2024 NHSMTC Case Materials

DELAWARE Law Related Education Center

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2024 National High School Mock Trial Championship Case

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NATIONAL HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP

In re: QuikPhone SAC I Shareholder Derivative Litigation

The Delaware Law Related Education Center sincerely thanks the many individuals who assisted with this year's national mock trial case.

The case was authored by NHSMTC Board Chair Paul W. Kaufman, NHSMTC Case Committee member Jonathan Grode, and Assistant United States Attorney Benjamin Wallace. Authors Paul Kaufman and Benjamin Wallace are former Delaware high school mock trial competitors.

The final supplement to the case materials has been incorporated into this case at the end of this document. The final supplement is an official memorandum with the case materials that may be used during the competition. We have also included a change log immediately prior to the final supplement. We will not provide a redline showing changes.

PROHIBITION ON UPLOADING THIS CASE TO ANY GENERATIVE ARTIFICIAL INTELLIGENCE PLATFORM

Generative artificial intelligence platforms such as ChatGPT, GitHub/Microsoft Copilot, and OpenAI are growing in their use and utility in our daily lives, and AI image generators such as DALL-E, Stable Diffusion, Copilot, and Adobe Firefly are now widely available, expanding creative opportunities while implicating the rights of the original creators whose work is used without their knowledge or permission.

These developments are pressuring many aspects of society to adapt, and mock trial is not immune. The NHSMTC Rules Committee is examining these issues, and it anticipates that rules will be forthcoming addressing the use of generative AI in national mock trial. Until those rules can be completed, for purposes of this year's competition:

> **<u>No</u> team member, coach, observer, or individual affiliated with the competing team or individual (in the case of courtroom artists or courtroom journalists) may upload any portion of this case to any generative AI tool. For avoidance of doubt, this includes uploading the case packet or any part of the case packet, such as the fictional logos in the Exhibits.**

If any team member, coach, observer, or other individual affiliated with a competing team is found to have violated this prohibition, that team is subject to the full range of possible sanctions provided by Rule 1.2 of the Rules of Competition, which can include suspension of that individual or expulsion of that team from competition.

CASE INTRODUCTION

Delaware is known for many things, including being the first state to ratify the Constitution of the United States. But within legal circles, Delaware is known first and foremost as the epicenter of corporate law. The Delaware General Corporation Law (DGCL) sets the standard for the law of business organizations nationwide, and each year thousands of law students navigate its intricacies. Delaware corporate common law is the product of Delaware's courts, and especially its Court of Chancery, a group of ten individuals who interpret the DGCL in business disputes. An overwhelming majority of America's largest businesses are incorporated in Delaware, in part to ensure the uniform application of law that the Court of Chancery and the reviewing Delaware Supreme Court provide.

In 1996, the Court of Chancery decided the famed *Caremark* case, in which it held that shareholders in corporations may – under limited circumstances – sue the corporation's board of directors for failing to protect the corporation's interests. *Caremark* liability is a critical check on corporate leaders that ensures shareholders get effective, engaged governance from the corporate boards that collectively make trillions of dollars in decisions each year. *Caremark* was also a critical step in the development of corporate compliance and board oversight, the legal structure that requires corporate leaders to help protect shareholders and the public alike by studying and mitigating the risks that corporate activities pose, especially to health and safety.

The pecuniary value of these decisions is just the start of their impact. Decisions made in C-suites across the United States affect the lives and health of every American. And as recent events have shown, business disputes need not be bloodless battles between attorneys and forensic accountants, arguing over spreadsheets. To the contrary, they can involve the flashiest and most public of characters and the most serious and tragic of results.

This is such a case. *In re QuikPhone* begins with the celebrity Bree Plaza, star of stage and screen, whose cinematic exploits are rivaled only by their entrepreneurship. For more than a decade, across industries, the Quik brand has been synonymous with cutting edge development and its owner's famous face and trademark wit. During the COVID pandemic, it looked like Quik and Plaza, its CEO, had hit another home run, as it took its limited-run QuikCases into mass production, offering consumers a Made-in-the-USA cell phone case solution at a time other companies were encountering intractable supply chain disruptions. But customers alleged that some QuikCases broke down in extreme heat, causing lasting neurological damage and bankrupting QuikPhone. Now the QuikPhone shareholders—many of them dedicated Bree Plaza fans—are suing Plaza themselves, claiming that Plaza's leadership was nothing more than a figurehead, and Plaza's failures have cost them millions.

Was Bree Plaza an absentee landlord, a CEO ignoring the dangers their company created? Or did Plaza try their best and make the kind of ordinary mistake that sometimes happens, especially when products have to be rushed to market?

Trial is joined.

AUTHORS' NOTE

Okay, we get it. You were probably hoping for a murder case, and your eyes maybe didn't light up when you saw the words "Shareholder Derivative Litigation." But please, give us a chance. We have done everything we could to make this just as interesting, twisted, and fun as any case you've ever tried, even if it doesn't start with a CSI team standing over a dead body.

One goal of mock trial is to provide an authentic experience akin to real courtrooms. Here, we have had to bend that a bit, because the Court of Chancery would not ordinarily proceed in this way. For example, the Court of Chancery uses bench trials, but mock trials are better with a jury, so this case will be tried to a jury. Likewise, the Court of Chancery is renowned for the speed with which it decides cases, but we've set a slower timeline for mock trial purposes. If you want to learn more about how Chancery proceedings *actually* work, follow the headlines, or check out the Court's website.[1] In the meantime, enjoy the problem and don't stress too much about whether this is exactly how it goes for corporations facing similar situation in real life.

With that said, we did try to get it close, and we were blessed to have amazing guides. We extend our thanks to former Vice Chancellor Joseph R. Slights III and current Justice N. Christopher Griffiths of the Delaware Supreme Court. In addition to his exceptional contributions to Delaware law, Vice Chancellor Slights was a longtime mock trial coach at the state and national levels and served as one of the Host Directors in 2008. Justice Griffiths was there when this case was conceived, over tacos, when he was merely honorable and not yet The Honorable, and he has been with us every step of the way since then, sculpting, drafting, and editing this problem. This case would have been impossible without either of them.

Among many individuals, we also thank law clerk Emily Bryant-Álvarez of the Delaware Supreme Court and our longtime friend and perennial reviewer Veronica Finkelstein, now of the Wilmington University School of Law. We likewise thank the National Case Committee – and particularly the Honorable "Pete" Jones of the Delaware Superior Court – for their sage counsel and extraordinary patience and trust, which we hope we have again justified.

Finally, for your entertainment – and perhaps your enjoyment outside of mock trial – we have seeded the case with references to some of our favorite action films and actors. Although actors and actresses with a Delaware connection received precedence, we have sampled liberally from the films we love or loved to hate. We hope you enjoy some Wikipedia or IMDB rabbit holes along the way, but we need to stress that we are taking only monikers, not characters or personhood, and we expressly disclaim any resemblance either to any living person or any character whose name we borrow. We do, however, thank Delaware's own Aubrey Plaza, who expressly consented to the use of her name for the main character in our little drama.

[1] https://courts.delaware.gov/chancery/

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

J. CAMERON and OTHER SHAREHOLDERS OF QUIKPHONE SAC I,	)	
Plaintiffs,	)	C.A. No. 23-1903
v.	)	
BREE PLAZA,	)	
Defendant,	)	
and	)	
QUIKPHONE SAC I,	)	
Nominal Defendant.	)	

SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs, derivatively on behalf of nominal defendant QuikPhone SAC I ("QuikPhone" or "Company"), bring the following derivative complaint (the "Complaint") against the Company's Chief Executive Officer ("CEO"), Bree Plaza ("Defendant" or "Plaza"), for a breach of fiduciary duty.

NATURE OF THE CASE

1. As CEO of the Company, Bree Plaza failed to ensure the safety of its products. In the absence of Plaza's oversight, the Company manufactured defective phone cases that exposed consumers to serious harm.

2. QuikPhone, created, manufactured, and mass produced a limited-run phone case, the QuikCase line of phone cases. Some of the QuikCases in this product line had product defects – chiefly, malfunctioning in heat from cellular phone use and failing to retain their structural integrity – which caused the release of a hazardous gas and thereby caused lasting neurological damage to case users.

3. As set forth in further detail below, Plaza breached their fiduciary duty of care to the Company.

JURISDICTION

4. This Court has jurisdiction over this action under 10 *Del. C.* § 341.

5. This Court has jurisdiction over Plaza pursuant to 10 *Del. C.* § 3114, because Plaza is an officer of a Delaware corporation.

6. This Court has jurisdiction over QuikPhone, a Delaware corporation, pursuant to 8 *Del. C.* § 321 and 10 *Del. C.* § 3111.

PARTIES AND RELEVANT NON-PARTIES

7. Plaintiffs were stockholders of the Company at the time of the wrongdoing alleged herein and at the time of its bankruptcy.

8. Plaintiff Jamie Cameron is a former QuikPhone employee whose employment was terminated when the company went bankrupt in 2022.

9. Nominal Defendant QuikPhone was a Delaware corporation with its principal offices located at 2600 Concord Pike, Wilmington, Delaware, 19803. QuikPhone is a special purpose entity created in 2014 which is majority-owned by QuikBrands (55%), a Delaware corporation with the same principal place of business, and minority owned by investors (45%).

10. Defendant Bree Plaza was the CEO of the Company, a position Plaza held during its entire existence.

11. Non-parties Gerry Butler, Mitch McDeere, Chev Chelios, and Teri Polo were board members of QuikPhone. All are longtime friends or personal confidants of Plaza, and collectively they comprise more than 50% of the Board of QuikPhone. Each board member's primary income source is or was derived from Plaza, the Company, or other QuikBrands entities. Non-party E.E.

Reinhold, Ph.D., who was in charge of research and development at QuikPhone, was one of Plaza's former college professors.

12. Upon information and belief, the board of directors met sporadically and informally during 2020 and 2021, and Plaza was frequently unavailable to the board.

FACTUAL BACKGROUND

13. In 2014, Plaza and QuikBrands founded QuikPhone and acquired Cilantro Wireless through it. By late 2016, it was making steady, limited profits.

14. In late 2017, QuikPhone began manufacturing the QuikCase, a cell phone case for the Google Pixel, made from Tiger Tail, a variant of the Lion's Mane mushroom. TigerSeat, a now-defunct subsidiary of QuikBrands, had previously worked with Tiger Tail to create foam for car seats using the mushroom strain. These cases were made exclusively from mushrooms grown in Delaware and/or southeastern Pennsylvania.

15. Plaza instructed QuikPhone to construct its cases from the Tiger Tail variant used in TigerSeat. Subsequently, Plaza directed the company to integrate copper into certain cases.

16. Following a board meeting in spring 2020, QuikPhone employees were directed to increase production on the cases and to find additional Tiger Tail suppliers, some of whom were outside of Delaware and southeastern Pennsylvania.

17. Upon information and belief, the Company had lost the raw data from earlier Tiger Tail testing conducted by mycologist Tee Mapother. Mapother was Plaza's college roommate and during the time working for TigerSeat, Mapother's income was primarily derived from the company and/or Plaza.

18. Upon information and belief, the Company failed to ensure that the farmers it contracted to grow Tiger Tail followed the Company's growing instructions.

19. Plaintiff and former QuikPhone employee Jamie Cameron expressed their concern about QuikPhone's testing protocol for the Tiger Tail that it was using in its phone cases. Cameron separately expressed their concern to Plaza in an email.

20. Through 2020, Plaza was largely disengaged from the Company's operations.

21. QuikPhone nonetheless consummated a deal with Apple in 2020 to make cases for iPhones. Apple hoped to harness anti-microbial materials to create an "anti-COVID" phone case made principally of Tiger Tail infused with copper. After QuikPhone and Apple made the deal public, the Company's profits and stock price spiked.

22. In autumn 2020, consumers began posting troubling information about their experiences with the QuikCases. Some consumers described having headaches after using the new case, while others described having adverse neurological reactions as a result of the cases. Such complaints even lead to the creation of a hashtag on X (then known as Twitter): "#QuikPain." After seeing consumer complaints, Cameron reiterated the concerns about the cases directly to Plaza.

23. In late 2020 or early 2021, Cameron tested QuikCases that used non-local Tiger Tail mushrooms and detected a hazardous gas emanating from some of the cases ("off-gassing") after the phones had been in use and plugged in for more than six to eight hours.

24. Cameron informed Butler and Professor Reinhold of their Cameron's findings.

25. Cameron was instructed to arrange for confidential testing of the QuikCase by a third party, which confirmed that off-gassing was occurring.

26. During an emergency QuikPhone board meeting called by Plaza for March 10, 2021, Cameron informed the Board about this testing.

27. Upon information and belief, Chelios was under the influence of drugs at the meeting.

28. Plaza departed the board meeting without addressing Cameron's concerns, although the Board voted to approve additional safety testing of the QuikPhone cases.

29. Without waiting for the results of this testing, on Memorial Day 2021, Reinhold went on national television and declared that QuikPhone's products, including the QuikCases, were safe and that production would continue to meet the deadlines in the Apple contract.

30. Shortly after Memorial Day 2021, plaintiff Jamie Cameron blew the whistle on QuikPhone's coverup of the adverse data regarding QuikCase.

31. After Plaintiff Cameron's revelation of the off-gassing data that could substantiate the customer complaints described in Paragraph 22, Apple insisted on testing the QuikCases.

32. This testing was performed by Goodspeed Laboratories. The Goodspeed testing confirmed that the QuikCases made from Tiger Tail mushrooms grown outside northern Delaware or southeastern Pennsylvania and/or those that contained copper were off-gassing when tested at high temperatures.

33. Goodspeed hypothesized, but did not demonstrate, that the high temperatures of the testing could be reached by users streaming video for extended periods on plugged-in cellular phones.

34. Goodspeed hypothesized, but did not demonstrate, that the gas released during high-temperature off-gassing could cause harm in humans.

35. As a result of the Goodspeed testing, Apple terminated the QuikCase mutual marketing and distribution contract for cause.

36. QuikPhone settled a class action under which settlement QuikPhone was forced to pay medical monitoring costs for QuikCase purchasers.

37. QuikPhone was named as a defendant in over three dozen product liability or personal injury lawsuits, stemming from the alleged failure of QuikCases leading to headaches or serious neurological symptoms.

38. These lawsuits led to a sharp drop in the Company's share price and, ultimately, its bankruptcy.

COUNT I

Breach of Fiduciary Duty of Care
(Derivatively against Bree Plaza)

39. Plaintiffs re-allege the preceding paragraphs as if fully set forth herein.

40. Plaza, as CEO of QuikPhone, was and is a fiduciary of the Company and its stockholders. As such, Plaza owed and owes the Company and its stockholders the highest duties of good faith, due care, and loyalty.

41. Plaza, consistent with their fiduciary duties, was required to ensure the safety of the Company's products, including the QuikCases.

42. Plaza consciously breached their fiduciary duty of care by exposing the Company to harm, including to numerous product liability lawsuits, and violating their corporate responsibilities by failing to implement and monitor compliance polices and systems to ensure the safety of the QuikCases.

43. Plaza was aware of numerous deficiencies in the Company's business processes, including lack of controls over finances, information technology, and decision-making.

44. Plaza was aware that on numerous occasions, these risks had manifested in incidents harmful to the company and its shareholders, including ill-advised or ill-informed

purchases, theft by employees and officers, loss or waste of valuable property, and other, similar events that put Plaza on notice that the lack of controls was harming shareholders.

45. Plaza had numerous opportunities to address the Company's lack of controls but (1) failed to make a good faith effort to implement and monitor an oversight system; (2) consciously disregarded their duty to learn of and investigate red flags; and/or (3) affirmatively undermined efforts to correct issues identified by Company employees. In so doing, Plaza recklessly disregarded the known risks to the Company posed by the lack of controls.

46. As a result of Plaza's conscious failure to carry out their fiduciary duty of care, the Company has sustained significant damages—both financially and to its corporate image and goodwill, damages which ultimately sufficed to put it in bankruptcy.

47. The equity shareholders of the Company were damaged by this conscious failure when their equity stake was extinguished by the bankruptcy.

48. QuikPhone's parent, QuikBrands, purchased a $20 million insurance policy for its directors and officers, which insures against reckless conduct by those individuals (i.e., a claim such as this one) for QuikBrands and its subsidiaries, including the Company. This policy represents the primary source of recovery of the equity stake of these individuals.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Declaring this action to be a proper derivative action and Plaintiffs to be proper and adequate representatives of the Company;

B. Declaring that Plaza breached their fiduciary duty of care to the Company;

C. Awarding damages sustained by the Company as a result of Plaza's breach of fiduciary duty set forth above, together with pre- and post-judgment interest, up to and including $20 million;

D. Awarding Plaintiffs' costs and expenses incurred in this action, including, but not limited to, experts' and attorneys' fees; and

E. Granting such other, further different relief as the Court deems just and proper.

Dated: February 2, 2023

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/s/ *Darby Shaw*

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IN THE COURT OF CHANCERY

IN RE: QUIKPHONE SAC I SHAREHOLDER DERIVATIVE LITIGATION **Case No.: 23-1903**

ANSWER

1. Defendant admits that Plaza was its CEO. The remainder of the allegations of this paragraph are legal averments to which no response is required. To the extent a response is required, they are denied.

2. Defendant admits that it released the QuikCase product. The remainder of the allegations of this paragraph are legal averments to which no response is required. To the extent a response is required, they are denied.

3. The allegations of this paragraph are legal averments to which no response is required. To the extent a response is required, they are denied.

4. Admitted.

5. Admitted.

6. Admitted.

7. Upon information and belief, admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Denied.

13. Admitted in part. Defendant denies the characterization "limited" profits.

14. Admitted.

15. Admitted in part. Defendant admits that Plaza recommended Tiger Tail and recommended copper, but it denies that the decision was made solely by Plaza.

16. Admitted.

17. Denied as stated. Defendant admits only that this data became unavailable to it; that Plaza and Mapother were roommates in college; and that Mapother worked at TigerSeat.

18. Denied.

19. Denied.

20. Denied.

21. Denied as stated. Defendant admits that it reached a contract with Apple and that the consummation of that deal appeared to cause an increase in company value and stock price.

22. Upon information and belief, defendant admits that there were one or more such complaints. Defendant denies the remaining allegations of this paragraph.

23. Denied as stated. Defendant admits only that Cameron performed some informal testing and reached a preliminary opinion regarding off-gassing.

24. Denied as stated. Defendant incorporates its response to Paragraph 23.

25. Denied.

26. Denied as stated. Defendant admits that there was a meeting of its Board that day and that Cameron – who was not invited – attended and spoke.

27. Denied.

28. Denied.

29. Denied as stated. Defendant admits only that Reinhold addressed the concerns with the QuikCase product during a television appearance on Memorial Day 2021.

30. Denied as stated. Defendant admits only that Cameron appeared on a local news telecast that was later picked up by national news organizations and provided a highly-biased, inaccurate version of the testing results. Defendant specifically denies that Cameron is entitled to any status under Delaware Code §§ 1701-08.

31. Denied as stated. Defendant admits that it reached a mutual agreement with Apple that a third-party would perform testing and that it agreed with Apple's proposal that Goodspeed Laboratories would be the company selected to perform the testing.

32. Denied as stated. Defendant admits only that the Goodspeed testing confirmed that some very small number of QuikCases made from Tiger Tail mushrooms grown outside of Delaware or southeastern Pennsylvania or made with copper suffered a structural breakdown at high temperatures and released a gas of unknown composition or effect.

33. Admitted.

34. Admitted in part. Based on the Goodspeed and its own testing, Defendant accepts that certain QuikCase products could have off-gassed at high temperatures and such off-gassing could have caused headaches or other neurological harms to QuikCase buyers, but no scientific testing has identified the particular gas that was released from any QuikCase or has proven any particular harm such gas might cause. Defendant specifically denies that any identified product caused any identified harm to any identified individual.

35. Denied as stated. Based on the Goodspeed testing, the parties mutually agreed to cancel their contract.

36. Admitted.

37. Admitted. By way of further response, Defendant denied the allegations of those suits and specifically denies that its product caused any harm to any particular individual.

38. Denied as stated. Defendant admits only that these lawsuits cost it considerable capital, which in turn resulted in a diminution of its business valuation and, hence, its share value. Defendant ultimately declared bankruptcy.

39. Defendant reiterates its responses in the preceding paragraphs.

40. The allegations of this paragraph are legal averments to which no response is required. To the extent a response is required, Defendant admits only that Plaza had duties of good faith, due care, and loyalty under Delaware law.

41. The allegations of this paragraph are legal averments to which no response is required. To the extent a response is required, Defendant admits only that it held itself to the highest standards with respect to all of its products, and its CEO fully supported these standards.

42. The allegations of this paragraph are legal averments to which no response is required. To the extent a response is required, they are denied.

43. Denied.

44. Denied.

45. Denied.

46. The allegations of this paragraph are legal averments to which no response is required. To the extent a response is required, they are denied.

47. The allegations of this paragraph are legal averments to which no response is required. To the extent a response is required, they are denied.

48. Admitted.

WHEREFORE, Defendant requests judgment in its favor and in favor of its CEO.

BUCHINSKY WILLIS

/s/ Willis

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IN THE COURT OF CHANCERY

IN RE: QUIKPHONE SAC I SHAREHOLDER DERIVATIVE LITIGATION **Case No.: 23-1903**

MEMORANDUM AND ORDER

Presently before the Court is the derivative action brought by the shareholders of QuikPhone SAC I, against its Chief Executive Officer, Bree Plaza. Both parties have moved for summary judgment, and both motions are denied for the reasons stated herein. This Court has already dismissed the action brought by the same shareholders against QuikPhone's parent, QuikBrands. *See* Memorandum and Order in Case No. 22-1968 (docket no. 19).

This case has attracted considerable public attention, and not all of the reporting has been accurate. It therefore behooves the Court to explain in at least summary form why we are here. Corporations are typically governed by two groups of individuals, the officers of the corporation, who are employees paid to handle decisions on a day-to-day basis, and the corporation's board of directors, who are elected by the shareholders and who typically handle corporate policy, choose the corporate officers and set their compensation, oversee the work of the corporation's officers, and generally steer the ship at a strategic level. Sometimes these are the same individuals, although this Court has long counseled in favor of "independent" directors who are not actively employed at the corporation. No company involved in this litigation had a majority of independent directors, and QuikPhone in particular did not at the time of its bankruptcy.

A shareholder derivative action is an action brought by the corporation's owners against the board of directors for breaching their duty of care or their duty of loyalty. Typically, these actions seek to recover from the corporation – or insurance it has purchased – the lost value of the shareholder's shares. That value is typically a measure of its net assets, *i.e.*, the cash and tangible things it has, and its expected future profits. Those profits are a factor of future revenue and future costs. Both can impact share price.

For example, if a company has a product that is expected to be very successful but instead fails, that often means a loss of projected revenue to the company. This loss of future revenue diminishes the value of the company, causing the share price to fall. The same is true if a product harms consumers in an unexpected way (for example, if an autonomous car crashes or a drug has unexpected side effects). Harmful products not only cause the company's "brand" to suffer, leading to diminished sales, but they can bring costly lawsuits. These costs reduce profits, and when it becomes clear they are coming, share prices can be expected to fall.

More than twenty-five years ago, this Court established in *In re Caremark Intl. Inc. Deriv. Litig.*, 698 A.2d 959 (Del. Ch. 1996) that members of corporate boards of directors ("directors") owe a responsibility to the corporations that they serve to both exercise due care in the performance of their duties and to perform those duties loyally, that is, act in good faith in informing themselves of the affairs of the corporation. When they fail in those duties, they may be held liable and forced to pay damages, although in some instances those damages are paid in part by insurance policies

the corporation obtained. Correspondingly, *Caremark* also made clear – and we have since reiterated several times – that these duties include the active oversight of all major functions of the business that could pose significant risks to the corporation. These of course include risks to the public from the corporation's products. If a corporation's products cause harm to the public, especially harm that could have been prevented, the value of the corporation's brand is damaged, and successful lawsuits can impose significant additional costs. It therefore follows that corporate leaders should be required to concern themselves with avoiding these eventualities.

With that said, allowing shareholders to sue directors is not a matter that this Court takes lightly. To the contrary, this Court wishes to encourage competent individuals to step up and serve as officers and directors. If such individuals could easily be found liable in claims such as this one, few would accept such risk. Moreover, business decisions are complex, and are rarely easy. The liability this Court describes cannot become a routine mechanism to punish any decision that goes poorly, even if in hindsight that decision appears poor or even negligent. For businesses to function, the discretion afforded to business decisions must be very substantial. If every business decision that ended badly brought liability to directors, or if even a majority of those decisions brought liability, corporations would be paralyzed. Businesses face considerable uncertainty and reasonable minds can differ as to what course of action will best enhance long-term value. Investors can replace directors or officers who make poor decisions, but that is their recourse, not a suit against those persons.

For this reason, *Caremark* claims have, since their inception, posed "possibly the most difficult theory in corporation law," setting "a demanding test" in order to ensure that directors remain willing to serve. 698 A.2d at 967, 971. *Caremark* is not, and cannot, become a license to second-guess business leaders who had to make the decisions in the moment, without the benefit (and bias) of hindsight. What products to market (and how), what individuals to choose to lead the corporation, what mergers or acquisitions to consider and which are a bridge too far . . . all are subtle decisions that require directors to weigh manifold concerns. None are easy, and thus none are susceptible to hindsight suits from shareholders disappointed with their outcomes.

Accordingly, as long as directors and officers act in good faith, with reasonable information that they acquired by following a reasonable, defensible process, they are immune from shareholder suit. The shareholder's remedy for a perceived lack of business acumen by a director is to replace the director or to sell the shares in that corporation and purchase in another.

Nonetheless, directors *do* owe a duty to shareholders to exercise that appropriate care in the management of the enterprise, particularly when those directors and officers are informed of particular risks to long-term value by employees or by the course of business. This duty is principally procedural, in the sense that it is less concerned with any outcome and more concerned with how directors conduct their business. In particular, directors are required to inform themselves of the matters within their respective purviews, and a "systematic failure" of a board member to exercise oversight, such as a "failure to attempt to assure that a reasonable information and reporting system exists," can still lead to *Caremark* liability. 698 A.2d at 971.

Since *Caremark*, business practice has evolved, particularly in highly-regulated environments, and this Court has evolved with it. Let us examine an example. As the modern internet has evolved, so

too have the risks that accompany it, including data breaches that can expose personal health or financial information to hackers around the world. For that reason, modern *Caremark* jurisprudence requires corporations to establish systems ensuring that information systems are secure. That is an archetypal procedural duty: if a board of directors ignores cybersecurity entirely, the directors may have violated their *Caremark* duties and may therefore be liable. But this Court does not examine the substance of board decisions, such as exactly *how much* time was devoted to cybersecurity as opposed to other important issues. And this Court certainly has no interest in revisiting with the benefit of hindsight which technology the Board chose or which contractor it hired, even when a subsequent data breach causes damage to share price. Our job is to ensure that shareholders are protected by the corporation making an informed decision, not to second-guess the decision that is made.

The question, of course, is where that line is drawn. The answer may vary. A corporation that possesses highly sensitive information might have a greater obligation than one that maintains only mailing addresses, and one operating in matters of human health will have a greater obligation than those whose work does not touch the public. Correspondingly, if a corporation starts in one business but moves into another, that might require enhanced compliance efforts by the directors, or it could relax those duties.

Factual disputes prevent the Court from deciding as a matter of law that Plaza violated their duty of care. This case arises from the damages caused by a manufacturing or design defect in the QuikCase, a cellular phone case marketed by QuikPhone SAC I, a special acquisition vehicle owned 55% by QuikBrands and 45% by public and private investors. The parties do not dispute that QuikCase products could have off-gassed or that the off-gassing could have caused consumer harm. QuikPhone has faced numerous lawsuits, including a class action settlement under which it was forced to pay for medical monitoring expenses. These suits impacted the QuikPhone brand and its valuation. Nor do they dispute that these failures have led to a loss of share price. The question that remains is whether Bree Plaza was reckless in governing QuikCase, that is to say whether Plaza ignored or failed to respond reasonably to known risks. If so, Plaza bears personal responsibility to the QuikPhone shareholders for these losses.

Whether Plaza is sued as an officer or a director is of no moment here. This Court decided in *In re McDonald's Corp. Stockholder Derivative Litigation*, 291A.3d 652 (Del. Ch. 2023) that corporate officers bear the same *Caremark* liability as directors. Accordingly, while the issue is preserved pending appeal to the Delaware Supreme Court, this Court denies Plaza's motion for present purposes.

Plaza next moves to dismiss because, Plaza claims, the shareholders here do not allege that Plaza breached a duty of loyalty, only a duty of care. Although Plaza is correct that *McDonald's* includes allegations of both breaches, nothing in that decision suggests that only an officer who breaches both duties simultaneously may be liable. We decline to so limit *Caremark* or *McDonald's*. A sufficient breach of the duty of care, standing alone, would render Plaza liable.

Next, Plaza contends that this action is improper, because the shareholder-plaintiffs never made a demand of the Board to sue Plaza. But this Court has long excused shareholder-plaintiffs when the directors are not independent enough to make the effort meaningful. The independence of the

QuikPhone/QuikBrands Board is not a close call. The directors are: Plaza's high school theatre and mock trial coach, "Gerry" Butler; Plaza's longtime agent and personal attorney, Mitch McDeere; Plaza's "brand manager" and "executive consultant for social media presence," Chev Chelios; and Teri Polo, who Plaza has represented on various social media applications as Plaza's "BFF" (which the Court understands to mean "best friend forever"), Plaza's "bestie," and Plaza's "No14Eva" in the captions of their literally dozens of photographs together. Several corporate prospectuses emphasize the close, personal relationship among these individuals, each of whose primary income source appears to be Plaza or Plaza's businesses. Plaza does not deny this connection, stating instead that these individuals are Plaza's "undying, unyielding rocks in the maelstroms of this life and the next." Suffice it to say that any request by the shareholder-plaintiffs that these individuals sue Plaza would be futile.

Finally, Plaza contends that the facts adduced in discovery, even if taken as true, show only a less-than-ideal performance, not a total failure. While it is true that Plaza avers that certain facts, if true, would demonstrate Plaza's commitment to the work of QuikPhone, those same facts viewed through a different lens might suffice to show the kind of failure that would result in *Caremark* liability. What efforts Plaza made or did not make to create adequate systems at QuikPhone is an inherently factual matter, as are the credibility and import of the explanations Plaza provides for them. This Court cannot resolve these conflicts at summary judgment.

Correspondingly, of course, the same is true of the shareholder-plaintiffs' motion for summary judgment. Viewed in a light most favorable to Plaza, the facts establish *some* efforts by Plaza and others and therefore do not establish *Caremark* liability as a matter of law.

How those facts are ultimately viewed therefore determines the question. Hence, a trial.

The Clerk of Court is directed to set a date in May 2024 for trial of this action. All parties are joined for trial on that date, and no continuances will be granted. A copy of this order will be forwarded to the Administrative Office of Delaware Courts so that it may prepare for the unusual levels of media attention that can be expected. The members of that office have this Court's appreciation for the considerable challenges trials such as this pose.

BY THE COURT:

Smith, VC

Willard Carroll Smith II, Vice Chancellor

IN THE COURT OF CHANCERY

IN RE: QUIKPHONE SAC I SHAREHOLDER DERIVATIVE LITIGATION **Case No.: 23-1903**

JURY INSTRUCTIONS

Now that you have heard the evidence and the arguments of counsel, it is my duty to instruct you about the law governing this case. Although you as Jurors are the sole judges of the facts, you must follow the law stated in my instructions and apply the law to the facts as you find them from the evidence. You must not single out one instruction alone as stating the law, but must consider the instructions as a whole.

Nor are you to be concerned with the wisdom of any legal rule that I give you. Regardless of any opinion you may have about what the law ought to be, it would be a violation of your sworn duty to base a verdict on any view of the law other than what I give you in these instructions. It would also be a violation of your sworn duty, as judges of the facts, to base a verdict on anything but the evidence in the case.

Justice through trial by jury always depends on the willingness of each juror to do two things: first, to seek the truth about the facts from the same evidence presented to all the jurors; and, second, to arrive at a verdict by applying the same rules of law as explained by the judge.

You should consider only the evidence in the case. Evidence includes the witnesses' sworn testimony and the items admitted into evidence. You are allowed to draw reasonable conclusions from the testimony and exhibits, if you think those conclusions are justified. In other words, use your common sense to reach conclusions based on the evidence.

You have been chosen and sworn as jurors in this case to decide issues of fact. You must perform these duties without bias for or against any of the parties. The law does not allow you to be influenced by sympathy, prejudice, or public opinion. All the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law, and reach a just verdict, regardless of the consequences.

FUNCTION OF THE COURT AND JURY

You are the sole and exclusive judges of the facts of this case, of the credibility of the witnesses, and of the weight and value of their testimony. It is not proper that the Court comment upon the testimony, but it is proper and necessary that I point out to you certain applicable principles of law.

THE ROLE OF ATTORNEYS IN THESE PROCEEDINGS

The role of attorneys is to zealously and effectively advance the claims of the parties they represent within the bounds of the law. An attorney may argue all reasonable conclusions from evidence in the record. It is not proper, however, for an attorney to state an opinion as to the truth or falsity of any testimony or evidence. What an attorney personally thinks or believes about the testimony or evidence in a case is not relevant, and you are instructed to disregard any personal opinion or belief offered by an attorney concerning testimony or evidence.

What the attorneys say is not evidence. Instead, whatever they say is intended to help you review the evidence presented. If you remember the evidence differently from the attorneys, you should rely on your own recollection.

ELEMENTS OF BREACH OF THE DUTY OF CARE

In order to prove a breach of fiduciary duty claim, the shareholders must prove two things by a preponderance of the evidence: (1) that Plaza owed fiduciary duties to the Company's stockholders; and (2) that Plaza breached those duties. If you find that the shareholders failed to prove even one of these elements by a preponderance of the evidence, your verdict must be for Plaza. On the other hand, if you find that the shareholders have proven all of these elements by a preponderance of the evidence, your verdict must be for the shareholders.

I will now explain "preponderance of the evidence" to you. Then I will explain each of the elements I just mentioned.

BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE

In a civil case such as this one, the burden of proof is by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence on any particular point is evenly balanced, the party having the burden of proof has not proved that point by a preponderance of the evidence, and you must find against the party on that point.

In deciding whether any fact has been proved by a preponderance of the evidence, you may, unless I tell you otherwise, consider the testimony of all witnesses regardless of who called them, and all exhibits received into evidence regardless of who produced them.

In this case, the shareholders have the burden of proving each and every element of their claim: that Plaza has a fiduciary duty of care toward the Company's stockholders and that Plaza breached that duty.

DEFINITION OF FIDUCIARY DUTY

Directors and officers have an unyielding fiduciary duty to protect the interests of the corporation and the stockholders alike. Directors and officers of a Delaware corporation owe two fiduciary duties: care and loyalty. The duty of care requires directors and officers to exercise the level of care that a prudent person would use under similar circumstances. The duty of loyalty requires directors and officers to refrain from benefiting themselves at the expense of the corporation. Do not concern yourself with the difference between these duties; I will describe the question before you.

DEFINITION OF BREACH OF FIDUCIARY DUTY

As part of the fiduciary duty of care, officers of a corporation owe a duty of oversight to matters within their authority.

When determining whether officers have breached their fiduciary duties, Delaware corporate law distinguishes between the standard of conduct and the standard of review. The standard of conduct describes what officers are expected to do and is defined by the content of the duties of loyalty and care. The standard of conduct for officers requires that they strive in good faith and on an informed basis to maximize the value of the corporation.

It is important to note that making a bad decision or a wrong decision does not mean that the officer violated the duty of care. Every person could look back and wish they would have done something differently, and we all have the experience of making what seemed like a good choice and having it end up being a bad one.

Nor is it enough for the decision, with the benefit of hindsight, to have just been other than the decision you would have made or the decision you think a reasonable person would have made. Delaware law provides substantial protections from second-guessing to board members and officers who take their responsibilities seriously, and operate in an informed, good faith manner.

The law sets a demanding test in which only decisions that are reckless, that is to say that they ignore a known risk or they fail to respond reasonably to a known risk, render an officer liable. Accordingly, the duty of care is evaluated under a gross negligence standard. Gross negligence is defined by Delaware courts as "reckless indifference to or a deliberate disregard of the whole body of stockholders or actions which are without the bounds of reason." For example, if there is a central business risk – that is to say a business risk that is essential or critical to the mission or business of the corporation – if a board or officers fail to make any effort to establish a system to address that central risk, that can lead to liability. But how much a company should or must do will depend on the context. Time and attention are precious commodities, and there is a limited supply of each, so each officer and director must make a judgment about how and where to devote their time and resources. With the benefit of hindsight, some of those decisions may appear not to have been the right ones, but only a reckless or patently unreasonable allocation of time and resources to risks leads to liability.

The risks businesses face also differ, and a company that prides itself in responding to certain risks or markets itself based on certain principles or propositions may generate liability if its directors or officers do not address the risks central to those principles or propositions. For example, if a company puts itself in the marketplace as providing class-leading training for new employees, there may be a greater duty on its directors and officers to mitigate against training risks than at a company that markets itself as a place for experienced professionals to succeed.

Whenever a decision goes bad, shareholders will be disappointed, but investors take the risk when they invest that a decision could be the wrong one or even an unreasonable one. Your focus should not be on an individual decision but on the whole sequence of decisions, and it should not be on the outcome but the process. As long as directors and officers act in good faith, with reasonable information that they acquired by following a reasonable, defensible process, they are immune from shareholder suit.

However, if you find that there was a systematic failure, you may find the officer liable for that failure. A conscious decision not to act is treated the same under the law as a conscious decision to act in a particular way.

Now let us discuss delegation. No human being can do everything in a corporation, and thus an officer is permitted to delegate to another, responsible employee the duty of following through on the officer's direction. But the officer is still responsible for their own actions and the systems that they create to oversee and manage those employees. An officer who fails to exercise oversight – for example, one who fails to attempt to assure that a reasonable information and reporting system exists to ensure they obtain relevant information – or who fails reasonably to follow up on their orders or to enforce a system in which employees follow those orders or company policies may be liable for those failures, if you find that the officer's actions – taken as a whole – unreasonably ignored or failed to respond to a known risk to the corporation's value.

If, on the other hand, the officer creates a reasonable system or sets a reasonable process in motion, taken as a whole, that officer is not liable, even if that system fails in a particular instance or you disagree with the decision made in a particular instance by those responsible.

The reasonability of any system, process, or delegation must be judged in context. It might be more reasonable for the CEO of a thousand-employee corporation to delegate certain duties than it is for the CEO of a five-person corporation to delegate the same duties. Likewise, responses to risk that a large corporation could easily afford may be beyond the means of a smaller company. What constitutes a reasonable response to a known risk by any officer or director or for any corporation will therefore vary by context, which is why you are here today.

Each officer's actions must be taken as a whole, and any one individual failure does not create liability unless that failure renders the actions as a whole unreasonable in their response to a known risk or issue or a bad faith manner of conducting business. In deciding whether a particular officer has breached their duty, you must consider all of the evidence in the context of the corporation in question and in light of your own experience and common sense.

OBJECTIONS – RULING ON EVIDENCE

Lawyers have a duty to object to evidence that they believe has not been properly offered. You should not be prejudiced in any way against lawyers who make these objections or against the parties they represent. If I have sustained an objection, you must not consider that evidence and you must not speculate about whether other evidence might exist or what it might be. If I have overruled an objection, you are free to consider the evidence that has been offered.

CREDIBILITY OF WITNESSES – RULING ON EVIDENCE

You are the sole judges of each witness's credibility. You should consider each witness's means of knowledge; strength of memory; opportunity to observe; how reasonable or unreasonable the testimony is; whether it is consistent or inconsistent; whether it has been contradicted; the witnesses' biases, prejudices, or interests; the witnesses' manner or demeanor on the witness stand; and all circumstances that, according to the evidence, could affect the credibility of the testimony.

If you find the testimony to be contradictory, you may try to reconcile it, if reasonably possible, so as to make one harmonious story of it all. But if you can't do this, then it is your duty and privilege to believe the testimony that, in your judgment, is most believable and disregard any testimony that, in your judgment, is not believable.

PRIOR SWORN STATEMENTS

If you find that a witness made an earlier sworn statement that conflicts with the witness's trial testimony, you may consider that contradiction in deciding how much of the trial testimony, if any, to believe. You may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation made sense to you.

Your duty is to decide, based on all the evidence and your own good judgment, whether the earlier statement was inconsistent; and if so, how much weight to give to the inconsistent statement in deciding whether to believe the earlier statement or the witness's trial testimony.

EXPERT TESTIMONY

Expert testimony is testimony from a person who has a special skill or knowledge in some science, profession, or business. This skill or knowledge is not common to the average person, but has been acquired by the expert through special study or experience.

In weighing expert testimony, you may consider the expert's qualifications, the reasons for the expert's opinions, and the reliability of the information supporting the expert's opinions, as well as the factors I have previously mentioned for weighing the testimony of any other witness. Expert testimony should receive whatever weight and credit you think appropriate, given all the other evidence in the case.

EVIDENCE: DIRECT, INDIRECT, OR CIRCUMSTANTIAL

Generally speaking, there are two types of evidence from which a jury may properly find the facts. One is direct evidence - such as the testimony of an eyewitness. The other is indirect or circumstantial evidence - circumstances pointing to certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from all the evidence in the case: both direct and circumstantial.

SYMPATHY

Your verdict must be based solely on the evidence in the case. You must not be governed by prejudice, sympathy, or any other motive except a fair and impartial consideration of the evidence. You must not, under any circumstances, allow any sympathy that you might have for any of the parties to influence you in any way in arriving at your verdict.

I am not telling you not to sympathize with the parties. It is only natural and human to sympathize with persons involved in litigation. But you must not allow that sympathy to enter into your consideration of the case or to influence your verdict.

Likewise, some of you may have seen the defendant or the defendant's photo or films. Others of you may have heard of those things for the first time during this trial. You are not to let that affect your decision in any way; Bree Plaza is here as a private citizen, and Plaza is entitled to the exact same sympathy and understanding any other litigant would be. You are not to treat Plaza any better or any worse because of their fame.

CURATIVE INSTRUCTION (where applicable in a particular trial)

I have read to you a number of instructions. These instructions should be considered by you as a series, and you should not choose any one or more instructions and disregard the others. It is your duty to follow all of the instructions given to you by the Court.

The fact that some particular point may be covered in the instructions more than some other points should not be regarded as meaning that the Court intends to emphasize that point. The Court is absolutely impartial in this case, and has not intended, and does not now intend, to give emphasis to any point, or to express an opinion one way or the other.

If an instruction seemed to favor one side or the other, you should take from the instruction the law contained therein and apply it to the facts of the case and understand that no favoritism or leaning was intended by the Court. I again emphasize, the Court does not intend to express an opinion on the facts, for you, and not the Court, are the judges of the facts.

THE COURT IS IMPARTIAL

Nothing I have said since trial began should be taken as opinion about the outcome of the case. You should understand that no favoritism or partisan meaning was intended in any ruling or

statement I made during the trial or by these instructions. Further, you must not view these instructions as an opinion about the facts. You are the judges of the facts, not me.

BIFURCATION

Do not concern yourself with the question of damages or with the impact of your verdict on either the plaintiff or the defendant or with their relative ability to shoulder the burdens of your verdict. If you find liability, damages will be addressed in another proceeding.

JURY DELIBERATIONS

How you conduct your deliberations is up to you. But I would like to suggest that you discuss the issues fully, with each of you having a fair opportunity to express your views, before committing to a particular position. You have a duty to consult with one another with an open mind and to deliberate with a view of reaching a verdict. Each of you should decide the case for yourself, but only after impartially considering the evidence with your fellow jurors. You should not surrender your own opinion or defer to the opinions of your fellow jurors for the mere purpose of returning a verdict, but you should not hesitate to reexamine your own view and change your opinion if you are persuaded by another view.

Your verdict, whatever it is, must be unanimous.

IN THE COURT OF CHANCERY

IN RE: QUIKPHONE SAC I SHAREHOLDER DERIVATIVE LITIGATION **Case No.: 23-1903**

STIPULATIONS

The parties stipulate to the following facts and legal conclusions. These facts may be considered in the record. No witness may contradict the stipulations.

1. Jurisdiction is proper in this Court over this action.
2. Venue is proper in this Court over this action.
3. All exhibits and signatures are authentic and accurate. No party may challenge the authenticity of an exhibit or signature.
4. Each witness made the witness statement designated as theirs under penalty of perjury after agreeing to include all material facts. Each witness reviewed each statement the day before the trial and confirmed that there were no additional facts that needed to be added and no changes needed to be made.
5. The exhibits that have been pre-marked may be offered into evidence by either party. Except as provided in the stipulations, no party has waived an objection to the admissibility of any exhibit.
6. Trial has been bifurcated. The first phase of the trial in this action will concern only liability. The second phase of trial, to determine damages, will occur only if necessary, should the jury find liability.
7. On January 12, 2022, facing numerous personal injury and product liability suits, QuikPhone declared bankruptcy.
8. The QuikPhone bankruptcy was adjudicated in 2022, and after the corporate debts were addressed, shareholders of QuikPhone received no portion of the proceeds of the bankruptcy. The litigation pending against QuikPhone SAC I was extinguished by the bankruptcy.
9. QuikBrands has a $20 million supplemental directors' and officers' insurance policy with Lincoln Insurance Co. that covers any reckless breach of duty of care by Bree Plaza or other directors or officers with respect to QuikBrands or any corporation majority owned by QuikBrands, including QuikPhone.
10. Exhibits 1 and 7 were obtained from the phone of Bree Plaza in discovery. Identical copies of the relevant portions of Exhibits 1 and 7 were obtained from the providers of the social media in question by subpoena.
11. Exhibits 2, 3, 4, 5, 9, and 10 were obtained by subpoena from third-party companies retained by QuikBrands companies to host email, instant messaging, video-teleconferencing, and similar information technology services. Exhibit 3 had no

attachment, but Exhibit 4 was attached to a blank email sent from Jamie Cameron to Bree Plaza at the same electronic mail addresses less than one minute after Exhibit 3. Exhibit 9 was an attachment to an electronic mail that has not been marked for use at trial but that was sent to Jamie Cameron's QuikBrands/QuikPhone work electronic mail account.

12. Each individual officer, director, and employee of QuikBrands and/or QuikPhone had only one email account for business purposes.

13. Exhibit 6 was obtained by subpoena from the corporate ledger of QuikBrands, maintained by its Registered Agent and Secretary, Carlos R. Norris.

14. Exhibit 8 was obtained by subpoena from servers maintained by the Department of Biology of the University of Delaware.

15. Exhibit 11 was retrieved from a folder marked "Board Notes - 2021" in the files of Gerry Butler maintained at the QuikBrands offices. It was boxed upon Butler's departure from QuikBrands and obtained in discovery in this action.

/s/ Darby Shaw

/s/ Willis

Statement of Jamie Cameron

Hi. Is this on? OK, cool. My name is Jamie Cameron, and I teach physical sciences at Newark Charter School. I have had that job since 2022, when I was fired from QuikPhone for blowing the whistle on the QuikCase product. I'm also a plaintiff, because I had most of my savings in QuikPhone stock. I probably should have invested in Pixar instead, but hindsight is 20/20.

I graduated from the University of Delaware in 2013 with bachelor's degrees in biology and electrical engineering and a minor in film studies. I always wanted a job as a screenwriter, but I was far better at science than writing. My first job was with a cell phone company, Cilantro Wireless, as a junior engineer and tech support. But less than a year in, Cilantro got eaten – ha! – by QuikPhone, Bree Plaza's new company. I was over the moon! Bree's films transcend their genres, and their cinematography is pathbreaking. Where DiCaprio or Streep walk, Bree Plaza runs! I have been a fan forever. When more senior Cilantro employees cashed out or left in disgust after the QuikPhone takeover, I stayed, and I was rapidly promoted to lead the QuikCase testing and production team. I didn't really know what I was doing, but I followed the advice Bree gave as our graduation speaker at UD: fake it 'til you make it!

Bree is really into sustainable development, and so we tried to source our products as much as possible with biomaterials, including mushrooms! Northern Delaware and the Kennett Square area in southeastern Pennsylvania are world-renowned for mushrooms production, and although Delaware might be best known for DuPont and other chemical companies, giving us Teflon, nylon, and Kevlar, we are now bringing eco-friendly technologies to market. Fortunately, Bree had an older company, TigerSeat, that had worked with the renowned mycologist Tee Mapother to try and make mushroom-based foam for car seats. It was supposed to be the Next Big Thing, but it really only caught on with Cheddar Motors. TigerSeat failed, and Tee went back to Hercules, but QuikBrands kept the technology.

In 2016, QuikPhone started developing the QuikCase, a case for Google Pixel phones that was made from the variant of the Lion's Mane mushroom (*hericium erinaceus*) called the Tiger Tail (*hericium grodeus*). Early on, the mushroom cases were a proof of concept upsold to ecofriendly customers. They also let Google get cheap publicity with Bree, one of the world's biggest stars. We sold a couple tens of thousands in 2018 and 2019, all sourced from our area.

But Bree had a much bigger vision than that. The goal of the concept cases we sold in 2018 and 2019 was to try to get into the market as a primary case, ideally with Apple. It turns out our timing was perfect – Bree's vision! – because in 2020, when China shut down manufacturing to contain COVID, American consumers lost more than just toilet paper and the ability to go to the local AMC! Many cell phone cases had been made in Chinese factories that just… dropped offline. Even better, in 2019, Bree had insisted we introduce copper into the cases. By early 2020, people were paranoid about contracting COVID, washing bananas with bleach before peeling them and stuff like that. Because copper was a known antimicrobial metal, we went from relative obscurity to a popular piece of PPE! We sold a lot more Pixel cases that year, and it was hard to meet demand those first few months of 2020. It was like we had bet on Marvel before *Captain America: The First Avenger* even released!

One day in April 2020, I was called to the back room at McGlynn's, where the Board was meeting, and asked whether we could ramp up production by a lot. Like, we would need *a lot* a lot more mushrooms! I knew that Delaware and Kennett Square weren't going to do that, so I started some research – ok, mostly Googling – and I found other places that could grow Tiger Tails in bulk.

Just like that, the QuikCase went through the roof! Well, it *really* went meteoric once Bree started pushing it on social media. Bree had, like, twenty million followers, and everyone knows Bree's track record. Everything Bree touches turns to gold: Speedboat Vodka, inspired by a trip across Redfish Lake with George Clooney; CraniumSugar ear buds, engineered by Hans Gruber, the legendary audio technician from *Quik to Anger* (*Quik II*); and even Aussie Rules Football, which was a niche sport in America that no one watched before Bree bought the Brisbane Lions with Sarah Connor, the director of *Boy-Girl//Girl-Boy*, and got their games streaming on Peacock. Now you see their jersey everywhere! And of course, the movies!

Anyway, I started calling those mushroom farmers and telling them to undercut their crops and plant Tiger Tail, Tiger Tail, Tiger Tail! It was a whirlwind. I didn't know which way was up!

Starting in February 2020, Bree was filming *Kalmar Nyckel* with Connor. It was *super* art house, and Bree was totally into the role, which meant sleeping on the boat and no cell phones. So Gerry and the others made the decisions about where to source the mushrooms, what testing to do, etc.

Anyway, the issue with the testing is that we didn't do much. Like, at all. Tee Mapother had tested the Tiger Tails back in 2010 or something, but while we had the reports from that, we didn't have the raw data, because it had been lost in some kind of computer crash or vendor dispute. I was fine with being in charge of my part of the product testing; I had taken several process engineering classes as an undergrad, and I did a lot of similar testing while working in Professor Reinhold's lab. While the testing we did do matched Tee's reports, a lot is lost between the data a tester collects and the tester's report, so you really want to work with the underlying data when doing follow-up testing. We never tested copper, for example, and the case testing was pretty modest, just some bench trials with typical use or a bit more than that. We also had no way to be sure the farmers we were hiring by the dozen would follow our very careful, very specific growing instructions; it's not like we could travel to inspect the sites or meet the farmers during pandemic, and some of them barely had a functional internet.

We also might not have even been using *exactly* the same Tiger Tail. Tiger Tails don't grow in every kind of soil. Professor Reinhold provided us biosimilar or bioidentical samples from the labs at UD, but there was no raw data to compare them to. The testing seemed similar, but you want to compare raw-to-raw. Even more worrisome was Prof's behavior. I took two classes with Professor Reinhold and did a semester in Reinhold's lab, and when Prof is under pressure or rushed, their face gets really flushed. Also, when Prof is conveying a decision that they don't believe, Prof gets this Look. When I asked if the mushrooms were identical, there was a lot of flush and a lot of Looking. Professor Reinhold is a world-renowned expert, and what Prof says is scientific gold. But I don't think Prof was comfortable with the whole thing, whatever they're saying now.

I expressed my concerns about ramping up production tenfold at that initial Board meeting. I did. I even sent an email about it to Bree, even though I knew Bree was out of communication. I would

give it to you, but they killed my email account when they fired me. Don't believe Reinhold on this; Prof is still mad about my hotline complaint to the Department of Defense about the CraniumStar Patriot and over that Zeta Iota Pi thing. Yes, I'm a "Zipper," a member of the co-ed honor fraternity ZIP at UD (and lots of other places). And yes, ZIP kept an archive of prior exams. And yes, I may have – when I was still Prof's TA and working in Prof's lab – put the *upcoming* exam into the archive. And yes, I may have told the Dean I didn't. In writing. At an honor proceeding. But c'mon, that was a decade ago.

Anyway, sadly, the rest of the QuikCase story is well known. Heck, you probably saw the doc on Netflix last month; it was in their Top Ten for two full weeks. First, the good part. Bree wrapped on *Kalmar Nyckel* in mid-2020 and began a push for our copper phone cases. Whatever. People buy amber necklaces for teething babies or homeopathic drops to cure motion sickness.

People were on their phones all the time during COVID, so demand for next-gen phones went through the roof and demand for cases followed. With supply limited, and some clever (but true!) "All-American" marketing, the QuikCase blew *up*. Profits spiked, and the stock price began a shocking, massive climb. We were still kind of a startup, so fully 25% of my compensation was stock options. That was like getting a 25% raise in a couple of months! I put a downpayment down on a house in the Brandywine area and looked at joining the Greenbriar Country Club, where executives play. Everything was coming up Cameron!

Bree made a deal with Apple to provide them QuikCases for the next-gen iPhones, with copper, of course, to "fight back against COVID." The orders were staggering. We were going to have a 12-month backlog. Bree was tweeting about it daily, and Bree's brand was going through the roof. I heard from Gerry Butler that Salus Energy Drinks paid $250,000 for a single Insta post.

But as we sold more QuikCases, we started getting more complaints. The first posts started popping up in October 2020, not long after we launched the next-gen cases from the ramp-up. People said they were getting headaches, and one guy who said his cousin had a seizure or stroke or something. No one thought much of it, because it seemed like these were probably people who just got COVID around the time they got a new phone. Bree would always send "support" or something if the social media team saw the tweets, or would urge them to get PCR tested. Those reply tweets would get, like 10x the number of likes or retweets as the original complaints.

Only the complaints kept coming. It even got a hashtag, #QuikPain. I had taken a basic epidemiology class in my Bio concentration, so I tried to model the things, but obviously, we needed a professional. But in fall 2020, the professional epidemiologists were more than a little busy! Still, I asked the entire executive team to fund some work on it.

What a reaction that got! The next morning, the QuikBrands social media manager, Chev Chelios, was in my lab before I was! I didn't even know Chev had a key, but I guess he was also the Chief Something Officer or something. None of us could keep the titles straight. We just called Bree's old buddies the Inner Circle. Anyway, Chev went totally *Mean Girls* on me. Chev was *total* IC, and he chewed me out, screaming at me that even the slightest "sign of weakness" could give credibility to the claims, and how I wasn't an epidemiologist. I was like, yeah, duh, that's why we need to *hire* an epidemiologist, and he was like, I should keep my conspiracy theories to myself

unless I wanted to land us in the News-Journal or on ProPublica. Chev even kept touting health *benefits* from using the phone case. We had no data supporting any of that.

After a week of sleepless nights and anxious days, I decided I had to go straight to the top. At 3 am one night, I typed out a measured, reasonable email – or so it felt – to Bree and sent it. Looking back, sending emails late at night wasn't my best plan. But it didn't matter; by then, Bree was on some kind of retreat in South America. I never heard back.

I created a few different burner accounts on Twitter and started collecting stories from the people who were posting them. To conceal who I was, I gave a fake name and told them I was a journalist working on an expose for ProPublica. What can I say? What Chev said struck a chord with me.

People told me things that were consistent with the defense that we'd been making in public: they were using their phones too much, so they were getting headaches. Myalgia is a known issue with, like, long-term use of electronics. Some gamers have even died after marathon sessions! Even so, I started to wonder if there could be a connection between the extended use and the case or the phone. So I ran my phone all the way down watching *Guardians* again, and then I plugged it in. I noticed pretty quickly that my QuikCase got hot. Like, real hot. We hadn't modeled or tested at all at temperatures caused by continuous use for hours, plugged in, because in 2018 and 2019, nobody used phones that way!

I started working nights and weekends, testing the QuikCase in higher heat. For the first month or two of part-time tests, I got nothing. I started to think maybe it was just long COVID or new COVID variant or something. But then it struck me: I was testing with local Tiger Tail mushrooms, and most of the new QuikCases used ones from around the country. When I tested *those* in December 2020, I knew we had an issue. The tests weren't showing anything wrong, at all, but I was getting a headache. I had been following pretty strict quarantining procedures, I went and got a PCR test, which was negative, so I *knew* it wasn't COVID. Finally, I narrowed it down: there was some kind of gas from some – but not all! – of the QuikCases made with non-local Tiger Tails and copper when the phones were in use, plugged in, for more than seven or eight hours.

I reported my findings to Prof and Gerry in early January 2021. Chev lost his mind, of course, screaming about my misuse of company property and how he'd see me fired or something. Professor Reinhold said I could be right, but there were a lot of things that could have been messed up my research. Like, duh: I'm doing this using spare equipment in a production lab. Of *course* there could be confounding variables. But Prof also made a snide comment about me being the "Boy who cried wolf," which – in addition to setting off Chev again – seemed really unusual. Professor Reinhold *never* engaged in *ad hominem* attacks at UD. It was always about the science.

Bree was on a publicity tour for *Kalmar Nyckel*, and so I wasn't surprised it took a few weeks before I heard back. That's when Prof asked me if there was anyone I trusted to do testing that would absolutely, positively not let it leak. Prof swore me to secrecy and was insistent: not even the other IC could know what I was doing, there could be no emails about it or written contracts, and Prof's division would pay for it off the books. Secrecy at most labs is impossible, because so many people work there. Scorsese knew how it works; three people can keep a secret, but only if two of them are dead. But my old college classmate Jacqueline Taggert was out in California,

working solo as an environmental consultant. Jac was basically a hermit, like super hippy-dippy-trippy off the grid, riding a biofuel-conversion Vespa. I called, Jac answered, we got things done quietly, and Prof's division paid for it somehow.

We got the results back from Jac in late February 2021, and they confirmed what I'd been saying: there was some kind of gas coming off at high temperatures. No one knew what it was, or *why* it was in some phones but not others, but there was something. I shared my findings with Prof, who pooh-poohed them. It was very frustrating. I printed that email and kept it at home.

Meanwhile, Bree had been nominated for a SAG award for *Kalmar Nyckel*, and the Oscars nominations were coming in March. But in the middle of that Oscar campaign, Bree was forced to mention during a hostile interview that the company was "looking into" the "QuikPain" issue, even though we had been saying there was none. We delayed the delivery of the cases to Apple, claiming production issues. That cost us a penalty, but the first batch of QuikCases for Apple was ten times the number of Pixel cases we'd sold in 2020 (which itself was a much larger number than we sold in 2018 or 2019). Losing Apple would have meant taking a loss for the year, for sure, and that would definitely have cratered the stock price, in addition to being a really high-profile failure for Bree.

Still, truth was truth, and I knew that Bree emphasized transparency and honesty. I needed to take my findings to the Board directly. Of course, I'm not a Board member, but my "email buddy" at Quik was the Board secretary, so I just checked *his* Outlook calendar and saw that the next meeting was scheduled for March 10, 2021. When I just showed up, Chev said this might be another "Jamie Special," but then Professor Reinhold started to support my research. That was a shock, given Prof's email! But when I told them I was considering talking to law enforcement or the press, Prof started screaming at me, and then other people started screaming, and then it seemed like two of them were actually discussing a TV show? Finally, the savior arrived. Bree slammed the table and told them what was what. I don't remember exactly what was said, because I was, like, in a fan dream. It was like Bree was channeling Dakota Quik, same look, same gestures! And then, to top it all off, Bree did the catchphrase! That's how I knew it would be ok, so I turned and left, dramatically, in Bree's wake, as a show of support.

But nothing changed until Memorial Day, 2021, when Professor Reinhold went on one of those cable news shows on CNBC or Fox Business or whatever. The terms Prof used were so scientific and so careful – "we do not yet have any scientific confirmation of a relationship" and "there are suggestions in data of a potential issue, but we are a long way from knowing if this is QuikCase." And when Prof publicly stated that the QuikCases would ship to Apple during the third week of June, it just caused me to, well, snap I guess. I called the local news and told them I was blowing the whistle. They looked into things for few days and then ran the story as the lead on the evening broadcast. Looking back, some of the things I said were over the top and not entirely accurate. I said that we "knew" that there was an issue months earlier, like this was *Spotlight*, when really what we had was inconclusive evidence. I said that management "condoned" it when really, they were just skeptical that we actually understood the issue. I figured the journalist might push back, but they just ran with it. And the details didn't matter. Once that interview got picked up by CNN, MSNBC, and the rest, it was all over, for me and for QuikPhone. Apple called for more testing, and that testing showed I was right all along.

So why am I suing? A couple reasons, I guess. Most importantly, I just feel like Bree wasn't there for us. Bree was, like, my idol in some ways and I loved seeing Bree's face talking about things I made. I guess hell hath no fury like a fan scorned?

And then there's the money. I lost a lot when the company went under, tens, hundreds of thousands of dollars. I love Charter, and I am touched by them saying I am a model of integrity and all that. But teachers aren't paid what they deserve, and I can't imagine that anyone will hire me as an engineer with my record of airing dirty laundry. I want for myself and other shareholders what we deserve: some of our hard-earned money back, from the executive who let us down. If Bree can make millions on CraniumSugar and Speedboat, Bree can pay us back for the millions Bree lost us on QuikPhone. Fair is fair.

Statement of Gerry Butler

Hi. I'm Gerry Butler. I'm seventy-eight years old, married, and a lifelong First State citizen. Until 2021, I proudly served as the Chief Officer of Officers of QuikBrands and a member of the QuikBrands Board of Directors. I served in the same capacity with each QuikBrands subsidiary, including QuikPhone SAC I, at the direction of Bree Plaza, my friend and former student.

We have no chorus to sing of the wrath of Achilleus or prelude our tale, and thus I must. I recognize that Bree views my decision to testify as a betrayal, but I hope Bree will come to see it otherwise in time. Honestly, I wouldn't want to be here either… Bree is closer to being from me than anyone I have mentored, an Elliot to my Pound. Bree is my reflection. But as one ages, one comes to value one's reputation, one's legacy. And therefore speak I must. "This above all//to thine own self be true//and so it follows as night the day//thou canst not be false to any man."

The Bard would call our little story a tragedy, for now, for it has an unhappy ending. But like *Romeo and Juliet*, there were good times along the way. It begins with an unsuccessful Broadway aspirant – yours truly – returning home to teach drama, direct school plays, and coach the mock trial team at Saint Mark's High School. There, a fateful meeting between mentor and pupil: even in high school, Bree had it all: the look, the voice, the sheer *presence*. I thought I was teaching a lead in a high school musical, not a Hollywood star, but Bree credits me with helping build their self-confidence and keeping things fun. Even so, it was quite a shock to me when years later, Bree rebuilt and renamed the school theatre in my name! The night we unveiled that theatre was the night Bree asked me to join QuikBrands.

It was clear why Bree needed me. QuikBrands had expanded to three businesses – Speedboat Vodka, a failing car seat manufacturing business, and CraniumSugar, then mid-development. But the complexity had grown, and things got missed. For example, the QuikBrands companies shared a server, and Bree – caught up in shooting the critical parts of *Boy-Girl//Girl-Boy* – had failed to authorize payment to the hosting service for several months. Bree was the only person authorized to make payments, restore access, or negotiate. It was a small thing, but it took the website and ordering system down just as Speedboat was making a major product push. They lost weeks of profits, and by the time Bree came up for air, the vendor wanted to enforce a significant financial penalty. Bree was ramping back up to do another *Quik* film, and Bree's response – duly recorded in the Board meeting minutes – was "We don't negotiate with terrorists." That was all well and good, but QuikBrands paid at least as much to reconstruct the system, and while Bree played it off in public as a "rebranding," a lot of data was lost forever.

Around the same time, there was a dispute with the distributor for Speedboat, a company called PopCap. They had a member on the Speedboat SAC I (which we just called "Speedboat," for obvious reasons) board, Ali Khan, who resigned with the intent to sue. Bree was also the only

executive who could cut off access to Speedboat's accounts. But Khan left Speedboat when Bree was in the Green Room before Jimmie Fallon's premier, and afterward, Bree forgot. Like all Board members and executives, Khan had systems administrator level access to the Speedboat accounts, so later that week, Khan just cut a $500,000 payment from those accounts to PopCap, just *taking* the entire amount in dispute. *Et tu, Brute*? Bree had to sell their condo on Park Avenue to re-capitalize the business, and that's when Bree decided the businesses needed me. I had served as the President of our teachers' union, run the City Theater Company in Wilmington, and had just finished being the Treasurer of the National High School Mock Trial Championship. True, that was a far cry from managing tens of millions of dollars and dozens of employees, but Bree was rightly concerned about a lack of... maturity at QuikBrands. Meanwhile, I had gone a decade without another Bree or Keith Powell coming through the theatre doors, so I agreed to be the Gandalf in this Fellowship, the McGonagle for these Gryffindors....

Just as I arrived, Bree noticed something untoward in the finances at SpeedBoat SAC I, and some of the others wanted to sweep it under the rug. Not Bree. Bree insisted on reporting the irregularity to shareholders and to prospective venture capitalists. It could have cratered the company, but instead it led them to invest *more* in us, because they loved that – as Bree said often – "Honesty and transparency are core principles of QuikBrands, whatever the cost." Bree stayed true to that, always.

Each QuikBrands company had a separate corporate form – a Special Acquisition Company – even though the companies were run by the same small group of people. Bree was the CEO of all of them, of course; the one who pays the piper calls the tune. Teri Polo was a quiet, lovely person who had been inseparable from Bree since elementary school. Wherever Bree went – except the South America trip – Teri followed, acting as Bree's liaison, travel arranger, coffee grabber, and whatever else was needed. If you called Bree, Teri would answer.

Chev Chelios was Teri's opposite, all swinging elbows and gnashing teeth. Chev met Bree in the Disney system, and he had Iago's eerie insight into people. He crafted the image Bree projected, managing the "brand" of Bree. Bree trusted no one more on business or financial questions, for better and worse.

Then there was Mitch McDeere. Mitch was a struggling Hollywood agent who knew his ticket to being un-struggling when he saw Bree. I didn't *dis*like Mitch, mind. He had Bree's interests at heart. But slick suits and Omega watches don't make you a general counsel. I prefer my lawyer to shop at the Christiana Mall instead of Rodeo Drive, if you take my meaning.

The brand Chev crafted and maintained, that Teri made work, and that Mitch protected vigorously was very successful. Two consumer brands' goods can be made of the same materials, in the same factory, by the same hands, and the price can differ hugely based on the logo slapped on at the end.

That meant that Bree's name and social media influence could be worth full percentage points of pure profit, *plus* the additional demand for the product.

Running every aspect of the businesses was clearly too much for Bree, so we amended the corporate bylaws to let me or Mitch make business decisions. But our growing pains continued when some of Speedboat's potato farmers trashed us on social media. Apparently, they had emailed Bree directly to get paid, but Bree was busy in post-production and missed the emails. So we had QuikBrands give each of us access to another person's email, so we could check one another's work. Any of us could check Bree's email, because Bree was often out of contact.

With these changes, CraniumSugar released as a massive success, and we avoided any supplier or consumer issues except the complaint to the Army, which turned out to be an unfortunate misunderstanding by Jamie Cameron.

That brings us to QuikPhone. In 2014, Bree noticed the excessive cell phone bills the entourage had rung up and began thinking about a cut-rate alternative. That's the story we've been telling investors, anyway. It might be mythology that Plaza and Chelios invented. In Hollywood, truth and fiction can be indistinguishable. Regardless, Bree used most of our remaining venture capital money to buy a young company, Cilantro Wireless, and its spectrum. There was no plan, but Bree often invested based on nothing more than an idea or a whim.

With Bree's personality as the selling point, QuikPhone became an immediate, if modest, success. The low-budget, ironic, "look how poor we are" advertisements struck a chord with younger individuals. But we had to pay handsomely to the companies who handled our nationwide coverage. By late 2016 or early 2017, QuikPhone was making steady money, but it was limited, and our investors wanted more.

Bree came to me with a new idea to improve QuikPhone profits: we could sell phone cases made in the USA, from sustainable materials. Cell phone cases are a dime a dozen, but the ad campaign sold me: "stunt advertising" with one of the world's greatest action stars dropping an expensive phone from a helicopter and off a speeding motorbike. Also, we had the technology already: Bree wanted the cases made from the same mushrooms as the failed TigerSeat. That made sense: the technology always worked, even if it didn't have a market.

The QuikCase launched as a "limited edition" for Google Pixels in late 2017, early 2018, and – at the same time – we decided to take part of the company public, not just to repay the venture capital, but so Bree's fans could get an actual "piece" of the company. It was Chev's idea: a marketing stunt that felt like an investment. His instinct was right: it was wildly successful, and the shares we sold at a loss was covered by profits from increased brand recognition and loyalty.

I was able to put some real systems in place, though. John McTiernan, the Chief People Officer, may have gotten the job because he'd been in Bree's theatre fraternity, but he had worked in HR for Wilmington University. He understood progressive discipline, and background checks, although he categorically refused to exclude people for drug crimes. I respected his belief in redemption, but I had to put my foot down when then we almost hired the former head of a local gang. John pushed back, but I called in Mitch, and I assume Mitch set it straight.

But although we were more professional, we weren't truly a normal business yet. The "Board" would meet at a pub or in a penthouse, in between movies, when Bree wanted to focus on something non-Hollywood. I spent hours writing policies for hiring and discipline and business processes, but while Bree's fans might have been willing to accept Kickstarter levels of service, big companies wouldn't settle for us missing a delivery because we forgot to pay the manufacturer. As the demands on Bree's cinematic schedule increased in 2018 and 2019, sometimes Bree was "dark" for weeks at a time.

And I had no success letting go of Chev Chelios, either! Look, I liked Chev as a person, and of all the people in the room, Chev probably had the highest raw IQ. But the jokes he made were… problematic. Bree was fine with that? OK. But when they got back from that "mind-opening" retreat in late 2020, it was clear that even whoever Chev had been, he wasn't anymore. Chev was hooked on something, and it was affecting his performance. And keep in mind, Chev was writing *as Bree* on social media. So when he started to follow fringe internet figures, and Like or Retweet what they said, that was *Bree* doing so. One time, he retweeted someone with a history of – let's say – *problematic* posts about a particular ethnic demographic, and while Chev said he had meant it to go out on only his personal account, it was on Bree's! Bree had to spend a good week of January 2021 doing a talk show apology tour instead of doing the Oscar push for *Kalmar Nyckel*. I wanted to shift the final say over social media to Teri, but even though Bree made Chev go to counseling, Bree said, "Chev needs the structure to give his life meaning." The very next month, Chev sent out some garbled, misspelled tweet while he was too cooked to see straight, and TMZ started reporting that *Bree* was on drugs.

Similarly, Tom Kazansky was the nominal CFO, but he was so non-confrontational that I had to intervene in the reconciliation process. Reconciliation is like checking your credit card statements, but for an entire company: every item has to have a receipt, and every charge has to match company policy. But at Quik, employees had credit cards that were never checked, and reconciliation was limited to whatever Tom and his staff could do. In 2020, less than 10% of all company receipts were verified! No company watches every dime, but 10% seemed way too low to me, and I said so. At the next board meeting, I made sure that Tom's staff was doubled, which was easy; I just waited until everyone was bored, toward the end, and moved to increase the budget. None of the board members even asked why, and only Chev even asked if we even had the money to do it! The motion carried on a voice vote.

I wasn't surprised. Just about any time a friend of Bree's asked for budget, they got it. Professor Reinhold wanted some fancy new gizmo for R&D or funding for a testing lab at UD? At first, people pushed back. Then Bree would get involved, and the Professor would win the argument. Pretty soon, we gave up.

Regardless, it's fair to say that with all of these issues over all of these years, the shine was off the apple for Old Gerry Butler by autumn 2020. I thought about quitting, but Bree suggested I take a vacation instead. The Old Vic had just started up again, and David Hasselhoff was playing Lear! Bree knows I have been a fan of the 'Hof since his virtuoso stint as Michael Knight, paladin of the roads! And, because he had been the villain in *Quik VI: Quicktober*, Bree could get tickets with full backstage access. It was a dream! Oh, we also had tickets for Patrick Stewart doing Prospero again later in the week. Bree covered the entire trip, everything first-rate. It was supposed to be a re-bonding experience for us.

Unfortunately, while Bree and I were away, Mitch McDeere was monitoring my email account. Some clever fellow crafted one of those "spam" messages, a wickedly tricky one that offered us mushrooms identified only by their scientific name, so it would not be immediately obvious that they were shitake mushrooms you eat, probably ordered by restaurants that were closed in the pandemic, not the Tiger Tails we needed. It threatened a massive production disruption if the offer was not addressed immediately. Prof. Reinhold was out of town for the UD winter break, and Mitch panicked; we didn't need another supplier crisis after the potato thing. He bought nearly a half-million pounds of cooking mushrooms before anyone figured it out, useless for cases. We donated as much as we could, but who needs that many mushrooms? Most of them wound up being composted, at a loss of three quarters of a million dollars.

Around that time, we also started to hear whispers of health issues associated with the QuikCases. Of course, I was concerned. You can bet my grandkids all got QuikCases for Christmas! But it all sounded non-specific and just like COVID symptoms, or maybe psychosomatic. I even thought it might be one of those Russian bot farms, hired by a competitor. We tried to talk to E.E. Reinhold about it, but E.E. just wanted more money for more tests. More, more, more… just like every other conversation with Reinhold. I suggested that we do a survey of users instead, try to collect some real data about how often this was happening and what was going on. It would be cheap to do online, I knew. But Chev opposed on the grounds that it "might make this look more true," and Mitch said it could be a liability issue, even though that was the point: we had to know! Ultimately, Bree sided with them, mumbling something about medical privacy. I tried a different tactic, suggesting that we bring in a consultant, get a third-party perspective on how we could improve our processes or procedures. That was similar to my ask earlier in the year, when I'd tried to get funds to pay for Ernst & Young. The Board shot me down both times. That's how I knew I had done all I could to make Quik more professional. Even a great teacher can't help a student who

refuses to listen, and we needed help from outside experts to know what the next steps even were. Besides, I was exhausted by the constant interpersonal drama and need to fix things that I hadn't broken. It's all well and good to read *Lear*, but no one wants to live it.

The final meeting of the Board I attended was on March 10, 2021, right before Bree had to travel to Saipan to start filming *Quik XI*. I had barely been in the office, and I had read the contract signed with Apple in 2020 from the deck of my sailboat, the *Pequod*. It was a thing of beauty, a true Plazan moonshot: Apple would co-market the QuikCase with their new generation of phones, but the QuikCase would be exclusively for that phone. Artificial scarcity, and a shooting Hollywood star to market the Next New Thing. A match made in heaven, and sustainable in more ways than one!

Ah, yes. The March meeting. Bree was mostly on that ridiculous golden phone while everyone else discussed business matters. Then, out of nowhere, Jamie Cameron bursts in, ranting about the cases causing seizures. Now, I had been involved with Jamie… let's say *several* times before, and this was a typically lunatic accusation. But the scientific testing seemed somewhat legitimate, even if it was a flagrant violation of company policy to order off-the-books testing.

I was shocked when Professor Reinhold didn't seem surprised or especially upset. Instead, Reinhold was saying things like the data was "interesting," and "concerning," and "merited further testing." This, from the Board's head of scientific affairs!

Meanwhile, Mitch and Chev weren't talking about the cases at all; they seemed more concerned with the potential impact on the Oscars. That set Jamie unhinged, ranting about murder charges or something… honestly, it wasn't even coherent. Then Jamie said that Reinhold was "burying the truth," which set off Reinhold, who *finally* started to point out that this was all irregular. That's when I realized Reinhold had seen this data before the rest of us, and I called E.E. out on that, which caused Mitch McDeere to lose it and start screaming about how he did not look good in orange, which caused Teri to say that orange is the new black, and then Mitch and Teri were going back and forth about Taylor Schilling and Piper Chapman.

After ninety seconds of absolute bedlam, Bree slammed that phone down on the table, silencing the room. Then Bree said, "Friends, we are stronger together than we are apart. We can solve anything we put our minds to, and we can manifest the reality we need out of the ether through our will. That is the Secret. Together. Manifest." Then Bree stood up, proclaimed that vapid "Catchphrase," and strode out. Chev Chelios jumped up on a chair and belted out "Oh Captain, my Captain" – and, honestly, I'm shocked he knew Whitman – but Bree was already gone.

The room stayed silent, less because we were inspired than because we had no idea what any of that meant we should do. Then we started to argue. After Mitch bought all those *shitake*

mushrooms, we had approved a protocol that required a majority vote of the three of us – me, Mitch, and Chev – to approve any major decision. Well, I was not about to continue shipping to Apple if the cases were not safe, even if it cratered the stock price to miss another deadline. Of course, Mitch was a "go," because he always thought about business, even though he was supposed to be our lawyer. That left Chev to break the tie, but he was still standing on the chair, looking blankly into space, and Mitch and I agreed Chev was in no shape to break the tie. E.E. tried to step in and insist on voting, but I had assumed the Prof would make a power grab at some point, so I made sure that's not how the policy worked.

Then, we heard a ding. We had all set notifications on our phones to tell us when Bree posted on social media, in case Chev had messed something up again. But Chev was still on the chair. Instead, this time we saw that Bree, probably in a car to the airport, had liked a tweet by Tee Mapother, the original mushroom scientist, that was supportive of the product's safety.

We took that to be Bree's direction, and E.E. half-whispered, "Motion to approve additional testing and to launch the product?" Mitch said "Aye," and then Chev said "Aye Aye," but even though there hadn't been a second, the meeting was already breaking up. I don't think I even voted, but Mitch and I agreed to check with Bree after the early part of filming was done. But by then, Cameron had gone to the press, and the rest is like *Richard II*: tragic, but history.

If we had decided not to ship the cases, it would have been financially ruinous. We would have operated at a loss, and our share value would have cratered. But announcing that we were going forward, then having it come out that we knew there were health issues? There was no chance the company could survive that. Apple insisted on testing, and when that testing found evidence that the claims might be right, Bree and the Board made the only choice they could: eat the loss. But with half a million or more cases now useless, there was no way back. We had encumbered every asset we had, Apple was not going to co-market the cases, and they were exclusive to that phone. The outcome for QuikPhone was as inevitable as *Antigone*.

But, no, I do not feel responsible. Bree is. QuikPhone SAC I was never Bree's primary business or a traditional business. And yet everyone, including investors, knew that Bree was the only person who held the operation together. By March 2021, Bree had a career to save, and I cannot help but think that was Bree's priority. If Oscar voters thought the QuikCases were hurting people, there would have been no chance for a golden statue, and an Oscar was Bree's best chance at escaping those dreadful *Quik* films. I know Bree views my saying so as a betrayal, but in protecting Bree's movie business, Bree failed QuikPhone. To try and put that onus on others now is simply shirking responsibility. You don't blame the prompter for not feeding you your line soon enough; it was your job to know the script!

Statement of Toni Scott

Good afternoon. My name is Toni Scott, and I am an attorney and certified compliance professional in the health effects group of Ernst & Young ("E&Y"). I moved to the middle Atlantic from Texas in 1996 to attend Wharton for undergrad, and I graduated from Widener Law School in 2003. After leaving service as a federal prosecutor, I earned compliance and advanced compliance certificates from Seton Hall University. I have provided a full resume.

I am participating in today's trial as a retained expert witness for the plaintiffs, but my work here is based on the work I performed as the team lead for the E&Y team retained by the United States Trustee in QuikPhone's bankruptcy. I may have gotten that job because during my time in government, I investigated several complaints by QuikBrands employees. Well, by one employee, Jamie Cameron. Even though those allegations were unsupported, I learned a lot about the business in the process of figuring that out.

Cameron first brought a complaint to the government about the CraniumSugar ear buds that Quik was selling to the Department of Defense, which Cameron said were not meeting the standards DoD sets for ear protection and were being made in China, instead of the U.S. It turns out they were actually being made in South Korea, which is one of our allies, and that while they did not meet the initial bid standard, as Cameron alleged, the bid requirements had been modified later to allow a lower level for wireless, in-ear buds.

I wasted dozens of hours investigating that case, so I was less than excited when Cameron showed up again a year later, claiming that Quik was using child labor in its production facilities. At the time, I remember thinking "Not again," and sure enough, it turns out that all the American mushroom farming was done under labor law exceptions for kids on their parents' farms, and Quik's foreign contracts all had anti-child labor clauses and certifications. Of course, now that I know about the difference between preventive and detective controls, I wonder about whether those clauses were followed. But our investigation – incomplete as it might have been – turned up nothing, and so I put Jamie on my mental Wolf List, you know, like the Boy Who Cried Wolf? It was my personal, internal version of "Don't waste time on whatever this witness brings you."

But back to the reason I'm here. Corporate compliance is, broadly speaking, the process, institutional mechanisms, and staff that enterprises use to ensure that their actions are consistent with statutes, regulations, internal policies. That sounds a lot easier than it is. You have to be willing to really learn and instantiate business practices. So, for example, let's say you're a dairy, and the law says that you have to pasteurize milk at 145 degrees Fahrenheit for 30 minutes. That means you need a process for testing the thermometer regularly; a process for ensuring that the milk remains in the tank for 30 minutes, every time; a process for documenting those thermometer tests and the time-in-tank that allows the data to be shown to the Department of Agriculture during inspections; and a process for occasionally testing batches to make sure there are no issues with

the output even though you followed the rules. And you also need to make sure that there are maintenance and sterilization procedures for the tank, heating element, and each pipe and junction that leads to it. All for one part of one process!

It may seem incomprehensible now, but for decades, there was no such thing as compliance, *per se*. The process described above would be handled by engineers or other personnel, often with a sign-off from someone in the General Counsel's Office. But as companies began to be prosecuted under the Foreign Corrupt Practices Act (for bribing officials abroad) and the False Claims Act (for violating Medicare and Medicaid rules, or mischarging the government, often to the tune of hundreds of millions of dollars), those companies began to see the need for a professionalized compliance function. And where they didn't, the government would "help" them by imposing Corporate Integrity Agreements that put in independent monitors – at company expense! – or required specified processes or audits.

Around the same time, the Delaware courts were establishing oversight duties for corporate directors, who could be sued personally by shareholders if they ignored compliance and something went wrong. Then Enron happened and Congress passed Sarbanes-Oxley, which required executives to make personal certifications of compliance under penalty of perjury. Small wonder these directors and officers wanted to be sure their companies were in compliance before they signed on the dotted line!

I guess it's not a shock that compliance officers are often former prosecutors. We know investigations, and we have had to learn a lot of the rules and regulations before. Well, that and we sometimes know the prosecutors, so we have credibility on Day 1 with the Department of Justice. It really is a different skillset, though, and I understand it better now than I did back then.

Compliance isn't one thing; it's a whole series of interconnected, linked "controls," each serving at a different point on the corporate lifecycle. Let me explain. Compliance starts with "preventive" controls, the systems that prevent rule or policy violations. The most basic form of preventive control is segregation of duties, which ensures that no one person can control a transaction, allowing that person to steal or make an expensive mistake. Another preventive control is an "access" control, which limits employees and officers to have access only to the information they need. This helps limit the risk of insider trading, data theft, or corporate espionage. But even something as simple as a good background and reference check for employees can be a preventive control: it ensures that you don't bring in people with a history of bad behavior or poor workplace practices.

Prevention isn't good enough alone; you have to make sure that your controls are working. That means you have to detect non-compliance in your business processes using "detective" internal controls. Most of these controls are variations on the theme of internal audits. For example, if you want to detect theft of corporate property, you need to inventory that property periodically. For

something like computers, that means a barcode scanner and database. For something like opioid pills, you need to physically count the pills. You do the same thing for finances; every so often, you need to do a reconciliation to make sure no dollars have gone missing, and the proper authorizations were made on each transaction. There's no sense having a great segregation of authorities if it's not being followed in practice!

Likewise, internal audits can detect issues with untruthful employees: it's pretty unlikely that the temperature in that milk tank was exactly 140 degrees every day for six weeks and that every processing in the milk tank was exactly 30 minutes. So if your employee is reporting that, you probably have someone lying!

And, finally, internal audits can be purely for process, like making sure that the documentation is in order on your pasteurization tank *before* the Department of Agriculture shows up.

In terms of detective audits, I also recommend periodic *external* audits, to make certain there is no collusion or laziness seeping into the internal audit process. *Quis custodiet ipsos custodes*? And I'm not just saying that because external audits are paying for my kids' college!

The final control set is what you do about what you find, what we call "corrective" controls. The easiest example, and the hardest, is employee discipline: you need to get rid of problem employees. It's a balance, though: if you fire every employee who forgets to complete a form, you won't have any employees left, but if you don't discipline employees properly, your rules and the law become "suggestions" that employees ignore. That's the opposite of compliance.

Another great example of a corrective control is improved procedures. For example, if your detective audit finds that the employee responsible for recording milk pasteurization times isn't completing the paperwork on time, a revised procedure might prevent them from logging out for the day until the paperwork is completed.

In January 2022, the bankruptcy court contacted E&Y, asking us to audit QuikBrands and, particularly, QuikPhone SAC I, which had just declared bankruptcy. I was brought in to examine the company's structure, because the accountants thought there might be fraud based on what Jamie Cameron was telling them. I was not excited to be working with Jamie again, but imagine my surprise when it turned out there was a wolf! I mean, there wasn't fraud, but the accountants were wrong; Jamie wasn't really saying there was. What Jamie was saying is that the company was a mess, and that was dead on. I determined that while there was no fraud, there really was no functional compliance, either. In my opinion, at a company of this size, that was an unreasonable, reckless failure by Bree Plaza and the Board.

First, preventive controls. Kind of a disaster, honestly. I mean, they *existed*, but mostly on paper. For example, Bree Plaza was supposed to be the CEO, but everything was run by Bree's friends.

There was barely any segregation of duties. In theory, Chev Chelios was responsible for social media, but Teri Polo was also posting on Instagram for Bree. Mitch McDeere was supposed to be signing off on regulatory compliance, but Gerry Butler had the authority to do it. Even crazier, after the incident with Ali Khan, if Bree was out, Gerry could sign off on any financial transaction. Heck, for most of 2019, Mitch had a full power of attorney over all of Bree's accounts! That's borderline legal malpractice, never mind preventative controls! And the solution was reading one another's emails? Just look what came of that; three-quarters of a million dollars in the wrong mushrooms.

The corrective controls were similar, maybe even worse. For the *employees*, the rules really existed. There was a real HR group, and there was a progressive discipline system that was *mostly* followed. But it was way too lax; employees were given second, third, and even fourth chances before they were let go. In my view, the best way to set the tone is with ironclad discipline. If employees know that they are at risk of termination when they make mistakes, they will make sure to follow policy. I saw too many times in the government where bad employees didn't get fired, and I believe it contributed to a "good enough" culture of compliance. Compliance should be binary; you are or are not complying. And if you're not, you're done. You could search far and wide for an employee Bree fired, and Bree even promoted a thief? How can you sell compliance to your team and then reward criminal behavior?

The bigger issue was not applying the rules to the senior executives. Take the Chev Chelios situation, for example. It was obvious to everyone in the leadership that he had a drug problem, but he still had the keys to the social media, still could sign off on transactions. I'm not unsympathetic to the dangers of addiction, but the corporation has to come first.

And there were basically no detective controls in place. Yeah, ok, Tom Kazansky was technically their internal accountant, but "I do Bree's taxes" isn't exactly enough to make you the CFO of a multi-faceted corporate structure. There was only the most basic financial reconciliation, and inventory reconciliation was limited to items over $10,000. So you couldn't steal a car or a three-ton piece of manufacturing machinery, but anything else might as well have been fair game. The Board did eventually increase funding, and that eventually caught one employee, but there was no detective control to determine whether the new money was enough. It was all just taken on faith. This could be a Harvard Business School case study called "Why You Don't Have Your Entire Board be Insiders." I mean, technically the entire board wasn't insiders, by which I mean executives. Two members were from venture capital. But four board members were insiders, so they made all the decisions!

The same issues recurred in the scientific/R&D side. Look, I think we could probably do with hearing *less* from Hollywood stars about science on Twitter, or X, or whatever it's called! So Bree could never reasonably be held responsible for knowing the metal-GMO interaction or whatever.

But instead of preventive and detective controls in the R&D space, QuikPhone just gave E.E. Reinhold total authority. Sure, they named Jamie Cameron as Associate Director, but Jamie had some issues, and there was no one with the impeccable academic credentials, years of industry experience, or blue-ribbon awards that Reinhold had. So anyone could protest a decision, but when you only have one Ph.D. in the room, the result will be obvious. And the problems with R&D accounting were all too obvious. Reinhold apparently didn't care at all, because thousands of dollars in equipment were never found, and there were five-figure gaps in the accounting some years.

Even after the bankruptcy, we only have the foggiest idea where all of the money went, company-wide, and the lack of paperwork associated with the expenditures made it impossible to get it back. The totals in money and equipment just… unaccounted for, whether somewhere in the business, lost forever, or invested in some way no one documented… were over $450,000.

And I guess I have to discuss the "CEO" as well. Look, I'm fine with celebrities owning companies. It's America, land of the free, home of the dollar… all that. But there's a difference between owning a company and running a company. Put your name on it, sure. Smile and do the ads. But when it was becoming obvious that there were serious issues with the QuikPhone, only Bree could pull the plug. Just look at the Board meeting! They all basically sat around waiting for Bree to save them all. Because… Bree took a few business classes in college over a decade ago? If Bree wasn't available, no one could pull the plug. And if Bree wasn't listening, it meant no one *would* pull the plug.

That's what I found when E&Y was brought in by the bankruptcy trustee to examine the books. As part of that investigation, I reviewed all exhibits and statements that have been introduced in this case, save that of Jean Varenberg, which I reviewed later. And of course, we recommended the bankruptcy be approved, because there was no fraud or intentional deception. They were just really bad at running a business of this level. If your investors are stealing from you, but you don't go after them; your employees are stealing from you, but you promote them; and your executives are not able to function, but you keep them on, then it's hard to say that you have any of the controls you need, functioning the way you need them to function.

In a lot of ways, that was the most important conclusion in the bankruptcy. Once Apple's testing showed that there could be a problem with the cases, they became unmarketable. And QuikPhone had leveraged itself to the hilt to produce those cases. Maybe, *maybe* the cell phone business could have eventually repaid that cost, but QuikPhone had nowhere near the assets to pay for all possible legal claims for product liability against it. Had there been fraud, maybe the bankruptcy would not have been allowed. But there wasn't, and so shareholders got essentially nothing. Their only recourse is this action against Bree and, particularly, against the insurance policy the company had

for exactly this reason. Success won't make the shareholders fully whole, of course, but it would return to them a significant portion of their investment. And that is not nothing.

Am I being paid for my report and testimony here? Yes, at my standard rates for any work: $400 per hour, minimum $40,000 for consultation and audit that results in testimony. I'll need less than 100 hours on this, because I did so much work on the bankruptcy. The real value to Ernst & Young isn't the hourly work. QuikPhone turned us down when we offered to help the business five years ago, as accountants and compliance consultants. But now, when executives and insurance companies see what happens in shareholder-derivative litigation when you *don't* hire us? When Lincoln pays out $20 million for harms that could have been avoided for a couple million in fees we would have charged? Companies will take note, and we will get the business we deserve. Penny wise is pound foolish.

QuikPhone is a new twist, but it's a tale as old as time. Capitalism works because it makes greed good. Greed gets new products get invented, new ideas manifested, and its reward incentivizes creators to take the risks that drive the economy and improve life. But greed can blind people, and when an executive or inventor is "bought in" on a product line or an idea, they lose the ability to see the risks clearly or to accept the information that warns them that things aren't going well. It's a form of cognitive bias. Compliance helps fight against that bias, but if you don't have processes, if you don't have systems, or if you have them and ignore them, you get what you have right here.

Compliance saves money, and compliance saves lives. I'm glad that my testimony here is already helping others to see that, and those others are hiring Ernst & Young.

Statement of Bree Plaza

When you have expectations, you are setting yourself up for disappointment. Yes, I expected to turn my name – my image – my life – into a brand that went beyond my years. But neither I nor my company did anything to deceive the public or our shareholders. Sure, I chose to believe rather than question at times. But I wanted people to thrive. Every time I hold a phone – every time I put a case around a phone – every time I eat a mushroom – I will be reminded of what I have lost, what we all have lost together.

My name is Aubrey Plaza, but you probably recognize me as "Bree." My Q score has been as high as 44, good for the seventeenth most recognizable star in Hollywood. I am best known for the *Quik* series, now filming its twelfth installment, but you probably also saw my work in the Marvel Cinematic Universe, and of course I co-starred in the Netflix originals *Knife Edge*, *Sword Edge*, and *Edge of Time*. But in my soul, I am happier playing Puck in Central Park than Dakota Quik on the silver screen, and my proudest professional moments are the quiet ones, like my Oscar-nominated effort in *Boy-Girl/Girl-Boy* or my BAFTA-winning *Kalmar Nyckel*. Of course, you also likely know me from QuikBrands products like the CraniumSugar buds in your ears or the Speedboat in your vodka twist.

I studied the work of Bruce Lee, who taught the martial art of fighting without fighting. In much the same way, I practiced the business of having no business. Other companies bite and claw at every aspect of the bottom line, working to make the product cheaply and sell it for the most they can. Not QuikBrands. I put my trust in the power of people, of my people. When my team comes together, it's like the *Avengers* or the *Suicide Squad*: there's nothing we can't do. We make premium products we would want to use or consume, and we figure others will, too.

I know you think I'm just a Hollywood pretty face, but I had eighteen credits in Business alongside my theatre degree, good for a minor, and I have a master's degree from the school of hard knocks. In Hollywood, you learn fast that people you can rely on are more precious than gold. I personally chose every executive at QuikBrands, and when I could, I made the critical decisions. We didn't *pretend* to be a normal business. We told every investor the same thing I told the world: this is a group of friends, *real* friends, and you can join the magic they work. Some of my crew had clear skillsets: John was an HR wizard, Mitch was a crackerjack lawyer, Chev knew people, and E.E. knew mushrooms. But anyone can bring together skills. I brought together *talent*. And I made sure we all stayed friends, so the environment was good for creativity. Because we were right: other people *did* want what we wanted. And when enough people buy what you make, the costs go down per product, and the products make money. You have to sell a lot, but that's always my plan. You change the world by reaching the world.

So we might lose a few dollars here or there when some "control" isn't there, but ask yourself: do *you* want to be controlled? So why would your worker? We have made tens of millions of dollars in profits by making our business about the people. A gilded cage kills the golden goose.

That's not to say that I'm some kind of airheaded Hollywood star who thinks business on the side is fun and easy. I worked at MBNA's offices in Ogletown in high school, and in college, after MBNA was bought by Bank of America, I was accepted into BoA's prestigious Executive

Development program. I took accounting, and I took it seriously. That's how I knew that the PopCap part of our books was wrong after Ali Khan left, even when our then-accountant missed it. I reviewed those books myself, in between filming and editing sessions.

That's what's wrong about all this Monday Morning Quarterbacking. We had growing pains, but when something bad happened, we adjusted. The thing with the server? I made sure someone could sign for me. The thing with Ali? I hired Gerry to get things right. We learned together. We grew. It was awesome, and every product made money. Well, except TigerSeat.

So how did I go from high profile films, top shelf vodka, and bangin' ear buds to cell phone cases? One day, Teri, who was monitoring Insta, saw a really cool ad for a cell phone case. The creators recreate one of the scenes from *Quik IV*, only the cell phone kept working, unlike Dakota's, so instead of having to free dive beneath the polar ice, the person in the ad just called an Uber. It was brilliant! That got me thinking about cell phone cases and how much plastic waste they created. And *that* got me thinking that I wanted to make the first fully compostable cell phone case. And I had the technology! I already owned a phone company, Cilantro, and our *first* business venture, which we don't talk about, was an effort to use mushroom-based foam in car seats. Yes, TigerSeat failed, but the *idea* was great, and my old college roommate, Tee Mapother made the product, so I trusted it. Mushrooms are everywhere in southern Pennsylvania and Delaware, and I am a First State kid, plus using mushrooms instead of bamboo (the boring renewable material) meant no splinters. And there's nothing more American than mushrooms!

In late 2017, in exchange for doing a series of ads for Android, I got Google to agree to let us make some phone cases for their flagship phones. I later added copper, because copper is *so hot right now*. I know that it probably doesn't actually do anything for joint pain or whatever, but if people think it might, they'll buy the product just in case. In case, get it? Besides, I remember from Earth Sciences that copper is inert. It can't hurt you, so what's the harm?

By then I'd learned to trust my instincts. It's like that thing with Casey Ryback. Casey was an employee in R&D, and Tom's audits caught a discrepancy in her equipment inventory. It turned out she had been taking equipment home for several years to work on her own personal business on nights and weekends. Everyone wanted to fire her and call the cops – because, you know, she had been caught stealing tens of thousands of dollars of company property over three or four years – but I saw something that I really liked. I bought her company for $1 in exchange for not firing her or turning her in, and I promoted her and gave her a staff. A year later, the work she had been doing in her garage turned into the key component in a moisture-wicking fabric that QuikBrands is launching next year with QuikGear, our new activewear line. Assuming this trial goes as I expect, Adidas is on board to invest seven figures in QuikGear, it could bring in millions in profits, all because I knew better than to fire an employee who dreamed of being me!

Anyway, my instincts were proven right. In April 2020, we were all adjusting to the new reality of COVID-19, and no one knew what was safe. Early in the pandemic, copper was being heralded, because it helped kill viruses. Then the sudden disruption of the entire Chinese supply chain meant that demand for our all-American, definitely-available cases went through the roof. I wanted to be for cell phone bodies what Edison was to lightbulbs.

Even so, I knew that my brand depended on my movies, and those depend on my ability to get into character. That means total immersion. So in winter 2020, when we started filming *Kalmar Nyckel,* a period piece on Swedish shipping, I had to cut off all modern conveniences: no cell phones, no TV, no social media. I became more of a luddite than Gerry! As far as QuikBrands was concerned, I had to rely on the team and the control mechanisms we had put in place.

I wasn't really worried about testing the new products themselves, because Tee and QuikBrands put so much effort into testing ten years ago. I know that Jamie says they tried to send me a note around this time via email about some initial concerns, but when I emerged from filming, I had like thousands and thousands of emails, direct messages, and texts. I had to have Teri help me sort through them all and pick out the important ones. Jamie was young and didn't have the best judgment, so I can see why Teri never filtered that one to me.

In late summer 2020, Apple came to me with the offer we needed to take QuikPhone through the roof: come to their product and make primary cases for next-generation phones. The contract was strict, but the overall deal was valued at tens of millions of dollars. For a company as small as QuikPhone, that was a quantum leap into the big leagues! Even when I signed the deal I wasn't certain we could pull it off, but I trusted my team. Call it a *Field of Dreams* moment. We announced the deal with Apple, and they gave me a golden iPhone. It was hyper-advanced, next gen tech, and for four months, I had the only one in the world. Even after they became available, I still used that phone, as a reminder to trust in my genius.

It like when I invented "CatchPhrase." We were filming *Quik VII*, and the writers were struggling, because Dakota Quik was tied to this water wheel in an old farmhouse. Dakota comes up and is supposed to kill the bad guy with a throwing knife, but before I throw it, there needed to be a cool catchphrase for the trailer. But we had already used "Ice to see you" in the arctic lair in *Quik IV*, and the catchphrase in *Quik V* was so lame. I mean, "You have the right to remain dead?" Really?

On, like, the twentieth take, I cold, wet, and tired of trying lines. So when they wheeled me up, I just looked straight at the camera and said "CatchPhase." The crew cracked up. That's when we realized that we really could break the fourth wall and take the movies from serious… to serious fun! *Quik VII* was a massive hit, and it got me a contract for five more movies. After that, CatchPhrase was one of my most recognizable inventions. It means everything and nothing at the same time. Very meta. It works in comedy routines, action sequences, and once in a heartrending drama. I even did it for an Insta post for a tasty pie I baked with Paul Hollywood!

When I came back to our team in mid-2020, I could see that the team wasn't working as well as I hoped. On *Kalmar Nyckel*, I learned that in old timey sailing, even one slip-up could be fatal, so the crews had to be on point! I started daily connection meetings, and I made the entire team learn to sail together… well, except Teri, who gets crazy seasick. Yuck. When we applied the lessons I learned on set about communication, we caught several things that could have slipped through the cracks if I hadn't been attending to our dynamics. It was just like Captain Lauren Morgens says, "You can't lead if you don't know your people." So I re-dedicated myself to spending one-on-one time with the key QuikBrands executives. I mean, other than Teri. We were together a lot. Like, all the time. Teri probably knows my mind better than I do!

Even though 2020 was one of the worst years in history, it was one of the best years in Bree-story. But we were all flying to close to the sun, like Iscariot. Late that year, reports started coming out about people getting sick, I thought it was a hoax. The stupid hash tag - #Quikpain – still haunts me. Of course, people were getting headaches from using their phones: they were on them every waking minute!

So I told everyone the truth – that we had tested Tiger Tail mushrooms extensively, and they were safe to use. Even though we were using new suppliers, E.E. told me that bioidentical means it is not *like* Tiger Tail, it *is* Tiger Tail, so we had nothing to worry about. I believed The Professor, of course, so that's also the message Chev ran with in our social media marketing.

Between the constant filming, all our businesses, and the stuff online, I needed a break. So, when Chev said let's take a trip to the jungle of South America and do some Ayahuasca in a remote village, I was down. I thought it was a good way to renew my bond with a critical team member and to decompress myself over a few weeks around Thanksgiving. Chev was a lot more adventurous with the stuff, even to the point of bringing some home. I wasn't going to mess with it again; the recovery was rough, and I needed every minute I could get. When we got back in December, there was a mountain of emails again. But the entire QuikBrands group of companies depended on my movies making money. That *was* the Brand. So, I let the team deal with the growing complaints, and I focused on box office gold.

Some people think I was burying the truth. That couldn't be more wrong. What I really liked about Jamie is how much Jamie looked up to me. This was someone I could mold into a future leader of the business! So I took the allegations seriously. But Jamie had a tendency to exaggerate, which had already cost us hundreds of thousands of dollars dealing with baseless government investigations. We had eight figures at stake in the Apple deal; the business could not afford another false alarm. How was anyone supposed to know that Jamie might be right for once?

Later, when Jamie started to get more data, I didn't hear about it right away. E.E. mentioned it to me in passing that there could be an issue with the cases, but I wasn't going to make the monument to Ebright Asimuth into Mount Everest, you know? QuikPhone had way too much at stake. The responsible move was to wait until we could figure out if Jamie was right or just, you know, Jamie.

I know there has also been criticism that all the same people ran each company. And sure, some new blood might have helped, but you can't just bring in new people and know it will work. Sometimes Vin Diesel doesn't get along with the Rock, and suddenly you're in a spinoff fighting with war clubs in Samoa or something. You have to be careful with chemistry is the point, the chemistry we all had made money. There was no *Glengarry Glen Ross*, "third prize is you're fired" stuff for us. The team was the team was the team.

But the team was tired. The South America trip loosened Chev up a lot, but maybe now he was a little too loose. I loved the creativity, but he was pulling all-nighters writing scripts for a Care Bears show, only the Care Bears are evil, and it's in medieval times? It was probably not going to sell, is what I'm saying. Mitch was Mitch: nervous about everything, and shouty. Gerry was, like, eighty or something. Ten years ago, when Gerry started with QuikBrands, we were all kids. I could never have imagined that Gerry would betray me, but by that time, I was starting to wonder if

Gerry had the energy for our business. Gerry just kept writing policies and memos and all that rather than, you know, doing business stuff! And Gerry wanted to do a survey that would probably have violated HIPAA or something. You can't just ask people about their medical conditions! I thought the Hasselhoff thing might help, but old is old, I guess. And then Mitch screwed that mushroom thing up. A lot has been made of that, but his mistake came from a good place, and in the end, it was only a few hundred thousand dollars, and some less fortunate people got to taste some amazing mushroom dishes for a week. No biggie.

Gerry was not alone in being tired, though. The relentless cycle of film, promote, release for the *Quik* franchise had really taken a toll on me. You try hanging by one arm over an ice chasm, shooting a handgun, for fifteen takes! By spring 2021, the negative press was still mounting, and the pressure was overwhelming. When something went wrong with Speedboat, I could simply stop shipping until we fixed it in our own time, but QuikPhone had massive contractual obligations to a billion-dollar company.

Sadly, the theatre – my longtime refuge – was also turning on me. I had had a brief, unsuccessful run on Broadway in a Tennessee Williams play in February, and the Oscar campaign for *Kalmar Nyckel* was getting drowned out by questions about our phones and these headaches. Gerry thought it was a Russian something, but I told the team to test more, if that's what they wanted.

So, in March 2021, I called an emergency board meeting. I don't remember much about the particulars of the discussion as the team worked the problem. I was about to start filming *Quik XI*, so I was deep into my character work: wearing Dakota Quik's leather jacket and boots, walking with Dakota's walk, and reading my lines again and again off my phone in my head in Dakota's voice to get the rhythm back.

I do remember looking up and thinking that there was a lot of negative energy in the room. And Jamie Cameron was there for some reason, something to do with mushrooms and science. Even though *Quik XI* was going to be darker, and brooding, it was the wrong place for that. So I acted quickly. I slapped down my golden phone like… that hammer thing in lawyer shows… and I took control of the meeting. I told my team in no uncertain terms that it was time that the bickering stop and that they needed to work together to find solutions. After all, Mitch knows law, E.E. knows science, Chev knows talking to people, and this was just a law-science-talking problem! This was my *familia*, the people who had made tens of millions of dollars and changed millions of lives. They just needed to work together, and I would support their decision. So then I left. Executive leadership is about tone-setting and delegation.

I don't really recall if I tweeted or liked the thing they say I did, but if it wasn't me, it was Teri. Either way, I stand behind it 100%. Nobody knew more about Tiger Tails than Tee, maybe not even E.E.. That's why Tee still had a stake in the profits from any Tiger Tail product. It was Tee's creation, after all!

If Jamie had just stayed on topic and manifested best intentions, the QuikCase might have been a legendary product. Do I blame Jamie? Maybe a bit. Do I hold a grudge? No. Jamie is just misguided family, like the murdering ghost stepson in *Sword Edge*. We did as would be expected under the law of man and spirit.

I also stand by E.E. saying there was nothing wrong with our products in May 2021. We didn't *know* that there was anything wrong, just a hot gas that might or might not have been a thing. We kept doing new testing even after our first testing said there was no reason to think it was our cases, because we cared about getting it right. Even now, we don't even really know whether QuikCase caused the headaches or the seizures; it just became pointless to keep litigating the personal injury cases. We were going to pay my fans or we were going to pay lawyers. Either way, the business was dead. Bankruptcy was a cleaner option to make sure people who *thought* we had harmed them got some compensation, and it protected the reputation for integrity of QuikBrands, which survived intact, because we did the right thing. When Apple asked us whether we'd be willing to let them test the cases, of course I said yes. And I didn't challenge their results; our fans are too important to risk their health unless we were sure the product was safe. Nothing matters more than our reputation for honesty.

And our investors knew that, because they were my fans. Our fans. Now those same people are suing us, the same *familia* who had made the right decisions before they made this one. We did our best, every time, with every decision. Some we got right, others we got wrong. But we were upfront with all of them: we weren't going to be Apple or Kellogg's or General Motors with a hundred Harvard MBAs consulting on every question. We were different. So every investor got what they bought: a Bree Plaza product with a Bree Plaza team making Bree Plaza decisions at a Bree Plaza not-business. They got what they bought, and we tried to make them money. If we made a mistake, it was not for lack of caring or trying. But these complaints and hindsight carping are just sour CatchPhrase!

Statement of E.E. Reinhold

This entire situation is ridiculous. To even suggest that we made a mistake on the science, that *I* made a mistake on the science, and then to further suggest that QuikPhone did it intentionally to defraud investors is beyond absurd. I am precise, my lab is immaculate, and my mark on the world was established decades ago through dozens of peer-reviewed articles with the highest of impact factors in the mycological sciences. To be certain, not many of my scientific peers share my fascination with mushrooms, but that does not mean I am any less qualified, precise, or dignified than any other elite scientific academician. I have appeared on television and radio, at scientific and lay audience conferences, and even on newfangled podcasts (to cater to humans with short attention spans). I don't have time for lies or conjecture. Yes, Bree may have been a bit rash when making business decisions, but Bree always relied on experts like me and professionals like Mitchell, Thomas, and that Benedict Arnold, Gerry.

I first met Bree in 100-level Earth Science, which is really a sort of Mr. Wizard or Bill Nye-esque entertainment effort that tries to sneak in science, rather than a real course. Teaching football players and theatre kids was a little embarrassing for a leading mycologist with a Ph.D. in Botany from Cambridge; a bachelor's in Biology, with high honors, from Stanford; over a hundred peer-reviewed publications; two terms as President of the Mycology Society of America; four honorary degrees; and thirty years of teaching experience. But mycology specialty classes don't get a lot of undergraduate registrants. Bree was very clearly *not* headed for science as a career, although Bree had the courtesy at least to recognize that I possessed wisdom beyond a baking soda volcano. Even so, as I gave Bree one of the many indistinguishable B+ grades that marked a courtesy to our non-majors, I never thought Bree would change my life.

Of course, I was unaware that Bree's roommate at the time was Tee Mapother, one of the few undergraduates to show interest in mycology. Tee spent two summers and three semesters in my lab, and I believe Tee could have gone on to a Ph.D. somewhere, had Tee not chosen engineering instead. Tee showed a real aptitude for manipulation of mushroom genome and growth, in particular in the Tiger Tail, a lab-created variant of the Lion's Mane. Tee and that mushroom had a special bond, and Tee argued that it could be shaped into anything from packaging peanuts to household furniture. Tee used to preach that with the Tiger Tail's rapid growth and production rate, in the right conditions, the "little *hericium* that could" might reduce our reliance on plastics. I was so taken with Tee's enthusiasm that I even invested a paltry sum into that start-up, TigerChair or something. I know it wound up in those little cars that don't even seem to be cars, but the business failed, and I lost some pocket change.

Then, in 2017, I got a call from Bree Plaza's agent, out of the blue. Bree feels famously strongly about sustainability, and QuikBrands was looking to explore creating a phone case from the Tiger Tail. Tee had suggested me as a technical consultant because Tee was sticking with Hercules, and Bree could not associate an eco-friendly brand with a chemical company. Frankly, I thought it was a pretty foolhardy idea. But Bree thought it would make millions with the Quik name behind it, and that's how I wound up joining QuikPhone. Not for the money, but science.

Imagine my surprise when I learned that I had also been recommended by Jamie Cameron! During my tenure as the esteemed Hammond Chair of Biology at the University of Delaware, I had dozens

of Ph.D.s come through my lab and hundreds of undergraduate research assistants. Jamie was in the bottom third and, worse, was a sycophant who would feign interest and admiration only to turn on you when they thought there was something more they could gain.

Back in 2012, Jamie was in my lab and looking to graduate with honors by getting second author on an article I was writing on the amazing tensile strength of the Tiger Tail. After Tee graduated, I had continued to develop and engineer the Tiger Tail, and by that point, I had a great deal of potential intellectual property wrapped up in that little *hericium*. The data was all there for publication, but due to the mistake of a clumsy post-doc, my final round of testing got contaminated, and the results couldn't be replicated fully. I was going to submit it for publication despite the inconsistency, using data from another strain of Tiger Tail, burying the difference in footnotes. Instead of supporting me, Jamie reported me to the department head for research fraud. Things could have ended badly, but I had tenure. The Dean did force me to pass Jamie, even though I had discovered that in addition to betraying my confidence, Jamie was helping other students – at an honor fraternity! – cheat on my exams. Ridiculous.

In any case, I began consulting at QuikPhone in mid-2017. It was immediately apparent to me that things were not run much better than an academic department! Chev Chelios and Teri Polo handled all communications, and Chev would attack anyone who encroached on his purview. Mitch McDeere insisted on being part of every decision, because "everything has law in it." And Gerry Butler was some kind of referee. At least Tom Kazansky understood his role: he did accounting, and he never got outside of his box, demanded additional information, or tried to control my budget. I, of course, was Chief Science Officer. For some incomprehensible reason, they also tried to give me access to another executive's email account. I politely declined. I would not have wanted to view Chelios's browser history.

Bree was insistent that all the fungus we used in the early QuikCases be grown in Delaware or southern Pennsylvania and that the manufacturing occur in Delaware, too. That gave me complete control over the development process, and soon the QuikCase was as strong as industry standard polymer-based cases, fire resistant, and cheap to manufacture. In late 2017, Google commissioned small batch runs of the QuikCase to upsell to eco-conscious millennials and Gen Zers. It was a mild success, but the buzz and marketing mattered more than the sales themselves. Bree was always on the internet, and after seeing copper-infused socks marketed as a joint remedy, Bree decided in 2019 to add a trivial amount of copper and cross-market the QuikCase to arthritis sufferers as well. The change did not affect sales.

Then, when the pandemic hit and cases could not be imported from China, demand for our America-first manufacturing went through the roof. Against my better judgment, I had to teach a number of mushroom producers how to grow my strain of the Tiger Tail. Of course, I was not able to go see their facilities or enforce controls; travel was restricted. Instead, I sent detailed instructions. There was no choice, though; we had to meet the new demand.

Now, I want to make one thing very clear: we tested this product. We would *never* have put it into production without doing so. There are rumors that we skipped steps, and that is simply false. It is true that I was forced to run testing more quickly than I originally proposed and that I had to base testing on incomplete foundational data. Apparently, the original Mapother data set from

TigerChair had been lost in some kind of computer glitch. But we had the printed reports, and I was able to make valid educated guesses about the underlying data from those reports, within a reasonable degree of scientific confidence, albeit with a larger margin of error than I would have liked. It was not ideal, but it was not what you heard on that Netflix thing. And we did test independently under various normal- and high-usage scenarios, typically ranging from 3-5 hours of intermittent daily use. That was actually *above* the middle and high-end ranges of typical use according to most studies of use in 2017-18.

It is also clear that my Delaware strains of Tiger Tail never had an issue with off-gassing, even at high temperatures. And it is laughable to think that just because some of the cases were produced outside Delaware, there was something different about the material. The Tiger Tail from Delaware, Pennsylvania, Ohio, and even Oregon were bioidentical. Tiger Tail is Tiger Tail.

That is not to say that there weren't some issues with the company. Our biggest was that Bree, the glue that held our organization together, was a *very* part-time employee. When Bree would go off to film, or to TV, or on stage, or on vacation, the feel of the company changed. We still followed protocols, but Chev became the default decision maker, because he was the loudest and most aggressive voice. For example, when Bree was off filming that boat thing, Chev decided to ramp up production so swiftly that we only could spot check shipments of material for quality or bio-identity. That did not meet my personal standards. I emailed Gerry about it, but Mitch, who was copied, assured me that we met all state and federal regulations. Which was not the point. As I said, Chev always won.

Suffice to say the phone cases became the darling of celebrities, and we were looking to take the next leap when we made a deal with Apple to provide cases to fit their spring 2021 model. I knew production would be a challenge to meet the massive order, but the product itself could be made and would be safe for consumers. Bree signed the deal, and our stock popped. It really looked like we would have no ceiling at the time.

Then, in the autumn of 2020, we started getting social media comments about our product causing headaches and myalgia. I am not on these platforms, so Chev brought those to me and asked if I had any information we could feed to friendly press. I wasn't sure what Chev was after, but I honestly told to him that all of the materials were still grown and functioning under normal parameters. I told Chev that QuikCase was being made with tolerances that rivaled the storied precision of Lego bricks. That was overstating it, but Chev said that was exactly the type of spin the company needed, and I started getting invited to more executive and Board meetings.

When Jamie came around asking similar questions, I pretty much told them that it was none of their business. Jamie was on production, not R&D and certainly not Quality Assurance. Jamie needed to stay in their lane. That is what corporate governance is all about: be responsible for your own tasks and respect the chain of command. I think Jamie took this as me trying to deflect or hide something. That is how much of an idiot Jamie is. It was not about us, them, their betrayal of trust, or whatever else – it was all about the product, and our legacy.

That autumn was an odd one around the company. Everyone was burned out, and management was largely absent. In fact, both Bree and Chev went to South America for some retreat, and I

didn't hear from them for almost a month. They sort of left Gerry in charge, and Gerry couldn't manage their way out of a paper bag. In fact, that was around the time that Gerry kept pitching the Board to bring in consultants for hundreds of thousands of dollars, to do the job that *Gerry* was supposed to be doing! What kind of business operating officer needs someone else to tell them how to operate a business? I helped the others convince Bree not to waste that money. Even so, as tired as we were, like every trip before, when Bree returned, so did confidence. Bree was inspirational. I felt like I was following William Wallace into battle.

A few months later, it came to light that Jamie had gone rogue and ran their own unsophisticated tests on our products. Jamie was convinced that the headaches were being caused by our phone cases. Our data just didn't show that at all. Worse, Jamie had gone outside the company and contracted with a disgrace of a "scientist" to perform further "testing." Once, Jac Taggert had been great, but she went full environmentalist two decades ago and has been on a "forever chemicals" kick that has destroyed her scientific reputation. And yes, she has testified in Congress a couple of times and did that thing on John Oliver, but I guess that just shows what Congress knows! Besides, the testing results from Taggert that Jamie showed me in February showed I was right to be concerned: her logs were sloppy, incomplete, and lacking data to show any carcinogenic release under heat. As I told Jamie, the company already *had* a Chief Scientific Officer, and this one didn't need fraternity "connections" to pass Organic Chemistry!

This was time for real science. Taggert had her experiment, I had QuikCase's. My hypothesis was that Tiger Tail cases were not causing headaches, and I had designed an experiment, the evidence from which had supported that hypothesis. So I was confident in the product. But experimental data has to be replicated to validate it. Neither of us had replicated under the other's experimental conditions, so we needed another test or set of tests.

I had been working on this issue for a few weeks when I was called to an emergency Board meeting in March 2021. Although Bree was a little preoccupied by the Oscars nominations to be announced the following week, I planned to present a fair, balanced report on the issues with QuikCase when Jamie Cameron – who is most definitely *not* a Board member – burst in, ranting. Jamie was blatantly overstating Taggert's results and completely ignoring the scientific method, so I kept my cool and started to explain matters. But Jamie employed scare tactics, and soon, paranoia was spreading. Mitch was blithering about prison until Teri distracted him with his catnip, celebrity gossip, and Gerry was… half awake? I began to lose my temper when Jamie began throwing out accusations of criminality and testing fraud, like we were Volkswagen or something. Say what you will about my personality, or my business acumen, but do *not* question my devotion to the scientific craft.

Finally, Bree stepped in, got everyone's attention, and returned the focus to the science. Correctly recognizing that someone who took Earth Science for Non-Majors should not make snap multi-million dollar decisions, Bree tried to focus on the process going forward. There were some other, less valid points made as well, some pseudo-science about manifesting or something. I made a mental note to speak with Bree after the filming about giving voice to that nonsense, but then, Bree still sees a *reiki* crystal therapist monthly to purify their *chi*, so baby steps.

That's when I learned that the Board had some kind of rule that required two of three people to approve major decisions, and *I* wasn't one of them, even when the decisions were about science! It made no sense, but Gerry assured me that Chev Chelios, who was standing on a chair staring into space, was a necessary vote, but I was not. I was incensed.

Fortunately, science won out in the person of Tee Mapother, who as fate would have it, had sent out a tweet about how Tiger Tail was safe until proven otherwise and how it had been extensively tested. I didn't know whether Tee had tested it under these thermal conditions, but it didn't matter. It wasn't my call, even if it should have been. *Bree* liked the Tweet, and that was the guidance the Board needed. Tiger Tail was safe until proven otherwise, and I asked for and received funding for the necessary testing to find out if there was any demonstrable connection between the QuikCases and the reported neurological episodes. Until that testing was complete, we would proceed based on the testing we had already done, rather than that quack Taggert's. At least *our* principal investigator had never been arrested for ramming a whaling ship.

So it is simply slander to say we did not test. Science takes time, and we proceeded reasonably with the information we had. Of course, events overtook us, and once QuikPhone declared bankruptcy, I had to cut short the definitive testing before it could be completed. Some of the plaintiffs in those suits retained experts whose reports claimed that the QuikCase off-gassed, resulting in their injuries, but those suits ended when QuikPhone went bankrupt. And yes, Apple ordered testing – and Bree agreed immediately! – but by then, Bree's "brand" was damaged. Apple didn't *want* to use the QuikCases anymore, because Bree was what Chev called "cold product." Small wonder that Apple hired Stanley Goodspeed, Jac Taggert's good friend, or that Goodspeed used a testing methodology – artificially heating the phones – that may or may not have replicated any real-life conditions of use. Apple got the answer it wanted by doing the tests they wanted. I advised Bree to fight, to demand Apple pay a penalty, but Bree said that if there was even a chance that our product could hurt the fans, we had to abandon it, whatever the cost. But because the lawsuits were terminated by the bankruptcy, none of the so-called experts were ever cross-examined about the reliability of their methods. We may never know the real answer.

And that's really what my Memorial Day statements were saying. Chev was supposed to be in charge of our messaging, but he wasn't up to the task. So Gerry said it fell to me. I told the viewers the truth: production would continue, and the question was scientific and unsettled. We don't know definitively now – and we certainly did not know definitively then – whether there were issues with the QuikCases, much less whether those issues were causing harm. Gerry might be trying to take the "high road" here, but Gerry set me up, and I fell for it. My reputation took the hit, so I guess Gerry can sail the Caribbean in peace.

So be it. I still have tenure at a prestigious university, and I still have Tiger Tail in all its mycological glory. Ultimately, the cream rises, and the best products win. Soon enough, we will find another market for Tiger Tail, and perhaps Bree will even help me to fund it. And when Bree does, and when my masterpiece is in every living room in the country, Gerry will still have an aging body and an aging sailboat. Even Tortuga is not worth one's honor.

Statement of Jean Varenberg

Good day. My name is Jean Varenberg, and I am here to bring a little calm reason to these proceedings. I have provided my full CV to the attorneys in this matter, and you may peruse it at your convenience, but let me provide a precis. I am a businessperson, and I have spent the last thirty-seven years as such. Note, please, that I do not say I am in this business or that, for such distinctions bring more heat than light. In truth, successful businesses are much the same: you discern a market for a product or service, provide that at an acceptable quality level, market it effectively as different than other options (whether it is or not), and profit from keeping costs as low and selling as high as the market will bear. And, if one wishes a long and healthy life of benign neglect from the government and the market, one follows the law.

I have been a part of every part of that cycle – a process engineer at a traditional manufacturer, a marketing executive at a medical device company, the VP of Quality Control for a food and beverage enterprise, and penultimately, the Chief Compliance Officer for Astra-Zeneca's American operation, headquartered in Wilmington, Delaware. For the last four years, I have been semi-retired, consulting with national and international businesses staging up or assessing their compliance efforts. On the side, for fun, I teach compliance at the Beasley School of Law at Temple University. I have testified numerous times on questions of compliance, and I have never been rejected as an expert, although in some cases the Court determined that expert testimony was not required. I have twice served as an independent monitor for the lawful authorities, once on behalf of Her Majesty's government in London and once here in Delaware for the United States Department of Health and Human Services Office of Inspector General. In fact, the latter opportunity is how I started at A-Z and down the consulting path, so I owe a good deal to my colleagues at HHS-OIG. Although I'm not from "around here," I've been proud to make Delaware my home for three decades. There's nothing quite as invigorating as sitting like an eagle in an aerie at the heart of corporate America.

It was from that perch that I was retained by Bree Plaza, whom I have come to understand is a celebrity, and the Lincoln Insurance Agency to serve as an expert in this matter. That review began with reading the witness statements and exhibits, of course. I found them illuminating, even if they principally confirmed my expectations. When you have been around as long as I have, you get a sense of such things. Unfortunately for us all, Toni Scott has not, and so the conclusions Scott reaches are, if not abjectly wrong, at least distinctly misguided and markedly overstated.

The fundamental mistakes that Scott makes are typical of someone who has not been in a real business environment: Scott assumes perfection is immediately achievable, insists on unworkable rules, and wields a flaming sword against anyone who fails to meet that standard. Certainly, QuikPhone was not perfect, but nor was it or its Board reckless. It – and they – simply made a bad business decision, trying to push a valuable product to market. They're scarcely the first, and history shows they will not be the last. Every investment involves a measure of risk, and betting on a Hollywood smiling face to develop next-generation bio-manufacturing processes? Well, one might venture that such is a greater risk than some. Higher reward, to be sure, but isn't that the point? If you want security, buy Treasury bills.

The fundamental issue with Scott's analysis is a basic one: compliance does not spring full-formed from the head of Zeus, like Athena. Compliance wisdom must be hard-won, and cultures do not change overnight. To the contrary, they develop over time, sometimes organically, sometimes in a guided way, like Mendel's peas, if you will, or well-raised children. We do not condemn the parents of an eleven-year-old who misbehaves at the end of a long flight; eleven-year-olds do that, even when properly reared, and the parents are doing their best. Similarly, if a teenager misses the Big Shot in the Big Game, we do not say the coach failed, just that the teenager was not mature or luck was not with them. Were a mature adult to wager substantially on that teenager's success, we would question the wisdom of the adult, not the competence of the teen. So, too, here.

Let us examine the work of these "parents" or "coaches" in the controls they have established. First, preventive controls. Here, at a point in time, these were lacking. But in the years that Gerry Butler worked with the Quik companies, they improved markedly. By the time of QuikPhone, there was a meaningful segregation of authority. Gerry Butler as chief operating officer could sign any financial paperwork under $100,000, and Bree Plaza signed above that. Of course, though, Plaza was not always there. And yes, poor Mitch McDeere made a simple, if expensive mistake, but he did so out of a commendable intent: to protect an important business line.

Initially, any executive could stand up and act in Bree's stead, but after the unfortunate mushroom purchase event, there was a standing resolution of the Board that allowed two of the three other executives to make a decision in Plaza's stead. This is not an unusual arrangement; I would say that most companies I've studied have had something akin to it. Granted, most often this authority is vested in individuals who have formal academic training in business or, at least, meaningful experience in traditional business, accounting, or operations. But some of the executives had training in one or more of those things! Bree even detected a variation on the Panama Pump by one of the investors by personally noting a very subtle divergence from Generally Accepted Accounting Practices. Even Ernst and bloody Young has to respect that!

And to be certain, I have seen businesses that check this authority in some other way. While one could question certain of the decisions – expensive vehicles for executives, the use of private aircraft, and the artwork purchased for McDeere and Chelios's offices come to mind – each of the identified questionable transactions was individually under $100,000. Besides, Scott's analysis misses a critical point: Bree may well have done the same. Bree is famous for the largesse Bree shows members of the entourage, so who is to say that McDeere would not have been driving the same Shelby Cobra? Or if it had been Bree receiving that email, or Gerry Butler, how are we to know that they also would not have been fooled? Those hacker emails are getting better and better! One even fooled me, and I was fortunate the bank caught it before "I" bought a large screen TV and several iPads! So even if one could say another system might be better, this system actually did work, almost every time.

The standard is reasonability. And what is reasonable for a Fortune 500 company with tens of thousands of employees and billions of dollars at stake is not the same as what is reasonable for a small business making its initial leap into being publicly traded. Here, the control group was very small, and so keeping that authority shared was not, in my opinion, reckless, or even negligent. It is not the advice I would have given. I would certainly have advised that they have independent

board members approve any transaction that could be considered self-serving. But my predilections do not control the Delaware General Corporate Law.

Other aspects of preventive controls were also reasonable. There were criminal background checks for most employees. It could have been all, but I respect those who respect second chances. It would have been better to have secondary checks for non-criminal malfeasance, like theft of customers or technology, but no one has suggested that any employee who engaged in any conduct like that would have been detected by such a control.

The rest of Scott's issues verge on being silly. Who cares which executive is sending corporate posts on Instabook or whatever? And should it be a surprise that in a company with limited regulatory personnel, the Chief Operating Officer can sign regulatory documents? In some ways, isn't that a sign of how seriously things were taken?

Now, detective controls. I have never agreed with the majority of the industry that detective controls are as essential as they are made out to be. Do we want companies to detect fraud? Of course! But periodic audits are often sufficient. The culture has been unduly influenced, in my view, by the Department of Justice and its independent monitors. Let us count the ways that the DoJ has twisted this process. First, of course, the DoJ is only involved where there has been malfeasance, often criminal malfeasance. They design heavily monitored, audit-heavy standards for these criminal enterprises, but then those same standards get applied to every business that had not crossed that line. Second, DoJ monitoring protocols are geared to large companies, because they put most smaller ones out of business! But the same costs that large companies can shoulder easily can crush smaller enterprises. Third – and the mind truly boggles here! – DoJ is not even certain if the monitoring works. There is anecdotal evidence, yes, but there is no systemic, neutral study that demonstrates the value in these programs with arithmetic precision. And yet, costs and benefits, revenues and profits… the core concepts of business… these things are measured in numbers! The DoJ does not even measure whether its compliance efforts are efficient, economically. For an Enron or some such, perhaps this is necessary. But for non-criminal enterprises, these extreme measures may prove to be both entirely too burdensome and entirely unnecessary.

Basically, the Department of Justice is imposing an expensive, sometimes-crippling one-size-fits-all solution, but it's not even sure its solution fits any! So *of course* if you measure smaller businesses against these standards, they fail. They don't have the resources to purchase a Rolls Royce of compliance and hope it runs!

That plays out here, of course. Scott is very pleased to note that there were a couple hundred thousand dollars in missing inventory or cash. True. But Scott does not analyze what the cost would have been of the level of detective controls necessary to spot that issue. Like, DoJ, Scott just uses the big number, ignoring cost. Why, it could have cost half of that just to detect the theft or waste! Of course a stronger regime could have deterred other misconduct, perhaps undetected theft or abuse, but the point remains: Scott is a product of their environment. Once a clueless, overzealous prosecutor, always…

Anyway, I prefer to rely upon a culture of compliance, which has been shown to be more effective than the police state that auditors tend to inculcate, when left to their own devices. Where the culture is compliant, the employees will do right. Where it is not, not even an army of accountants and a shipload of ledgers will make them do so. Ernst & Young, indeed!

Forgive me. I become exercised on this topic. Where were we? Ah, yes, corrective controls. Well, I will beg your pardon, but I don't think the French Revolution was a success, and I don't favor guillotining employees because they did not fill out their TPS reports. Such an extreme step is not going to make a successful business, either! This idea of a one-strike policy is absurd. Yes, there should be progressive discipline, and yes, that discipline has to end in termination. But most employees need a pat on the back and a buck-up-old-chum, not a pink slip! Scott is entirely too concerned with firing people for modest offenses. Consequences need not be fatal to a career: even a censure or a call-out in a meeting can set a ne'er-do-well on track. Leadership is what is needed, not erecting a gallows in town square!

I have reviewed the policies for employees, and if anything, they were too strict! Not at first, perhaps, but after Gerry Butler was able to pass some quite reasonable, modest resolutions? A rule of reason prevailed. The rate of terminations increased substantially, and the rate of reported misconduct dropped precipitously. If anything, the rate became too low, a sign that the efforts were over-deterring reporting.

That is a subtle challenge of compliance, you see. If you are too strict, too demanding, too ready to punish, wrongdoers won't self-report, and employees won't report their friends and colleagues. In such cases, too strict a system can result in the system getting less information, not more. Another reason I favor a laxer disciplinary approach.

Now I suppose I ought to address the situation with that Chelios fellow. Dreadful thing, that. Addiction presents harsh challenges to businesses. Do you fire someone for something that is, after all, an illness? Do you cut them off from the responsibilities of their job, when that is sometimes the only harbor in the tempest-boiled seas of their life? Or do you support them, taking some risk that their choices will not be the best, but knowing that if you can see them through, sunnier days are ahead, and other employees will see the support you have given and reward your loyalty to their colleague with their own? And if you do cut them off, will you find their tell-all book a bestseller on the beaches summer next, or them selling your secrets in their next job, particularly where you did not insist on a non-disclosure or non-compete for *that* purpose?

No easy choice here. Which is, certainly, why those who rush to condemn are mistaken. In such circumstances, all choices are justifiable from a business perspective. Certainly, if there is impairment on the job, something must be done, but what it is, you must leave to the decider, the person in the arena and all that. I would not care to live in a world where one abandons one's friends at the first foible or false step. It might have been wisest to take away the "keys to the castle" or whatever they called it, but the transaction audit logs never show Chelios using that power for anything but routine expenses and, once, a rather pricy sound system. That was caught by the finance team eventually, though, and the cost was swiftly reimbursed.

And as to Scott's opinion of the scientific operation, well, the less said, the better. I am no research scientist, and neither is Scott. So who are we to judge the level of controls applied? Besides, whatever controls they applied would simply have been in the hands of that Cameron character. Better to trust Professor Reinhold more than one should than to trust that dimwit, I say.

What it seems to me that we have here is, as Scott would have it, an old story. But rather than the story of untrammeled greed that the prosecutor is spinning, rather this is the story of growing pains. I am not here to testify that the compliance at QuikPhone was perfect, because of course, it was not. It was evolving. It was improving. I would have loved to see what it would have been in a year, or five, or a decade, because I believe it would have been a model. Eventually.

And credit to Bree Plaza for that. Many small business owners disregard compliance, but when Plaza heard Gerry's pitch for more compliance, more compliance is what occurred! Careful policies, checks and balances, and – at each step – Plaza's name and motive force behind them. Make no mistake: Quik was Plaza's company, and the credit for the evolution goes to Plaza. Not perfect, not fully evolved, not yet *homo sapiens*, but certainly no Neanderthal, either!

Yes, Plaza was often absent. Plaza was sometimes unreachable. But the same is true at far larger businesses: the CEO is in the islands, or in Tibet, or in space it seems, these days! Business operations can develop around an absent CEO. And having a person who did not lack for ambition primed to take over the day-to-day operations is a well-trod path to doing it!

When Plaza was present, Plaza made decisions. Plaza encouraged. Plaza led. Not every CEO will be deep in the weeds of every transaction or should be! There's nothing wrong with a CEO who makes strategic decisions and delegates effectively. After all, it's not as though Roosevelt commanded D-Day from Omaha beach.

More to the point, though, is responsibility. Where is the responsibility being taken by those who invested in this enterprise? They knew that Plaza had a day job. They knew Plaza was completely untrained in business. They knew that Butler was a former dramaturge whose education was on-the-job and a bloody correspondence course! And they invested anyway, because they believed that Plaza would try and would put the name and likeness of a famous person behind the brand. They believed that the name and likeness would bring them profits. And they were not wrong, for a time.

One can see this in the specific moment of the March board meeting. The system… not perfect. Having Chelios as a signatory on critical decisions, given his condition, is a failure. And they saw that in the moment. But the deliberative process was a model. Bree Plaza insisted on a collaborative, consensus-based model, and Plaza enforced it when it broke down. Ultimately, every voice was heard, and every vote was counted. Ultimately, the CEO's wishes were considered as part of a constellation of other evidence and opinion. The team made a decision, and it was a rational one: continue production and marketing while scientists sought to identify any issues. What more could reasonably be asked of a lay board?

There are risks in investing, and those risks were realized here. That is business for you. That is capitalism. If you want the highest profits, you have to maximize revenues and minimize costs.

Compliance is a cost, and so companies – especially young companies – must be careful in just how much compliance they purchase with their hard-earned dollars. What we can say of these lads and lasses is what we can say of many a venturer from the time of the explorers until the present day: they tried. Plaza was never disloyal. Plaza did not steal from the business. Plaza did exactly what investors expected Plaza to do: smile, say the right things, Twit or Tweet or Tik or Tok happily, and continue to act. To pretend otherwise now, having thrown the dice and lost? Disgraceful.

Exhibit List

- Exhibit 1 – Instagram Post from Bree Plaza
- Exhibit 2 – Email from Jamie Cameron to Bree Plaza – April 2020
- Exhibit 3 – Email from Jamie Cameron to Bree Plaza – Fall 2020
- Exhibit 4 – Tweets with #QUIKPAIN
- Exhibit 5 – Email from Mushroom Master LLC to Gerry Butler
- Exhibit 6 – Resolution of QuikPhone SAC I dated November 13, 2020
- Exhibit 7 – Tweet by Tee Mapother liked by Bree Plaza on March 10, 2021
- Exhibit 8 – Email Exchange Between E.E. Reinhold and Jamie Cameron
- Exhibit 9 – Results from Jac Taggert Testing dated February 20, 2021
- Exhibit 10 – Teams Chat Between Jack Burton and Gerry Butler
- Exhibit 11 – Notes of Gerry Butler from Board Meeting of March 10, 2021
- Exhibit 12 – Toni Scott Resume
- Exhibit 13 – Jean Varenberg Resume

Exhibit 1

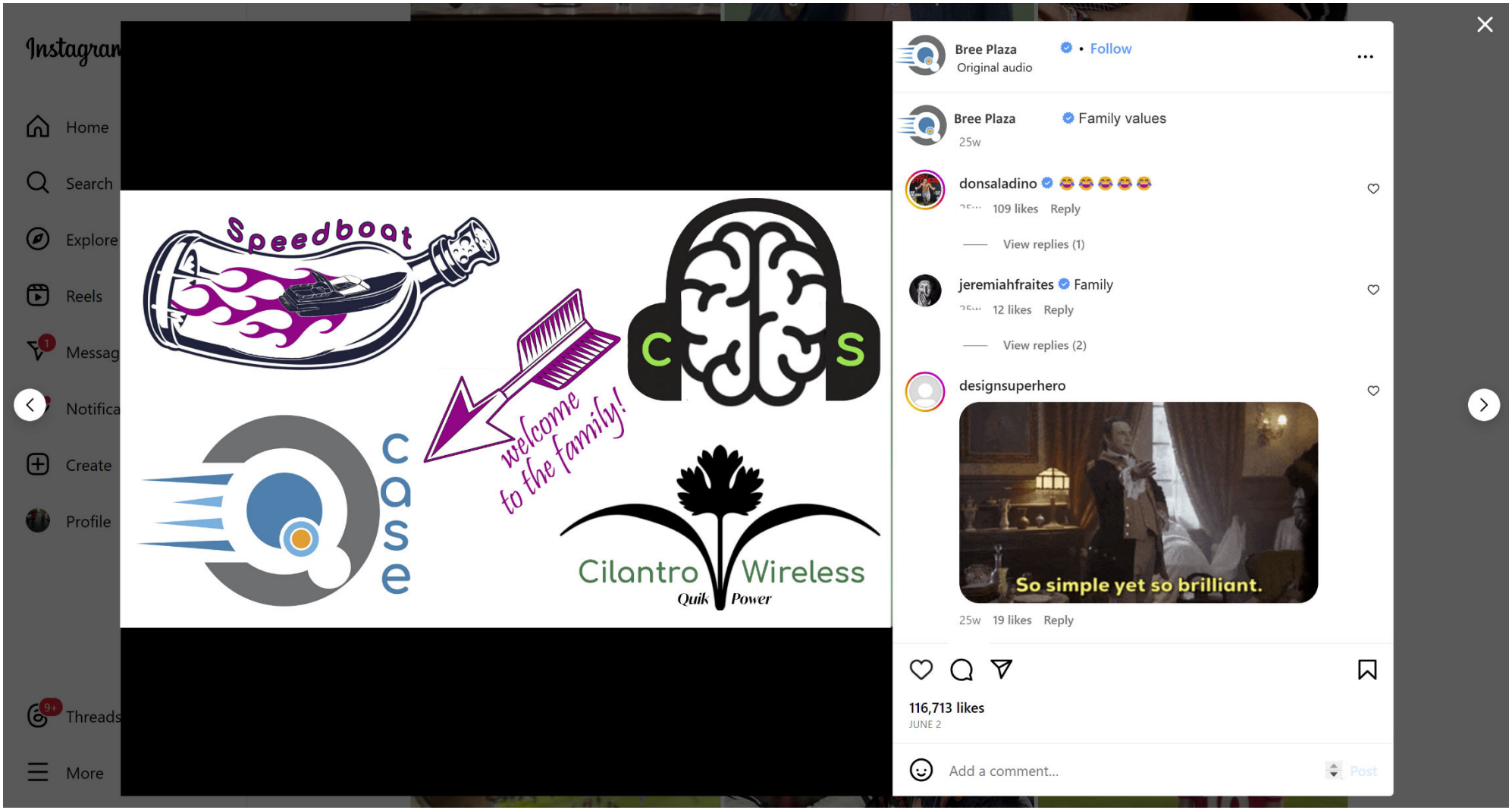
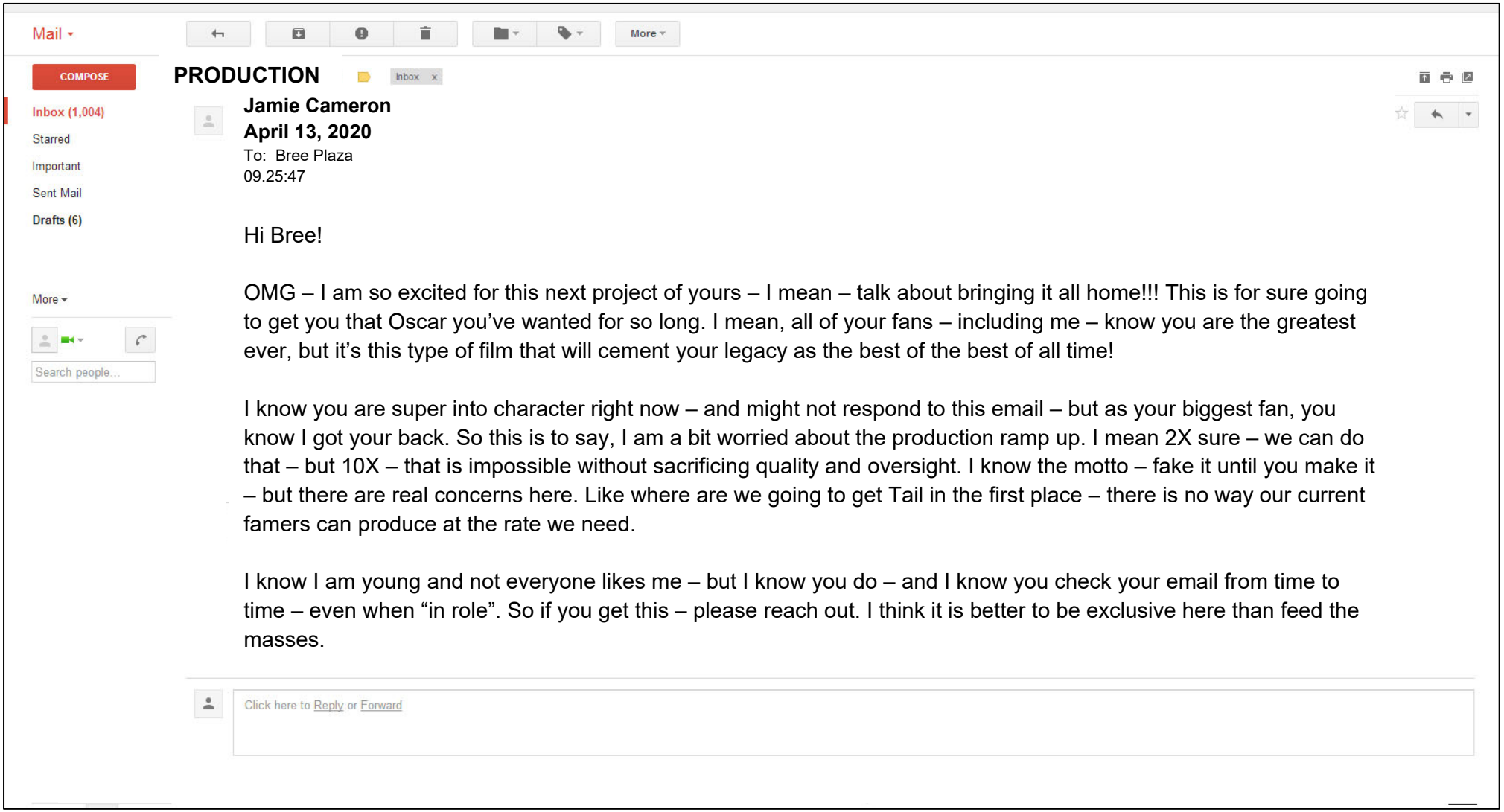

Instagram
Home
Search
Explore
Reels
Messag
Notifica
Create
Profile
Threads
More
Speedboat
welcome to the family!
C S
case
Cilantro Wireless
Quik Power
Bree Plaza • Follow
Original audio
Bree Plaza Family values
25w
donsaladino
109 likes Reply
View replies (1)
jeremiahfraites Family
12 likes Reply
View replies (2)
designsuperhero
So simple yet so brilliant.
25w 19 likes Reply
116,713 likes
JUNE 2
Add a comment...
Post

Exhibit 2



Mail

More

COMPOSE

Inbox (1,004)

Starred

Important

Sent Mail

Drafts (6)

More

Search people...

PRODUCTION Inbox x

Jamie Cameron
April 13, 2020
To: Bree Plaza
09.25:47

Hi Bree!

OMG – I am so excited for this next project of yours – I mean – talk about bringing it all home!!! This is for sure going to get you that Oscar you've wanted for so long. I mean, all of your fans – including me – know you are the greatest ever, but it's this type of film that will cement your legacy as the best of the best of all time!

I know you are super into character right now – and might not respond to this email – but as your biggest fan, you know I got your back. So this is to say, I am a bit worried about the production ramp up. I mean 2X sure – we can do that – but 10X – that is impossible without sacrificing quality and oversight. I know the motto – fake it until you make it – but there are real concerns here. Like where are we going to get Tail in the first place – there is no way our current famers can produce at the rate we need.

I know I am young and not everyone likes me – but I know you do – and I know you check your email from time to time – even when "in role". So if you get this – please reach out. I think it is better to be exclusive here than feed the masses.

Click here to Reply or Forward

Exhibit 3

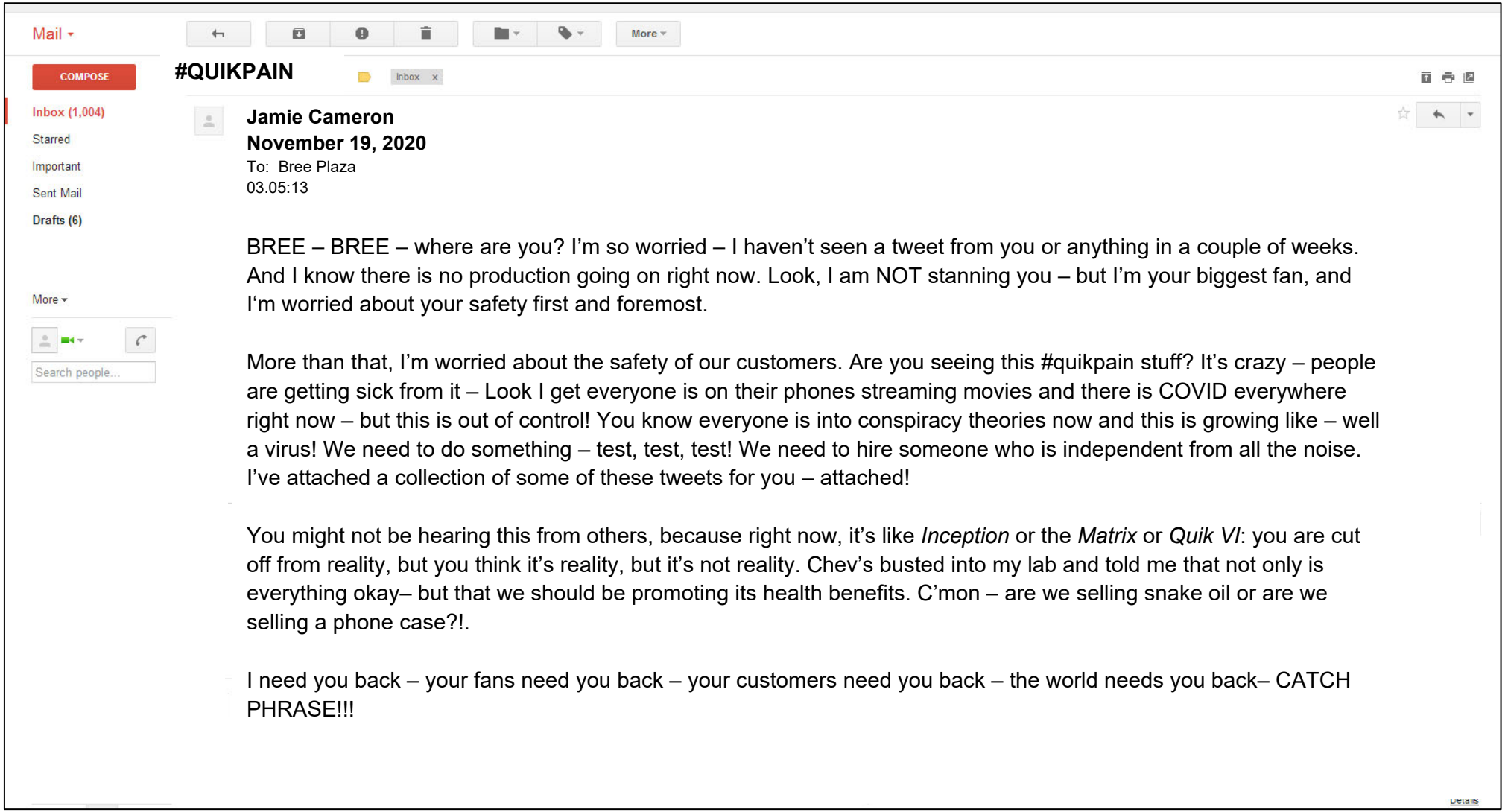
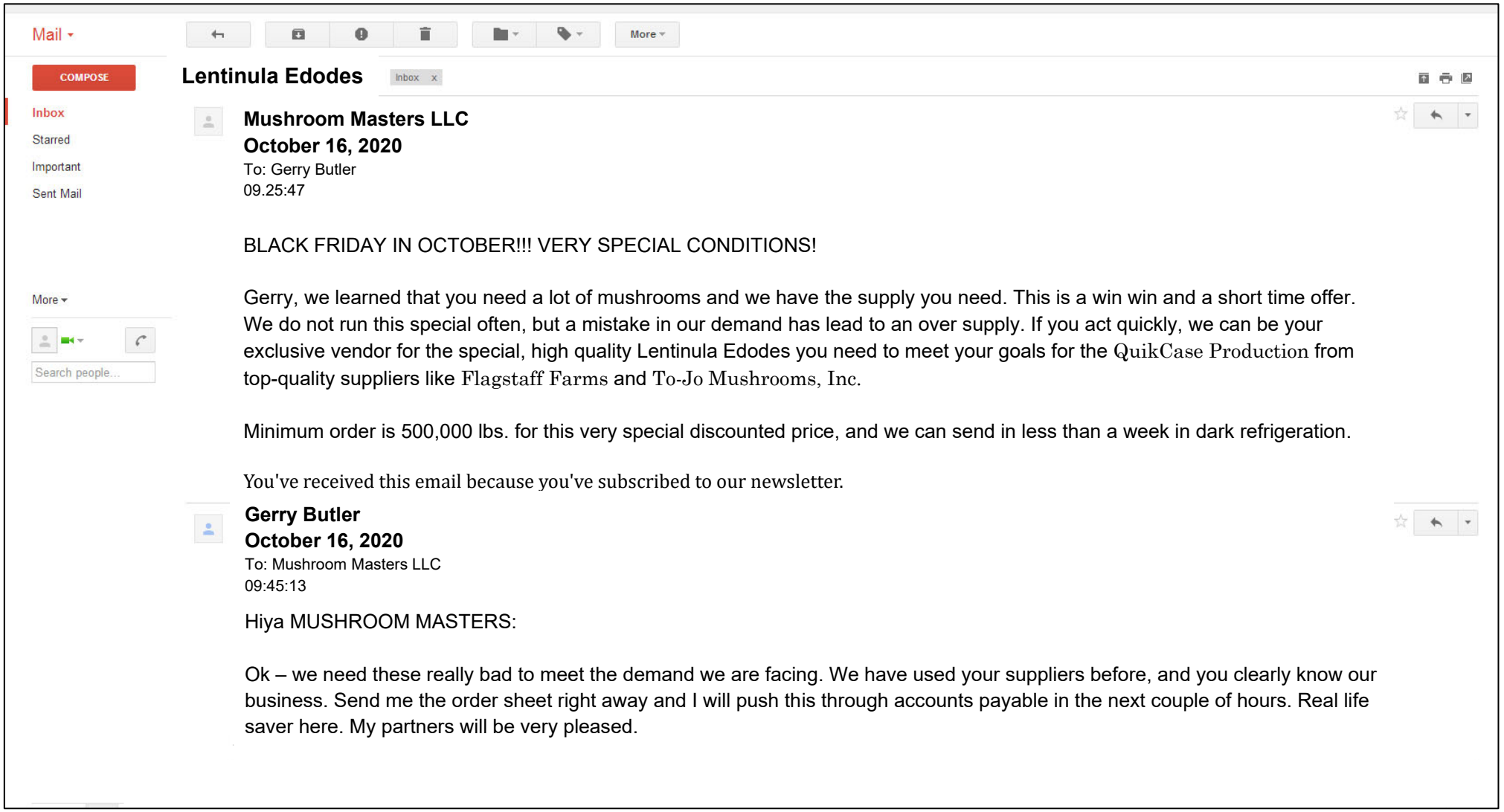

Mail
More
COMPOSE
#QUIKPAIN
Inbox x
Inbox (1,004)
Starred
Important
Sent Mail
Drafts (6)
More
Search people...
Jamie Cameron
November 19, 2020
To: Bree Plaza
03.05:13
BREE – BREE – where are you? I'm so worried – I haven't seen a tweet from you or anything in a couple of weeks. And I know there is no production going on right now. Look, I am NOT stanning you – but I'm your biggest fan, and I'm worried about your safety first and foremost.
More than that, I'm worried about the safety of our customers. Are you seeing this #quikpain stuff? It's crazy – people are getting sick from it – Look I get everyone is on their phones streaming movies and there is COVID everywhere right now – but this is out of control! You know everyone is into conspiracy theories now and this is growing like – well a virus! We need to do something – test, test, test! We need to hire someone who is independent from all the noise. I've attached a collection of some of these tweets for you – attached!
You might not be hearing this from others, because right now, it's like *Inception* or the *Matrix* or *Quik VI*: you are cut off from reality, but you think it's reality, but it's not reality. Chev's busted into my lab and told me that not only is everything okay– but that we should be promoting its health benefits. C'mon – are we selling snake oil or are we selling a phone case?!.
I need you back – your fans need you back – your customers need you back – the world needs you back– CATCH PHRASE!!!
Details

Exhibit 4

SAMPLE TWEETS Re: #Quikpain (collected by Jamie Cameron | October 2020)

Tweeter	Tweet
@breeislife	BREE – I can't stop watching your movies on repeat – like for 10 hrs! no cap – but for this damn headache that won't go away! **#quikpain**
@Ragsthedog17	My cousin had to go to the hospital with a massive migraine from using a Quik Case – is this thing safe? **#quikpain** #migraine
@lastactionhero99	This case is crap – it stinks – chuegy!!! My brain hurts it's so bad! **#quikpain**
@BogTurtleTime	No bells ringing. Only my brain – I had to throw it out. Where's my $49.99 at? **#Quikpain.**
@pizzamikeychucks	I was seriously bussin when I got this quickcase – used it for like 14 hrs straight – and then my head hurt. Glad its made from mushroom cause this thing is in the compost heap. **#Quikpain**
@OliviaLiv14	Bruh – you got to be kidding me – $50 for a phone case to help the planet and all it does it hurt my head! **#quikpain**
@danthemanwithaplan	I love this case so much! Carrying a part of Bree with me is awesome. Worth the $50! **#quikpain**
@wisawizard	You don't even know what I need? But you gave it to me anyway. At least I don't have to go to work tomorrow because of the headache I got from the case. **#quikpain**
@bigtroubleinlittleNYC	Was in Cali and got my hands on a quickcase – watch my phone the entire right back and now I feel terrible. Is this Cobvid or **#quikpain**
@toxicavengerpartII	Ok – everyone knows Im into the toxic vibe, but Bree's taking it to a new level with this **#quikpain**
@cockadoodledont	I get this bougee case and everyone is jealous until I cant get out of bed for like three days **#quikpain #quikrefund?**
@who8rogerrabbit	I'm like I need a glowup for my phone – Im like all about the planet – Im like all about Bree – Im all about this case until… **#quikpain**
@elonmusket	And they say I overengineer things? Everyone knows copper is heat conductive. **#quikpain**
@simonsaysstop2	Simon Says stop using this case – besides the fact it is not worth $50, it will send you to the hospital. **#quikpain #PSA**

Exhibit 5



Mail

COMPOSE

Inbox

Starred

Important

Sent Mail

More

Search people...

More

Lentinula Edodes

Inbox x

Mushroom Masters LLC
October 16, 2020
To: Gerry Butler
09.25:47

BLACK FRIDAY IN OCTOBER!!! VERY SPECIAL CONDITIONS!

Gerry, we learned that you need a lot of mushrooms and we have the supply you need. This is a win win and a short time offer. We do not run this special often, but a mistake in our demand has lead to an over supply. If you act quickly, we can be your exclusive vendor for the special, high quality Lentinula Edodes you need to meet your goals for the QuikCase Production from top-quality suppliers like Flagstaff Farms and To-Jo Mushrooms, Inc.

Minimum order is 500,000 lbs. for this very special discounted price, and we can send in less than a week in dark refrigeration.

You've received this email because you've subscribed to our newsletter.

Gerry Butler
October 16, 2020
To: Mushroom Masters LLC
09:45:13

Hiya MUSHROOM MASTERS:

Ok – we need these really bad to meet the demand we are facing. We have used your suppliers before, and you clearly know our business. Send me the order sheet right away and I will push this through accounts payable in the next couple of hours. Real life saver here. My partners will be very pleased.

Exhibit 6

RESOLUTION OF QUIKPHONE SAC I

For the Purpose of Creating a new Voting Protocol when Bree Plaza is not Available

I, Gerry Butler, the Chief Officer of Officers, of QUIKPHONE SAC I, a company organized under the laws of the State of Delaware, with its primary place of business at 2600 Concord Pike, Wilmington, Delaware, 19803, hereby certify that the following is a true and complete copy of a resolution adopted by a vote of the Board at the Board meeting taking place on November 13, 2020 virtually consistent with quarantine recommendations of the Centers for Disease Control.

A quorum was present, and the vote complied with the company's established management procedures, except that this meeting was held virtually and signatures are electronic.

I certify that the resolution has not been amended, modified, or repealed.

NOW THEREFORE LET IT BE RESOLVED that when Bree Plaza is not available to make a key decision regarding the business, a vote will be held amongst the next three highest ranking officials of the company (currently, when available, Gerry Butler, COoO; Chev Chelios, Vice-Officer, Communications; and Mitch McDeere, Vice-Officer, Legal).

FURTHER RESOLVED that a simple majority of those voting on such an action will pass the vote.

IN WITNESS WHEREOF, I have set my hand on behalf of the company on November 13, 2020.

X // Gerry Butler
Gerry Butler, Chief Officer of Officers

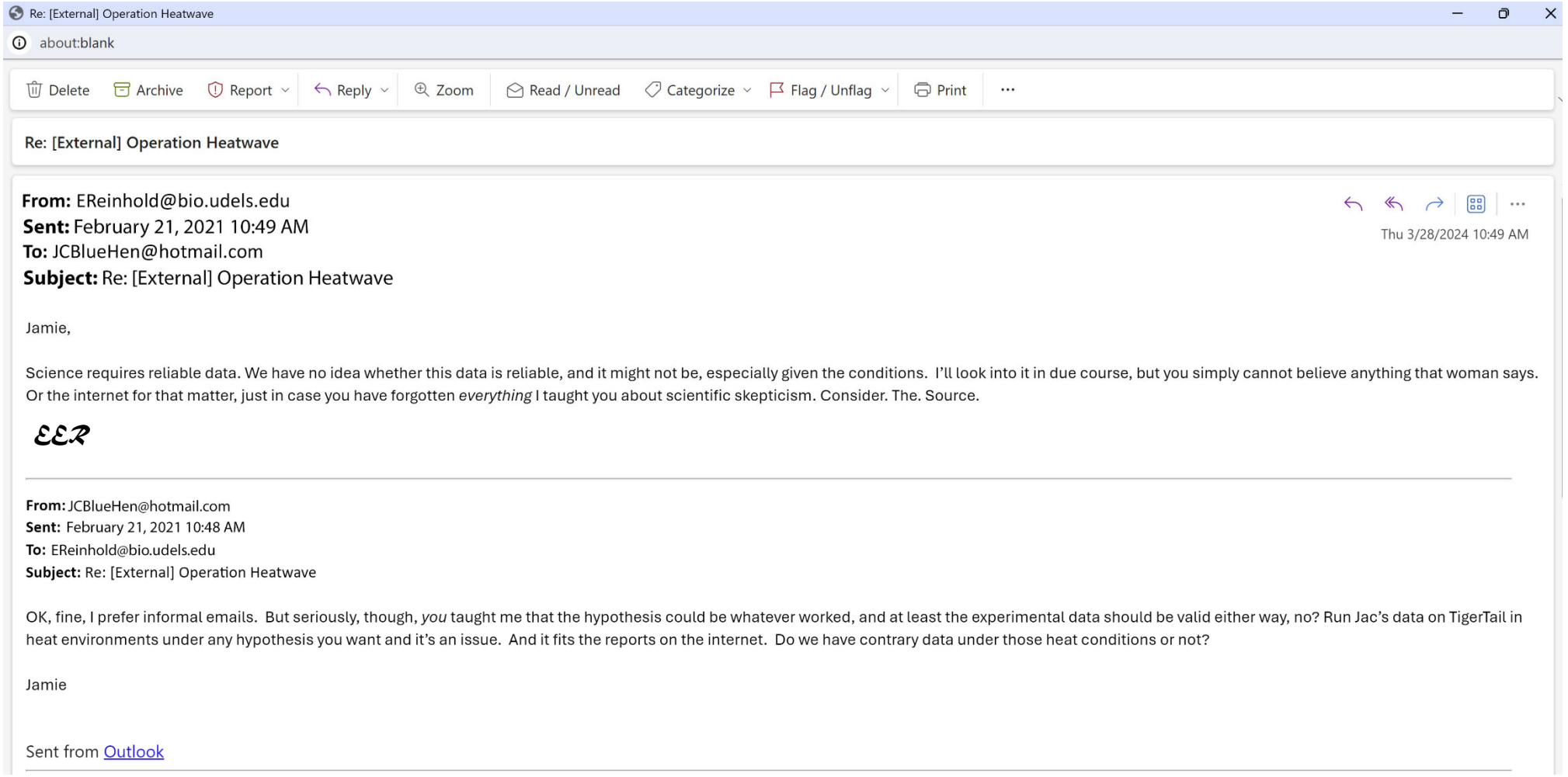
X // Mitch McDeere
Vice-Officer, Legal

X // Carlos R. Norris
Secretary to the Board

Exhibit 7


100%
Tee Mapother
SAFE
Liked by BreePlaza and others
Quick case is safe. I was the original engineer of the material, and we tested it extensively. The things people are saying don't make sense. COVID is a nasty virus with impacts we do not yet understand. Copper is safe. The mushroom is safe. The Case is safe. #dontbefooled #considerthesource
View all 108 comments
@danthemanwithaplan I knew it all along!!!

Exhibit 8



Re: [External] Operation Heatwave

about:blank

Delete | Archive | Report | Reply | Zoom | Read / Unread | Categorize | Flag / Unflag | Print | ...

Re: [External] Operation Heatwave

From: EReinhold@bio.udels.edu
Sent: February 21, 2021 10:49 AM
To: JCBlueHen@hotmail.com
Subject: Re: [External] Operation Heatwave

Thu 3/28/2024 10:49 AM

Jamie,

Science requires reliable data. We have no idea whether this data is reliable, and it might not be, especially given the conditions. I'll look into it in due course, but you simply cannot believe anything that woman says. Or the internet for that matter, just in case you have forgotten *everything* I taught you about scientific skepticism. Consider. The. Source.

EER

From: JCBlueHen@hotmail.com
Sent: February 21, 2021 10:48 AM
To: EReinhold@bio.udels.edu
Subject: Re: [External] Operation Heatwave

OK, fine, I prefer informal emails. But seriously, though, *you* taught me that the hypothesis could be whatever worked, and at least the experimental data should be valid either way, no? Run Jac's data on TigerTail in heat environments under any hypothesis you want and it's an issue. And it fits the reports on the internet. Do we have contrary data under those heat conditions or not?

Jamie

Sent from Outlook

From: EReinhold@bio.udels.edu
Sent: February 21, 2021 10:43AM
To: JCBlueHen@hotmail.com
Subject: Re: [External] Operation Heatwave

Jamie,

Your continued misuse of the English language is disturbing. " 'Sup" is professionally inappropriate, a malapropism and contraction of "What's up?," which itself is inappropriate for professional communication. If you ever wish to be taken seriously, you must stop with such infantile nonsense.

Sadly, "Dr." Taggert's work is no more convincing than your salutations. Her hypothesis is that the phone cases were causing off-gassing. That is an inappropriate starting point. The starting point should be that they are not or, alternatively, she should have started with the basic science, as in hypothesis: extreme heat conditions can cause breakdown in TigerTail. I will have to work with the Board to design an appropriate study; certainly we have never sought to verify such an extreme hypothesis!

Moreover, "Dr." Taggert is a known quack, having published and spoken many times against genetically-modified organisms (GMOs) like TigerTail. I know you had to search for a researcher at a smaller facility, but really, a biased investigator alone can invalidate results. This was a ridiculous choice, and it reached predictably invalid results, such as the Colorado ones you mention, which clearly must be the result of sample contamination. TigerTail simply does not behave like that. It appears at first blush that your eco-terrorist friend can't even keep a clean room clean.

I'll have to redo all of this before we know anything that is actual Science.

PS: I didn't have you send this here to live out some fantasy from your stupid, brain-rotting cinema. Mitch McDeere has access to all my company emails, and he is liable to have a panicked, unscientific reaction to anything he sees, as the Shitake Incident proves.

From: JCBlueHen@hotmail.com
Sent: February 21, 2021 10:41AM
To: EReinhold@bio.udels.edu
Subject: [External] Operation Heatwave

'Sup, Prof?!

Per your request, I'm sending these results to your U Del account direct from my Hotmail, rather than on the Quik accounts. Cloak and dagger like *Mission Impossible*, amirite?

Anyway, here's what was concerning me. I know you and Jac don't get along, but her results on the heat testing are pretty concerning, especially on the copper-infused models. And the ones from the farm out in Arizona just don't make any sense. Was TigerTail tested under those heat conditions? Do we have contrary data?

Jamie V

Sent from Outlook

Reply Forward

Exhibit 9

Jac Taggert TESTING

A peaceful way to interact with nature

February 20, 2021

Dear Jamie:

May you be embraced in the arms of our Mother Earth.

Those samples are odd – some real Frankenscience going on! I mean mixing metals with mushrooms. I think that's the issue. But only on some cases, only a few, really. I cannot really speak to what it is or how it is happening; and I have not been able to isolate the gas yet. But there is something. *Might* have a slight odor to it when it is present, but it makes my eyes cross as soon as I get a whiff of it, so I stopped. I think there are some serious forever chemicals in here, too. They're everywhere, and they make every product more dangerous.

I was only able to do a heat test. Basic bunsen burner to warm an enclosed, isolated, static environment. You are going to have to rent me some proper lab space if you want to make these results certain and to find out what gas is coming off. I've been testing materials for decades, and for something like this, you need precision gear I don't have out here. But even so, if you get them to temperature, and they off-gas, you feel the impact almost immediately.

Here are my logs so far:

Sample #	Heat Temp	Duration of Heat	Gas Offing?	Carcinogenic
1	109.4°F	1 hrs	Yes	?
2	110.8°F	2 hrs	No	No
3	108.2°F	1.5 hrs	No	No
4	111.6°F	8 hrs	Yes	?
5	106.5°F	12 hrs	No	No
6	113.1°F	6 hrs	No	No
7	105.4°F	10 hrs	Yes	?
8	109.6°F	7 hrs	Yes	?
9	101.6°F	6.5 hrs	Yes	?
10	107.8°F	15 hrs	No	No
11	107.9°F	12 hrs	No	No
12	109.7°F	8 hrs	No	No
13	110.1°F	9.5 hrs	No	No
14	119.5°F	17 hrs	No	No

Exhibit 10

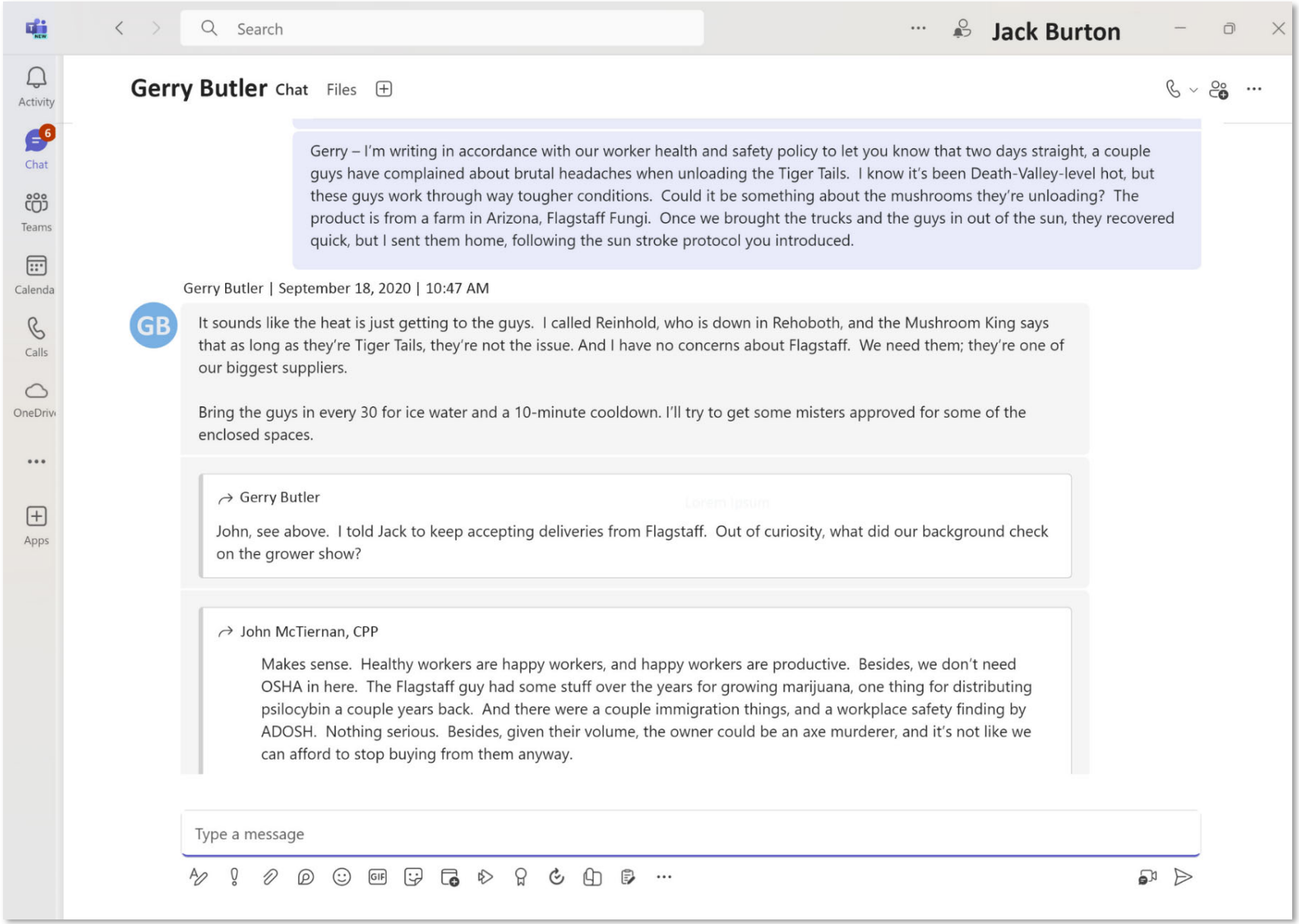

Search
Jack Burton
Activity
Chat
Teams
Calenda
Calls
OneDriv
Apps
Gerry Butler Chat Files
Gerry – I'm writing in accordance with our worker health and safety policy to let you know that two days straight, a couple guys have complained about brutal headaches when unloading the Tiger Tails. I know it's been Death-Valley-level hot, but these guys work through way tougher conditions. Could it be something about the mushrooms they're unloading? The product is from a farm in Arizona, Flagstaff Fungi. Once we brought the trucks and the guys in out of the sun, they recovered quick, but I sent them home, following the sun stroke protocol you introduced.
Gerry Butler | September 18, 2020 | 10:47 AM
GB
It sounds like the heat is just getting to the guys. I called Reinhold, who is down in Rehoboth, and the Mushroom King says that as long as they're Tiger Tails, they're not the issue. And I have no concerns about Flagstaff. We need them; they're one of our biggest suppliers.
Bring the guys in every 30 for ice water and a 10-minute cooldown. I'll try to get some misters approved for some of the enclosed spaces.
Gerry Butler
John, see above. I told Jack to keep accepting deliveries from Flagstaff. Out of curiosity, what did our background check on the grower show?
John McTiernan, CPP
Makes sense. Healthy workers are happy workers, and happy workers are productive. Besides, we don't need OSHA in here. The Flagstaff guy had some stuff over the years for growing marijuana, one thing for distributing psilocybin a couple years back. And there were a couple immigration things, and a workplace safety finding by ADOSH. Nothing serious. Besides, given their volume, the owner could be an axe murderer, and it's not like we can afford to stop buying from them anyway.
Type a message

Exhibit 11

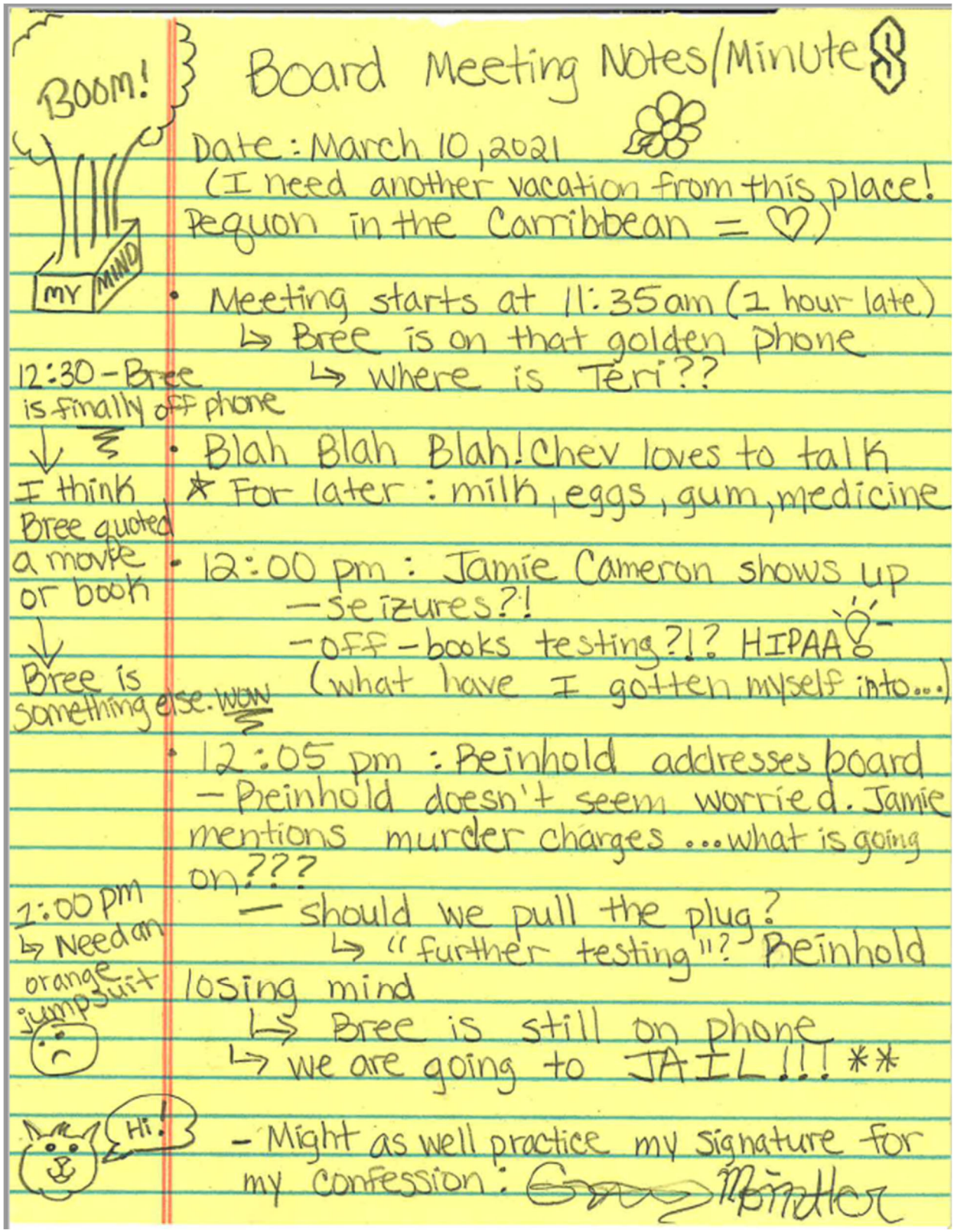

BOOM!
MY MIND
Board Meeting Notes/Minutes
Date: March 10, 2021
(I need another vacation from this place! Pequon in the Carribbean = ♡)
• Meeting starts at 11:35am (1 hour late.)
↳ Bree is on that golden phone
↳ where is Teri??
12:30 - Bree is finally off phone
• Blah Blah Blah! Chev loves to talk
* For later: milk, eggs, gum, medicine
I think Bree quoted a movie or book
Bree is something else. WOW
• 12:00 pm: Jamie Cameron shows up
- seizures?!
- off-books testing?!? HIPAA
(what have I gotten myself into...)
• 12:05 pm: Beinhold addresses board
- Beinhold doesn't seem worried. Jamie mentions murder charges ...what is going on???
1:00 pm ↳ Need an orange jumpsuit
- should we pull the plug?
↳ "further testing"? Beinhold losing mind
↳ Bree is still on phone
↳ we are going to JAIL!!! **
Hi!
- Might as well practice my signature for my confession: Mueller

Exhibit 12

Toni Scott, Esq.

2501 Pike Creek Road, Newark, DE 19707

I. EXPERIENCE

Ernst & Young, Compliance and Audit Professional, Health Effects Group, 2020-Present
Participated in and directed numerous audits and compliance assessments, principally in the pharmaceutical and medical device fields. Appointed by U.S. Bankruptcy Trustee to lead forensic, accounting, and compliance audit team assigned to QuikPhone SAC I (2022) (QuikBrands).

United States Attorney's Office for the District of Delaware, Assistant United States Attorney, Civil Division, 2010-20; ACE (Affirmative Civil Enforcement) Coordinator, 2017-20
Served as lead counsel for the United States in investigating and prosecuting matters pursuant to the civil False Claims Act, 31 U.S.C. § 3729 *et seq*., e.g., *U.S. ex rel Murtaugh v. McAllister Arms* (2015) ($120 million settlement of defense procurement fraud); *U.S. ex rel Ripley v. Astra-Zeneca* (2018) ($70 million settlement of claims for paying kickbacks and giving illegal, undetected discounts in violation of company policy). Defended United States in tort, constitutional tort, and employment litigation.

Morris, James, Hitchens, and Williams, Litigation Associate, 2003-08; Of Counsel, 2008-10
Corporate litigation. Senior associate on *In re Yeoh LLC Security Litigation* (shareholder-derivative *Caremark* claim against biochemical engineering firm for failure to fire researcher who falsified data).

II. EDUCATION

Widener University (Delaware) School of Law, J.D., 2003

Wharton School of Business, University of Pennsylvania, B.S., *cum laude*, Business Administration, 2000
Phi Beta Kappa
Knight-Taylor Prize for Exceptional Contributions to Undergraduate Student Life
All-Ivy, Squash

III. PROFESSIONAL ASSOCIATIONS AND CERTIFICATIONS

Seton Hall University, Compliance Certification and Advanced Compliance Certification, 2021
Society of Corporate Compliance and Ethics, Member, 2019-Present
Certified Fraud Examiner, anticipated October 2024, pending examination

IV. PUBLICATIONS AND PRESENTATIONS

Compliance for Business Executives, Vistage annual meeting, October 2023
Compliance Audits in the Bankruptcy Context: How to Do Them, Why They Matter, American Bankruptcy Law Journal, Vol. 97, Issue 1 (2023)
Blog: *Caremark and Compliance Today*, NYU Program on Corporate Compliance and Enforcement, 2021
Co-author, with four Morris James partners, *Caremark and In re Yeoh: Is Compliance* Mandatory *Now for Any Sophisticated Business?*, Corporate Counsel, Summer 2008

Exhibit 13

Jean Varenberg, GCStJ

1995 Al Powell Place| Wilmington, DE 19810

2008 Statham Blvd., Apt. 221B| London, England

EDUCATION

Drexel University, Ph.D., Process Engineering, 1977

Cambridge University, B.S. Engineering, 1966, M.S. Metallurgical Engineering, 1968

EXPERIENCE

Pro Domina Consulting, Founder and President, 2019-Present
Clients include governments of the United States and the United Kingdom
Experienced in testimony in court and legislative bodies (several dozen examples available upon request)

Astra-Zeneca Pharmaceuticals, Chief Compliance Officer, 2006-18

Kraft Foods, Vice President for Quality and Inspections, 1986-2003

Chemie Grunenthal, Director of North American Marketing, 1983-86

Rolls Royce, Director of Fabrication, 1977-1983, Metallurgical Engineer, 1968-1972

ACADEMIC AND PROFESSIONAL APPOINTMENTS

Temple University Beasley School of Law, Adjunct Professor, Compliance, 2016-Present

Guest Lecturer, University of Delaware, 2008-Present

Coordinator, University of Delaware – Astra-Zeneca Chemical Engineering Pathway Program

Guest Lecturer, Drexel University, 2001-Present

Faculty Coordinator, numerous Drexel University intern- and externships

Preceptor/Examiner, Certified Fraud Examiner Certification Program, 2012-Present

Society of Corporate Compliance and Ethics, Member, 2007-Present; Recording Secretary, 2010-12; Vice-President, 2012-13; President, 2013-14

Editorial Board, New York University Program on Corporate Compliance and Enforcement, 2018-22

MISCELLANEOUS HONORS

Most Venerable Order of the Hospital of Saint John of Jerusalem, 2018

Society of Corporate Compliance and Ethics, Lifetime Achievement Medal, 2022

Honorary Doctorates, University of Delaware, American University, University of Tokyo

REVISION LOG

Location	Revision
Exhibit List	Revised the descriptions for Exhibits 12 and 13 to show that: • Exhibit 2 has been updated to reflect "April 2020" • Exhibit 10 has been updated to describe the exhibit as a Teams Chat • Exhibit 12 is the CV of Toni Scott and • Exhibit 13 is the CV of Jean Varenberg
Exhibit 9	Exhibit 9 has been revised to show a date of February 20, 20

FINAL SUPPLEMENT TO THE CASE MATERIALS

In re: QuikPhone SAC I Shareholder Derivative Litigation

This is the final supplement to the case materials and serves as an official memorandum that may be used in the competition. The final supplement may be used as provided below:

I. Supplemental Materials—Evidentiary Value

The supplemental clarifications may be used in all the same ways (including for impeachment and as testimony) that the main body of the case materials are used. Answers clarifying a witness statement are to be treated as follows: Where necessary, information will be attributed to a specific witness in which case the clarifying information becomes part of that witness' statement. If the clarifying information is not attributed to a single witness, assume that all witnesses have this knowledge. The practical implication of this is that if a witness is challenged as to his or her knowledge reflected in the statement, he or she may refer to these supplemental clarifications to show knowledge.

II. Note to the Supplementary Materials

Questions have been divided into "Case Clarifications" and "Rule and Evidentiary Interpretations." Later supplements include answers from all previous supplements.

Some case clarification questions have been answered with a general response: **"The case materials provide all of the information available to answer this question."** That response sometimes means that there is enough information already in the materials to answer the question asked; more often, the response means that the question was not addressed in the case materials and the answer to the question is unnecessary for purposes of the competition. The case committee has tried to fill in unintentional gaps in the case materials without creating too much new information that might burden teams preparing for the competition.

Some questions have been edited for the sake of clarity and brevity.

A. Case clarification questions—answers provided

No.	Question	Answer
1	On the exhibit list table of contents, Exhibits 12 and 13 do not make the Exhibits found on those pages (Pat Quinn and Terri Pollo are listed instead of Toni Scott and Jean Varenberg)	Whoops! I guess now everyone knows the names of two of the witnesses from our drafting process, when they were named for Delaware mock trial participants and volunteers. This has been corrected in this final draft. The documents themselves were correct.
2	Is Exhibit 9 the attachment discussed in Exhibit 8? If so, the date of Exhibit 9 is after the dates of the emails in Exhibit 8.	This is a mistake. Exhibit 9 has been corrected to February 20, 2021.
3	With regard to stipulation 9, it states that "these facts are considered to be in the record." Does this mean that it is in evidence and/or admissible? Generally, this would be excluded under National Rule 4.11.	Presumably, this question refers not to Rule 4.11 but to Rule of Evidence 411, which does not provide a *per se* bar on insurance evidence but only prohibits certain uses of such evidence. Regardless, teams are reminding of Rule of Competition 4.2, which states that "Stipulations will be considered a part of the record and already admitted into evidence."
4	The case materials do not identify which witnesses are familiar with which exhibits. Stipulation 2 says no witness may deny the authenticity of an exhibit, but I think that still leaves a loophole that can have an impact on rounds. By way of illustration, we asked for this same clarification several years ago at nationals and the response was, "just rely on the case materials." We ended up in the final round, and our opponent's police officer witness denied that a key defense exhibit (a parking ticket suggesting an alternate	At this point, we have decided not to publish a matrix of familiarity or add a paragraph to each witness's statement, and we do not agree that this case is particularly problematic in this respect. With that said, to address the specific concern of this question, the only email or document in the case materials not authored by the individual identified as the sender or recipient is Exhibit 5. The circumstances under which Exhibit 5 was created and sent from Gerry Butler's account were discussed in several witness statements.

No.	Question	Answer
	suspect) was connected to this specific case. Because there was no identification of the exhibit in the case materials, we were left with no adequate remedy of impeachment. (We were aware of this risk beforehand, so we were prepared to treat it as a Brady issue in closing - the police officer not sharing the exculpatory evidence he mentions in his affidavit.) I don't fault the kid who played the witness for giving that answer, but I don't think the result was what was intended. I think this particular case *invites* that sort of deflection, because executives say that they've been looking over each other's emails. A witness could easily say, "I've never seen this before" when a team is trying to offer one of these exhibits on cross. I would ask that each witness statement identify each exhibit with which they are familiar. I don't think that detracts from realism, because - in a civil case, anyway - there would certainly be questions about exhibits in depositions	Likewise, each email was directed to the recipient account identified.
5	The Exhibit List refers to Exhibit 10 as an “Email Exchange” between two people. The document itself appears to be a Teams Chat among three people. Is it the latter?	You are correct. We have updated the description to be a “Teams Chat.”
6	In the exhibit summary in the Exhibit List for Exhibit 2, the summary indicates May 2020, but the email itself says April 13.	You are correct. We have changed the summary description in the Exhibit List to April 2020.

No.	Question	Answer
7	Exhibit 1 is stipulated to come from Bree Plaza's phone, however, the layout is computer specific for Instagram.	We are doing our best, but on occasion, we may not reach perfect verisimilitude, for any number of reasons. Please accept the case as written, even if the exhibits are imperfect facsimiles of social media technology. None of these divergences are intentional, and none are intended to create any issue of fact or to create "wiggle room" for arguing against the stipulation that these documents are what they purport to be. **Any effort to deny the authenticity or accuracy of these exhibits based on discrepancies between them and real life technology will be viewed very unfavorably**.
8	Exhibit 7 is called / labeled a tweet, however, it presents as an Instagram post.	
9	It is stipulated that Exhibit 7 was taken from Bree Plaza's phone, however, if that was the case, it would not show "liked by Bree Plaza" as it is their own account.	

B. Case clarification questions—no answer provided

The answer to each of the following questions is: "The case materials provide all of the information available to answer this question."

As noted, this response sometimes means there is enough information already in the problem; more often, this response means the question was not addressed in the case materials and the answer to the question is unnecessary for purposes of this competition.

- In Jamie's testimony, should Lines 52-62 on Page 33 should be "in front of" Lines 47-50? The timing doesn't entirely line-up with the timeline of the case

- In Gerry's testimony, the sporadic period of board meetings is listed as 2018-2019 but in the Complaint, Paragraph 12 it is listed as 2020-2021.

- In Gerry's testimony, lines 162-65—are they referring to 2020 (with the testing of the mushrooms) or 2021 (testing the cases)? The two paragraphs before seem like 2021 but the paragraphs after go back to 2020.

- What year is Exhibit 1 from? We think it is 2017 but were not 100% sure.

- In Exhibit 6, does Bree also have to sign the document?

- Gerry says they are the "Chief Officer of Officers" (page 38, line 4), but is that a real position? Are they the Chief Operations Officer / Chief Operating Officer as Jean says?

- Jean Varenberg states, "Scott is pleased to note that there were a couple hundred thousand dollars missing in inventory or cash." (Line 64). Varenberg also states that she has read all the witness statements, and Scott's witness statement states that "The totals in money and equipment just…unaccounted for, whether somewhere in the business, lost forever, or invested in some way no one documented…were over $450,000." (Lines 175-176). This puts the witness in an impossible bind if asked about the number, since Varenberg specifically states in her statement she got the number from Scott. How is this to be reconciled?

- The companies represented on Exhibit 1 do not seem to represent QuikBrands' subsidiaries from the case. Cilantro Wireless is called QuikPower as shown, however, Cilantro became QuikPhone once acquired, and there is no other mention of QuikPower in the case. Also, QuikCase is a product, not a SAC, so the exhibit is a bit confusing.

C. Rule and evidentiary questions

No.	Question	Answer
1	Do we need to tender experts before they can testify to an opinion?	Believe it or not, there is no one "Delaware answer" to this question. Delaware courts do not follow a uniform practice in this regard, and even judges in the same court may ask different things of attorneys appearing before them. Accordingly, we have not set a single, uniform rule, and some judges may allow experts to opine without having been tendered, while others will not. In terms of a default practice, no judge is likely to mark students down for tendering an expert before the expert opines.
2	One of my rule experts pointed out that the Mock Trial Rules of Evidence at the National level is missing Rule 611 (d) and (e) (which are about redirects and recrosses) from that at our competition. However, the National Rule of Competition 4.22 (which are about redirects and recrosses) still exists. So the question is, are redirects and recrosses allowed (and the rules of evidence were just streamlined) or are they not allowed and Rule 4.22 was not removed as you intended?	The NHSMTC Rules of Evidence were revised over the last few years to make them closer to in-line with the Federal Rules of Evidence. The current Federal Rule of Evidence 611 does not contain subsection (d) and (e). Your state's may, but many states have changed theirs to make the Federal Rules. (In fact, this question comes from one such state!) Because the Rules of Evidence would no longer expressly provide for redirect and recross, Rule of Competition 4.22 was updated to clarify that redirects and recrosses were allowed in the National Championship. That remains the rule today.
3	The witness statements are missing signatures. Was that an oversight or is the stipulation that they were truthful enough?	The stipulation is enough. Because the practices vary state to state on whether a notary is required, how and whether unsworn declarations may be made,

No.	Question	Answer
		etc., we operate without signatures on each statement. Any witness who violates Stipulation 4 by denying that the statement is theirs, denying that they made it after being told to include all material facts, denying that they reviewed the statement the day before trial, or denying that they confirmed the day before trial that no additional facts needed to be added will be in violation of the Rules of Competition and the Code of Conduct
4	We have a question about the rules of what witnesses may testify to per rule 2.2. Our question may relate mostly as to what "bound" means exactly. For example, Jamie Cameron's statement mentions filing a report/complaint with the Department of Defense. There are no other details or mention of it in Cameron's statement. But then the plaintiff attorney Toni Scott goes into detail what happened with that complaint DoD issue. So the question is, does the intent of the rules allow Jamie Cameron to talk about the DoD complaint using some of the details found in Toni Scott's statement? Would that be a violation of the Unfair Extrapolation rule?	This is a more complex question than it appears at first, but the simplest answer is that it does not violate unfair extrapolation, because it is not an extrapolation: these facts appear in the case materials and are therefore within the “four corners” of the materials from which teams may work. However, Jamie Cameron did agree that the facts contained in Cameron’s statement are all of those that were relevant, *see* Stipulation 4, so Cameron could be cross-examined on why facts previously thought to be irrelevant Cameron is now discussing.
5	Is there a Statement of Facts in these case materials?	No.
6	Are witnesses allowed to testify to something they would have reasonable knowledge of if it is stipulated, or if it is	That likely depends a great deal on context, but it would not violate the rules regarding unfair extrapolation, because it is not an extrapolation: these facts appear in the case materials and

No.	Question	Answer
	listed in the complaint/answer as long as it is not disputed or denied?	are therefore within the "four corners" of the materials from which teams may work. However, again, there could still be cross-examination on why facts previously thought to be irrelevant are now being discussed. Teams are reminded that in accordance with Rule 4.2, the Stipulations are already evidence in the case.
7	It is not clear to us from the legal materials whether causation and the existence of damages are part of the first phase of trial. The stipulations say liability first, then damages. But the elements listed in the jury instructions make it seem that liability arises **only** from duty and breach, not from causation. There is no jury instruction addressing causation that we are able to find. We're wondering if scorers will expect that causation and existence of damages will be addressed in the first phase because those are usually elements of liability. And also wondering if teams may object to relevance to whether damages exist based on the way the jury instructions are written.	Causation need not be proved in this phase of the trial, but some judges may accept evidence regarding causation as relevant to the reasonableness of defendant's response to risk or for other purposes. This response is limited to the bifurcation question, and it is not intended to address the admissibility of any particular evidence in any particular trial.
8	We have a question concerning rule 4.9 which discusses sequestration and exclusion. Will witnesses be considered automatically sequestered? If not, can they be questioned about testimony provided before their own during the trial?	Rule 4.9 provides that no team may request sequestration of witnesses, and therefore witnesses are not sequestered. The proper subjects for questioning are defined in the Rules of Competition, which do not forbid questioning about other witnesses' testimony, but which - again - could open questions regarding why such

No.	Question	Answer
		testimony was not found in the witness's statements
9	This case involves a very specialized area of corporate law. Since many of our judges will not have extensive experience in this area, I expect that some of the rulings on the party opponent hearsay exception could be all over the place. We would ask for clarification on how 801d2 works in the context of a shareholder action *and* a case with a corporate nominal defendant. Perhaps an additional paragraph in the Memorandum and Order that starts on page 19?	QuikPhone is a defendant (party) for purposes of Rule 801(d).
10	Would it be possible to number the jury instructions by paragraph, or at least number the paragraphs in the two jury instructions about fiduciary duty and breach?	We are not going to make this change. They jury instructions are consistent with the normal format for jury instructions in Delaware.