Ch. 2004).

Even where a minority stockholder is cashed out against his or her will, such as through a reverse-forward stock split that creates fractional shares, courts have required that the minority stockholder be compensated on a fair market value basis, not an appraisal basis. *See Applebaum*, 812 A.2d at 889-90 ("While market price is not employed in all valuation contexts, our jurisprudence recognizes that in many circumstances a property interest is best valued by the amount a buyer will pay for it.") (footnote omitted). As Elting's expert, Timothy Coleman (along with Shawe's two experts) recognized, the correct test for valuing Elting's shares is fair market value, *i.e.*, what a willing buyer would actually pay a willing seller for her ownership interest. Tr. 1558:15-17 (Coleman); Coleman 34:20-35:6, 35:9-16, 155:7-18, 156:6-14.

Elting baselessly attempts to analogize this case to cases in which courts have applied appraisal value. Elting relies, for example, on *Litle* v. *Waters*, 1992 WL 25758 (Del. Ch. Feb. 11, 1992), describing it as a case in which "the defendant refused to distribute any dividends, leaving the plaintiff on the hook to pay corporate taxes out of pocket."[19] As the trial testimony demonstrated, the facts here are different, because TPG has never failed to pay the personal tax obligations of its stockholders, *see* Elting Demo. 5; JX2049; JX2050-55; JX2348, and Shawe has given assurances that it will not do so going forward, *see* Tr. 1837:10-15; Letter of Mar. 4, 2015 from Lisa Schmidt; JX2004 at 21.

Both J.T. Atkins and Creighton Hoffman explained at trial and in their expert reports that, applying the appropriate fair market value standard, Elting's non-controlling and illiquid stock in the Company would command a price reflecting a substantial discount to their *pro rata* share of the Company's TEV. Tr. 1716:1-1717:6 (Atkins); 1800:20-1801:4 (Hoffman); JX2126 at 15-16 (Atkins Rebuttal Report); JX1333 at 15-17 (Hoffman Report). This view, unlike that put forward by Elting's expert (who testified that he does not "believe" in discounts),

[19] Elting Opp'n to Shawe's Mot. in Limine to Preclude the Report & Testimony of Timothy Coleman, at ¶ 17.

is generally recognized by courts, markets, experts and bankers.[20]

Accordingly, absent some extraordinary circumstance not present here, discounts for illiquidity of the type applied by Atkins and Hoffman properly bear on the fair market value of Elting's shares. While the Court need not determine that fair market value in this proceeding, the applicability of generally recognized discounts confirms the inequity of Elting obtaining the equivalent of appraisal value through litigation and at Shawe's expense.

4. Shawe's Extraordinary Value to the Business and Lack of a Non-Compete Obligation Would Affect Any Third-Party's Valuation of Elting's Shares

Hoffman concluded based on a thorough review of the literature and interviews with senior TransPerfect managers that a key person discount of approximately five to twenty-five percent is also appropriate in this case. Tr. 1800:20-1801:18 (noting that Shawe, Obarski, Hagerty, and Ng could all be considered key people by any potential buyer); JX2125 at 13-15; *see also*

[20] Coleman took the extreme position at trial that illiquidity discounts are never applied in the marketplace. Tr. 1562:20-1563:12. And at his deposition, Coleman claimed that he is not aware of any businessperson who applies these discounts, and refused to acknowledge generally recognized authorities such as Shannon Pratt, who have marshalled the empirical evidence of such discounts. Coleman 97:25-99:2. This may in part be explained by the fact that Coleman, who specializes in the disposition of whole companies, is not involved in the sale of minority interests and had little familiarity with Delaware courts' treatment of applicable discounts. *See id.* at 15:4-16:6.

Monacelli 54:14-55:2, 56:12-57:4. The 14 senior TransPerfect employees Hoffman interviewed confirmed that new technology is the driving force behind the Company's ability to compete against low-cost service providers, and that Shawe and the technology team are critical to the Company's technology portfolio remaining strong. *See* JX2125 at 7-13. Coleman offered no opinion in this regard. *See* Tr. 1580:5-1581:10.

Because of this consideration as well, the fair market value of what Elting owns cannot be measured by an abstract assessment of total company value, thus further establishing that Elting has no right (and there is no reason) to impose a sale process designed to give her that higher value.

IV. Elting Has Not Established That the LLC Should Be Dissolved Pursuant to § 18-802

Shawe's arguments as to why Elting has not established a claim for dissolution of Shawe & Elting LLC under 6 *Del. C.* § 18-802 are set out in his brief in opposition to Elting's motion for summary judgment on her Verified Petition for Dissolution, filed August 15, 2014, and are incorporated by reference. In addition, the trial evidence, particularly the testimony of Stone and email correspondence that included Elting, further demonstrates that the LLC was established to protect TPG's assets while leaving them available for business purposes should they be needed. Tr. 620:21-621:17 (Shawe); 1409:22-1412:5 (Stone); JX44; JX80; JX132;

JX155; JX180; JX280. Because the assets of the LLC are still available to the Company, or to pay taxes for the stockholders so as to alleviate a Company cash drain, its purpose has not been defeated. It is only Elting's obstructive behavior, and her implausible assertion about the LLC as a mere repository for personal assets, that prevents its proper use. Should this Court nonetheless decide to dissolve the LLC, Shawe respectfully submits that the assets held at the LLC should be returned to TPG, the original source of these funds and the party for whose benefit these assets were ultimately intended.

V. The Relief Shawe Seeks

Shawe seeks damages and restitution for the economic loss that he and the Company have sustained by virtue of Elting's breaches of fiduciary duty and acts of corporate waste and self-dealing. Specifically, Shawe seeks an order requiring that Elting return to TPG the following monies she caused the Company to pay for her personal expenses: (a) the $144,163.83 paid to Kramer Levin (JX382, JX477); (b) the $15,194.46 paid to Kidron (JX477); and (c) the $436,946.67 paid to Elting's personal housekeeper, Mohanee Jadunath. (JX2113). Shawe also respectfully seeks an order requiring Elting to join Shawe in transferring $8.15 million from Shawe & Elting LLC to TPG, reflecting the approximately $8.15 million that was held by the LLC at the time that Elting

unilaterally paid stockholders' personal taxes out of the TPG operating account over Shawe's objections. Tr. 1031:9-24 (Shawe); JX266; JX274; JX280; JX2055.[21]

As importantly, because Elting's misconduct is continuing, as are the injuries inflicted by her misconduct, Shawe also respectfully requests that the Court issue an order (a) declaring that Elting has breached her fiduciary duties, including the duty of loyalty, and (b) permanently enjoining Elting from further breaches of fiduciary duty by linking her personal interests in receipt of distributions or other payments from TPG to the exercise of her business judgment with respect to (i) approval of mergers and acquisitions, (ii) approval of leases for office space, (iii) reforming the Company's internal controls, (iv) employee compensation and the hiring and firing of employees, (v) whether the Company should undergo an audit and (vi) any other business matters that require the exercise of informed business judgment.[22] Because the scope of Elting's financial misconduct, self-dealing and waste is unknown, Shawe also seeks a full accounting

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[21] The Court should also award Shawe his attorneys' fees and costs incurred in bringing and defending against these actions, as well as all pre- and post-judgment interest.

[22] *See, e.g.*, *Black* v. *Hollinger Int'l Inc.*, 872 A.2d 559, 565 (Del. 2005) (permanently enjoining further fiduciary duty breaches); *Venoco, Inc.* v. *Eson*, 2002 WL 1288703, at *8 (Del. Ch. June 7, 2002) (same).

of and access to the books, records and financial systems (including accounts related to banking and payroll) of the Company and its subsidiaries. These remedies, coupled with the denial of Elting's petition for the appointment of a custodian, will protect the Company from further harms arising from Elting's efforts to manufacture deadlock and to force dissolution of the Company.

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Dated: March 31, 2015

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re: SHAWE & ELTING LLC	)	C.A. No. 9661-CB
	)	
PHILIP R. SHAWE, derivatively on behalf of TRANSPERFECT GLOBAL, INC., and in his individual capacity, Plaintiff, v.	)	C.A. No. 9686-CB
ELIZABETH ELTING, Defendant, & TRANSPERFECT GLOBAL, INC., Nominal Defendant.	)	
In re: TRANSPERFECT GLOBAL, INC.	)	C.A. No. 9700-CB
	)	
ELIZABETH ELTING, Petitioner, v.	)	C.A. No. 10449-CB
PHILIP R. SHAWE and SHIRLEY SHAWE, Respondents, & TRANSPERFECT GLOBAL, INC., Nominal Party.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Ct. Ch. R. 171(d)(4) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2010.

2. This brief complies with the type-volume limitation set by order of the Court dated March 9, 2015, because it contains 20,728 words, which were counted by Microsoft Word 2010.

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