

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ROBERT FREEDMAN,

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

C.A. No. 2019-2279-LTU

"PUBLIC VERSION FILED:

"January 31, 2019

**VERIFIED COMPLAINT PURSUANT TO SECTION 220 OF THE
DELAWARE GENERAL CORPORATION LAW**

Plaintiff Robert Freedman (“Plaintiff” or “Mr. Freedman”), by and through his undersigned counsel, submits this Complaint, upon knowledge as to himself and upon information and belief as to all other matters, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action pursuant to Section 220 of the Delaware General Corporation Law (the “DGCL”). Plaintiff seeks an order for this Court permitting him to immediately inspect certain books and records of defendant Ford Motor Company (“Ford” or the “Company”) for the purpose of (i) investigating mismanagement and breaches of fiduciary duties in connection with the board’s and management’s oversight of the Company’s business practices, including the adequacy of Company’s controls with respect to discrimination and sexual harassment; (ii) determining whether the board provided adequate oversight and/or

knew of or condoned of the conduct described in the Books and Records Demand (defined below); and (iii) determining whether the Company's directors are independent and have acted, and are capable of acting, in good faith with respect to the Company's alleged misconduct.

2. Mr. Freedman has a credible basis to suspect wrongdoing at the Company relating to decades-long, systemic sexual harassment and racial discrimination that pervades the plants, factories and work environment at Ford. The board and senior executives of the Company, while purportedly enhancing governance as part of a settlement with the Equal Employment Opportunity Commission ("EEOC"), turned a blind eye to the continuing, pervasive misconduct at the Company.

3. Accordingly, Mr. Freedman respectfully urges the Court to compel the immediate inspection of documents demanded pursuant to DGCL Section 220.

BACKGROUND

4. Plaintiff is, and has been at all relevant times, the owner of common stock of the Company.

5. On September 7, 1999, the EEOC announced that it had "reached a major settlement with the Ford Motor Company providing nearly \$8 million in damages to be paid to female employees alleged to have been victimized by sexual harassment, racial harassment, harassment on the basis of sex, and retaliation for

complaining to management about the harassment” (the “1999 EEOC Settlement”). See <https://www.eeoc.gov/eeoc/newsroom/release/archive/9-7-99.html>. The claims against Ford were brought under Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of sex, race, religion, color or national origin.

6. As part of the 1999 EEOC Settlement, Ford also agreed to provide training for all of its employees on prevention of job discrimination and to take steps to increase representation of females entering supervisory positions to 30% over three years at its Chicago Stamping and Assembly Plants. *Id.* A three-member panel of independent monitors was established to oversee the implementation of the settlement, including the claims process for distribution of monetary damages for eligible claims. *Id.* As part of the settlement agreement, Ford agreed to submit its policies for prevention and correction of employment discrimination and for the internal resolution of employee complaints to the panel. *Id.* EEOC and Ford each appointed one member to the panel and the third member was chosen by the EEOC-Ford members. *Id.* Ford was responsible for paying all compensation and expenses of the panel in carrying out its responsibilities. *Id.*

7. In connection with the settlement agreement, Cheryl Mabry-Thomas, EEOC’s lead investigator into the charges against Ford, stated “By entering into this **very significant** settlement, we are sending a strong message to the business

community that EEOC is committed to vigorously pursuing allegations of harassment...”. *Id.*

8. The EEOC also reported that under a related confidential agreement, Ford agreed to pay \$250,000 to two female employees to resolve their individual charges. *Id.*

9. As part of the 1999 EEOC Settlement, Ford was also required to provide training on the prevention of discrimination and the panel-approved policies and procedures. At the time, Ford estimated this would cost \$10 million. *Id.*

10. Years later, on August 16, 2017, the *Detroit News* reported that Ford again agreed to pay millions to settle sexual and racial harassment charges at two of its Chicago facilities that were under investigation by the EEOC (the “2017 EEOC Agreement”). After an investigation, the EEOC found reasonable cause to believe that Ford personnel had harassed both female and African-American employees and that the Company retaliated against employees who complained about such behavior.

11. Under the 2017 EEOC Agreement, Ford was required to conduct regular training at its facilities for the next five years, to disseminate anti-harassment and anti-discrimination policies and procedures to employees and new

hires, and to report any complaints of harassment or related discrimination to the EEOC.

12. A few months later, on December 19, 2017, the *New York Times* published a detailed report on the history and culture of sexual harassment at the Company based on interviews with more than 100 current and former Ford employees and industry experts, as well as a review of legal documents, revealing that for years Ford did not act aggressively or consistently enough to eliminate pervasive discrimination and sexual harassment at its facilities. The article reported that Ford delayed firing employees accused of harassment and did not provide adequate sexual harassment training.

13. Specifically, the *New York Times* article details how women at Ford's plants have been subjected to harassment and discrimination, and these women claim they were mocked, dismissed, threatened and ostracized for reporting it, while the men who harassed them kept their jobs. It provides detailed reports from female employees who had to fend off advances from both supervisors and co-workers. The article notes that these female employees endured such harassment even though Ford is a multinational corporation with a professional human resources operation and even after the EEOC findings in 1999 and an independent monitor was on Ford factory floors.

14. The article notes that the final report of the independent monitors in 2003 warned of “significant risks that need attention,” including staffers inexperienced in investigating complaints, the lack of policy against fraternization and the practice of promoting people widely viewed to be harassers. The article notes that the “report was prescient: Ford would struggle in those areas in the coming years.”

15. As a result of its continued tolerance of discrimination and sexual harassment, the Company now faces significant costs, including the payment of a \$10.1 million fine to the EEOC, reputational harm, and the cost to investigate and litigate claims of harassment and discrimination filed by former Ford employees. These issues have impacted, and will continue to impact, Ford’s business, reputation, and operational potential. The *New York Times* reports also notes that in a rush to increase production at the Company’s Chicago factories, discrimination and harassment training lagged. Several workers recalled only receiving a piece of paper outlining the Company’s harassment policy and managers refusing to excuse workers for training class.

16. This long history of sexual harassment and discrimination at the Company raises questions as to the effectiveness of the Company’s corporate governance and risk management practices, and the oversight of these matters by the Company’s board.

Plaintiff's Books and Records Demand, the Parties' Communications, and Ford's Document Productions

17. On January 17, 2018, Plaintiff, through counsel, made a demand, pursuant to Section 220 of the DGCL, to inspect the Company's books and records (the "Books and Records Demand") for the purposes of investigating potential wrongdoing and mismanagement related to sexual harassment and discrimination at the Company.¹

18. Counsel for Ford responded to the Books and Records Demand in writing on February 2, 2018.² The response asserted that the Books and Records Demand did not state a proper purpose and that the requests in the Demand were too broad. Nonetheless, the response stated Ford's willingness "to discuss a request for documents that is more limited in scope than that which you request in the Demand." Response at 2.

19. Counsel for Mr. Freedman and counsel for Ford (together, the "Parties"), held a telephonic meet and confer regarding the Books and Records Demand on February 9, 2018. Counsel for Ford stated that after receiving the Books and Records Demand and in anticipation of the meet and confer call, the

¹ See Books and Records Demand from Robert Freedman to Bradley M. Gayton, Esquire, attached as Exhibit 1.

² See Letter from Raymond J. DiCamillo to Jeffrey W. Golan dated February 2, 2018, attached as Exhibit 2.

Company did a search of documents that might normally be produced – so they looked at any board minutes and board level presentations dealing with the subjects of the Books and Records Demand. Counsel for Ford stated that the only responsive documents were privileged reports from the general counsel on the status of various investigations.

20. Counsel for Ford asked Plaintiff's counsel if there are specific types of documents that Plaintiff sought. In response, Plaintiff's counsel suggested, as a starting point: (i) documents identifying measures put into place in the 1990s and recently; (ii) reports about effectiveness/compliance with the EEOC agreements, whether internal or by an external consultant; (iii) board/board committee level reforms put into place; and (iv) board level documents detailing complaints of harassment and/or discrimination. Counsel for Ford agreed to talk to the Company about whether such documents existed and, if so, about producing such documents. Ford's Counsel also stated that they would start putting together a draft protective order in anticipation of producing documents responsive to the Books and Records Demand.

21. Plaintiff's counsel followed up with Ford's counsel via email one week later on February 16, 2018, inquiring about the status of the Books and Records Demand. On February 20, 2018, counsel for Ford responded via e-mail

noting that they passed Plaintiff's requests along to Ford and hopefully they would be in a position to respond the next week.

22. On February 22, 2018, Plaintiff's counsel emailed counsel for Ford, noting the Company's press release issued the previous day after the close of the market, concerning the departure of Raj Nair, the head of Ford's North American operations, as a result of reports of "inappropriate behavior."³ Plaintiff's counsel also noted the press coverage of the departure of Ali Vahabzadeh of the Company's Chariot ride-sharing division, which included reference to a letter sent to Ford's CEO James Hackett that cited to a "toxic work culture" allegedly created by Mr. Vahabzadeh. *Id.*

23. The letter further noted that the Books and Records Demand "already calls for the production of books and records pertaining to Mr. Nair's and Mr. Vahabzadeh's alleged misconduct and their departures from the Company. For instance, Item 1 seeks: 'All minutes of any meeting of the Board, its Nominating and Governance Committee, or any other committee or subcommittee thereof, as well as all materials provided to or authored by any member of the Board *concerning sexual harassment and/or racial discrimination at the Company or any of its facilities, including the Company's headquarters.*'" *Id.* (Emphasis in

³ See Email from Jeffrey W. Golan to Raymond J. DiCamillo dated February 22, 2018, attached as Exhibit 3.

original). Plaintiff's counsel's letter further noted that: "Items 2, 3, 5 and 6 similarly seek documents concerning '*any remedial measures taken in response to any complaints of sexual harassment and/or racial discrimination,*' Ford's failure to monitor its facilities for sexual harassment and/or racial discrimination, '*[a]ny reports of concerns or criticisms raised by any Ford employees or internal investigators concerning sexual harassment and/or racial discrimination,*' and '*[a]ll documents concerning any investigation or inquiry ... concerning the Company's compliance with state and federal regulations governing racial discrimination or sexual harassment,* including the Civil Rights Act.'" *Id.* (Emphasis in original).

For these reasons, the February 22, 2018 email stated that Plaintiff's counsel did not believe there was a need for a superseding books and records demand.

24. On February 23, 2018, Ford's counsel responded that they would discuss the issues raised in the February 22, 2018 email with Ford.

25. Counsel for Plaintiff emailed Ford's counsel on March 1, 2018, after not having heard a response from Ford. Ford's counsel responded and the Parties scheduled a telephone call for March 5, 2018, which was thereafter rescheduled and held on March 7, 2018.

26. Counsel for Plaintiff sent Ford's counsel an email on March 9, 2018 to follow-up on the March 7, 2018 telephone call and to request the Company's

draft protective order for its anticipated production of documents in response to the Books and Records Demand.⁴ Plaintiff's counsel requested agreement on a protective order no later than March 15, 2018, and that the Company would start producing documents on a rolling basis once a protective order was executed.

27. Plaintiff's counsel also reiterated its understanding that "it is Ford's position that all documents responsive to the Demand that were provided to and/or evidence discussions at the Board and Board Committee levels are privileged (a position that we reserve the right to challenge on behalf of the petitioner)." *Id.*

28. The email also noted that, as discussed, at Plaintiff's counsel's request, Ford was considering producing "(a) documents identifying pertinent measures the company may have put into place in the 1990s through recently; (b) reports concerning the effectiveness of any such measures and/or compliance with agreements, whether done internally or by an external consultant; (c) any documents that may evidence pertinent Board or Board Committee level reforms put into place, if any such reforms were put into place; and (d) Board and Board Committee level documents detailing complaints of harassment and/or discrimination." *Id.*

⁴ See Email from Jeffrey W. Golan to Raymond J. DiCamillo dated March 9, 2018, attached as Exhibit 4.

29. The email also reiterated Plaintiff's counsel's request during the March 7, 2018 call for the production of the complaint and other pertinent documents filed in the existing lawsuit brought by 30 current or former Ford employees, which was mentioned in a *New York Times* article dated December 21, 2017, captioned "Ford Apologizes for Sexual Harassment at Chicago Factories."

30. The email further called on Ford to reconsider its position that all documents responsive to the Books and Record Demand that were provided to and/or evidenced discussions at the board and board committee levels were privileged. Specifically, the email noted that "Any such documents, portions of such documents or attachments to such documents that simply report underlying facts or provide otherwise non-privileged documents (such as harassment complaints, reports of harassment, compilations, and historic statistics) to the Board or Board Committee -- even if provided by in-house or outside counsel -- should not be considered to be privileged or subject to any other protection from production. Thus, if such documents exist, we would expect them to be produced, either in whole or in redacted form." *Id.*

31. The email further noted that to the extent the Company was claiming that such board and board committee documents were privileged, Plaintiff's counsel requested that Ford produce underlying documents pertinent to the Books

and Records Demand, possibly from the factory or human resources (“HR”) levels, which would not be subject to a claim of privilege.

32. Plaintiff’s counsel also requested on March 7, 2018, that Ford produce a privilege log for the documents it was withholding and/or redacting in a timely fashion so that Plaintiff’s counsel had a record of the author(s), recipient(s), date, and subject matter of any such withheld or redacted documents.

33. On March 22, 2018, Plaintiff’s counsel again followed-up with counsel for Ford, asking to schedule a call the next day to discuss the current status of the Books and Records Demand. The email noted that Plaintiff’s counsel had expected a draft of a proposed protective order by March 9, 2018.

34. On March 23, 2018, Plaintiff’s counsel received a call from Ford’s counsel explaining that the Company’s key decision-maker was tied up in trial, which caused the response to the Books and Records Demand to halt for the time being. Ford’s counsel noted that they should be able to get back to Plaintiff’s counsel sometime in the next week. Plaintiff’s counsel noted that a call should be scheduled for no later than Wednesday the following week, as the initial Books and Records Demand had been sent over two months ago.

35. On March 28, 2018, Ford’s counsel sent an email to Plaintiff’s counsel stating that without conceding the sufficiency of the Books and Records Demand, and reserving all rights and defenses, Ford was willing to agree to certain

materials for inspection pursuant to an executed confidentiality agreement.⁵ The emailed stated the Company would agree to produce the following categories of documents:

1. Documents sufficient to show the measures Ford put in place in response to Ford's 2017 settlement with the United States Equal Employment Opportunity Commission ("EEOC") and Ford's settlement with the EEOC in 1999;
2. Non-privileged reports, drafted internally or by retained consultants, regarding the effectiveness of and compliance with the measures put in place following Ford's 1999 settlement with the EEOC, if any such reports exist; and
3. Documents sufficient to show Board/Committee level reforms that have been put in place in response to Ford's settlements with the EEOC in 2017 and 1999.

Id.

36. After some back and forth, counsel for the Parties agreed to the terms of a protective order and it was executed on April 5, 2018.

37. Ford began producing documents in response to the Books and Records Demand on April 13, 2018. Plaintiff's counsel reviewed the documents. On May 4, 2018, Ford's counsel advised that there would be a follow-up production, and additional documents were produced on May 8, 2018.

⁵ See Email from Ryan Durkin to Jeffrey W. Golan dated March 28, 2018, attached as Exhibit 5.

38. Plaintiff's counsel sent a letter to Ford's counsel on June 5, 2018 to follow-up on the Company's response to the Books and Records Demand.⁶ The letter reiterated that the Books and Records Demand has the proper purpose of "investigating possible mismanagement and breaches of fiduciary duties in connection with the Board's and management's oversight of the Company's business practices, including the adequacy of controls with respect to discrimination and sexual harassment" and the additional purpose of "determining whether the Board provided adequate oversight and/or knew of or condoned the conduct described in the Demand" and "determining whether the Company's directors are independent and have acted, and are capable of acting, in good faith with respect to the Company's potential misconduct." *Id.*

39. The letter further noted that Plaintiff's counsel had carefully reviewed the documents produced and noted that certain documents the Company agreed to produce were not made available to Plaintiff for inspection. Specifically, the letter noted that,

Ford has not produced any documents evidencing any consideration given by the Board of any complaints, claims, reports or established instances concerning sexual harassment and/or racial discrimination. We further note that Ford has not produced any documents evidencing the effectiveness of and compliance with the measures put into place following the EEOC settlements in 1999 and 2017. It further appears from the production of documents thus far that there have been no

⁶ See Letter from Jeffrey W. Golan to Raymond J. DiCamillo dated June 5, attached as Exhibit 6.

Board or Board Committee level reforms put into place following the EEOC settlements in 1999 and 2017. Unless Ford is willing to produce such documents, please confirm that no such documents exist.

Id. In addition to sending this document production deficiency letter, Plaintiff's counsel also provided Ford's counsel with a detailed chart of corporate governance reforms that Plaintiff believed should be implemented by the Company, consistent with the facts underlying the Books and Records Demand.

40. Plaintiff's counsel emailed Ford's counsel on June 18, 2018, to follow-up on the June 5, 2018 letter, and called Ford's counsel on June 22, 2018. Ford's counsel stated that they would be talking to Ford and would be able to respond to Plaintiff's counsel the following week.

41. On July 12, 2018, Ford's counsel emailed Plaintiff's counsel noting that they would confer with their client by the end of the week and follow-up promptly thereafter with a response. On July 25, 2018, Plaintiff's counsel emailed, and Ford's counsel confirmed, that Ford was discussing Plaintiff's letter dated June 5, 2018 and would get back to Plaintiff's counsel the following week.

42. Counsel for Ford sent a letter to Plaintiff's counsel on August 3, 2018 and produced additional documents and suggested an in-person meeting. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. Notably, the August 3, 2018 production did not include any board or board committee level documents, and there is no indication that any of the documents in this production were ever reviewed or even read by any member of the board. Also, many of the documents from this production were not recent – including documents dating back to 2007 and as recent as 2015.

44. The Parties scheduled an in-person meeting for September 13, 2018. Attendees at the meeting were: Ford’s corporate counsel for Delaware issues; Ford’s securities and derivative litigation counsel; Ford’s counsel for employment law issues; and Plaintiff’s counsel. Plaintiff’s counsel noted that no documents evidencing Board level training or oversight were produced – no minutes, no reports, no Board or Board Committee level changes, no approvals of settlements. Counsel for Plaintiff also noted that no senior level training documents were produced.

45. At the meeting, Plaintiff’s counsel also noted that Plaintiff would like to see documents regarding Board reporting, and whether there had been any substantive reporting to the Board concerning the issues raised in the Books and Records Demand. This included: reports to the Board concerning complaints / investigations (recognizing there has to be some level of materiality as to

individual items, but not as to cumulative reports), settlement payments (same), reports on conditions, and the like.

46. Counsel for Plaintiff sent Ford's counsel an email on September 25, 2018, following up on the September 13, 2018 in-person meeting, and having received no response emailed again on October 23, 2018. Ford's counsel responded on November 1, 2018, indicating that they would have more information the following week.

47. On November 6, 2018, Ford's counsel sent an email correspondence and an additional production of documents to Plaintiff's counsel. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

48. Notably, the production did not include any Board or Board Committee level documents, and there is no indication that any of these documents were ever reviewed or even read by any member of the Board.

49. Ford's counsel produced additional documents to counsel for Plaintiff on November 12, 2018. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The same day, the Parties held a conference call, during which counsel for Ford indicated they would not be making another production at that point.

50. Notwithstanding that indication, a final production was made by counsel for Ford on December 20, 2018. [REDACTED]

What Ford Has Failed to Produce

51. As of the date of the filing of this Complaint, the Company *has not produced any documents* evidencing or even referring to any Board or Board Committee discussions or consideration of the 1999 EEOC Settlement, the 2017

EEOC Agreement, the facts underlying the *New York Times* articles of December 19 and 21, 2017 (or the articles themselves), or the departures of Company executives Raj Nair and Ali Vahab. The Company has further ***not produced any documents*** discussing or evidencing any consideration of the Board or any Board Committee of potential or actual reforms that the Company may have taken in response to these events.

52. Ford has similarly ***not produced*** any documents (whether at the Board or Board Committee level, or at any other level of the Company's management) reflecting or evidencing any payments the Company has made as a result of claims of harassment and/or discrimination, including legal fees, fees for consultants or settlement payments, or any claims or complaints of harassment and/or discrimination.

53. Further, as of the date of the filing of this Complaint, Ford ***has not produced a privilege log*** evidencing documents that may have been responsive to the Books and Records Demand, but that were withheld or redacted on a claim of privilege.

54. The Company has also ***not produced any documents*** pertaining to the independence of the Board members.

55. Through this Section 220 action, Plaintiff seeks to compel the Company to provide him with all such documents, as requested in the Books and Records Demand.

56. Because the Company has thus far refused to provide access to the books and records to which Plaintiff is entitled, Plaintiff respectfully requests that the Court compel the immediate production and inspection of the documents properly demanded pursuant to Section 220.

PARTIES

57. Plaintiff Robert Freedman is a current stockholder of the Company and has held Company stock at all times relevant to this litigation.

58. Defendant Ford is a Delaware corporation with its principal headquarters in located at One American Road, Dearborn, Michigan 48126. The Company, which was founded in 1903, designs, manufactures, markets, and services a range of Ford cars, trucks, sport utility vehicles, and electrified vehicles; and Lincoln luxury vehicles worldwide. The Company's stock trades on the New York Stock Exchange under the ticker symbol "F."

THE COMPANY'S BOARD MEMBERS

59. Stephen G. Butler has served as a member of the Board of Ford since 2004. He also serves on the nominating and governance committee and as chair of the audit committee.

60. Kimberly A. Casiano has served as a member of the Board of Ford since 2003. She serves on the audit committee, nominating and governance committee, and sustainability and innovation committee. Kimberly A. Casiano shares a close and personal relationship with Bill Ford that extends beyond the board room. In a December 19, 2005 article entitled “Ex-battlers Now Board Buddies” in *Automotive News*, Bill Ford said that “he now counts Casiano ‘as one of [his] very closest friends.’” See <http://www.autonews.com/article/20051219/SUB/51216027/ex-battlers-now-board-buddies>. While they have not always been friends, Bill Ford and Casiano had known each other for 30 years at the time the article was written having been classmates at Princeton University.

61. Anthony F. Earley, Jr., has served on the Board of Ford since 2009. He serves on the nominating and governance committee and the sustainability and innovation committee, and as chair of the compensation committee.

62. Edsel B. Ford II has served on the Ford’s Board since 1988. He is also a consultant to Ford. He began his career at Ford in 1974. In 1991 he was named president and chief operating officer of Ford Motor Credit Company and in 1993 he was selected as a Company vice president. He is the great-grandson of Henry Ford, the founder of the Company. The Fords have closely overseen the

Company's business operations and have control over the day-to-day operations of Ford.

63. William Clay Ford Jr. is the Executive Chairman of Ford. He has served as a member of Ford's Board since 1988 and has been its chairman since 1999. He joined the Company in 1979 and has held various positions in manufacturing, sales, marketing, product development and finance. He became chairman of the Board's finance committee in 1995. He also served as the Company's chief executive officer from 2001 through 2006, when he was named executive chairman. He is the great-grandson of Henry Ford – the Company's founder. The Fords have closely overseen the Company's business operations and have control over the day-to-day operations of Ford.

64. Jim Hackett has been the president and chief executive officer of the Company since May 2017 and has been a member of the Board since 2013. He was previously chairman of Ford Smart Mobility LLC, a subsidiary of Ford. Mr. Hackett is a member of the Board's sustainability and innovation committee.

65. William W. Helman IV has served as a member of the Company's Board since 2011. He serves on the finance committee and nominating and governance committee, and as chair of the sustainability and innovation committee.

66. William E. Kennard has served as a member of the Board since 2015. He serves on the nominating and governance committee.

67. John C. Leichleiter has served as a member of the Board since 2013.

68. Ellen R. Maram has served as a member of the Board since 1988, and is the presiding independent director. She also serves on the compensation committee, nominating and governance committee and sustainability and innovation committee.

69. John L. Thornton has served as a member of the Board since 1996. He serves on the compensation committee, finance committee and nominating and governance committee.

70. John Veihmeyer has served on the Board since December 2017. He serves on the Audit, and Nominating & Governance Committees.

71. Lynn Vojvodich has served on the Board since April 1, 2017. She serves on the Nominating and Governance, Sustainability and Innovation, and Audit Committees.

72. John S. Weinberg has served on the Board of Ford since 2016. He serves on the Nominating and Governance, Sustainability and Innovation, and Finance Committees.

FACTS

73. Ford, one of America's most storied companies, is a multinational automaker that has its main headquarters in Dearborn.

74. On September 7, 1999, the EEOC announced that it had "reached a major settlement with the Ford Motor Company providing nearly \$8 million in damages to be paid to female employees alleged to have been victimized by sexual harassment, racial harassment, harassment on the basis of sex, and retaliation for complaining to management about the harassment." *See* <https://www.eeoc.gov/eeoc/newsroom/release/archive/9-7-99.html>. The claims against Ford were brought under Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of sex, race, religion, color or national origin.

75. Ford also agreed to train all of its employees on prevention of job discrimination as part of the EEOC settlement and take steps to increase representation of females entering supervisory positions to 30% over three years at its Chicago Stamping and Assembly Plants. *Id.* A three-member panel of independent monitors was established to oversee the implementation of the agreement, including the claims process for distribution of monetary damages for eligible claims. *Id.* As part of the agreement, Ford agreed to submit its policies for prevention and correction of employment discrimination and for the internal

resolution of employee complaints to the panel. *Id.* EEOC and Ford each appointed one member to the panel and the third member was chosen by the EEOC-Ford members. *Id.* Ford was responsible for paying all compensation and expenses of the panel in carrying out its responsibilities. *Id.*

76. In connection with the settlement agreement, Cheryl Mabry-Thomas, EEOC's lead investigator into the charges against Ford, stated "By entering into this *very significant* settlement, we are sending a strong message to the business community that EEOC is committed to vigorously pursuing allegations of harassment...". *Id.*

77. The EEOC also reported that under a related confidential agreement, Ford agreed to pay \$250,000 to two female employees to resolve their individual charges. *Id.*

78. Ford was also required under the agreement to provide training on the prevention of discrimination and the panel-approved policies and procedures. At the time, Ford estimated this would cost \$10 million. *Id.*

79. Years later, the EEOC reached yet another settlement with Ford in August 2017. Ford agreed to settle claims of sexual and racial harassment at two of its Chicago facilities for \$10.125 million. After conducting an investigation, the EEOC found reasonable cause to believe that personnel at the Chicago Assembly Plant and the Chicago Stamping Plant had subjected female and African-American

employees to sexual and racial harassment and that the Company retaliated against employees who complained about such harassment or discrimination. This conduct was in violation of Title VII of the Civil Rights Act of 1964. In addition to the monetary fine, the agreement also ensures that Ford will conduct regular training at its two Chicago facilities; continue to disseminate its anti-harassment and anti-discrimination policies and procedures to both employees and new hires; report to the EEOC complaints of harassment and/or related discrimination; and monitor its workforce regarding issues of alleged sexual or racial harassment and related discrimination.

80. As detailed above at paragraphs 12 to 14, on December 19, 2017, the *New York Times* published a piece titled “How Tough Is It to Change a Culture of Harassment? Ask Women at Ford” detailing allegations of decades-long widespread sexual harassment and discrimination at the Company’s plants in Chicago. The article stated that for years the Company did not act aggressively or consistently enough to root out the problem, according to interviews with more than 100 current and former employees and industry experts, and a review of legal documents. The *New York Times* reported that Ford delayed firing employees accused of harassment and/or discrimination and the Company failed to provide adequate sexual harassment training. For instance, current and former Ford female employees described how they have been subjected to repeated harassment and

discrimination from supervisors and co-workers alike and how they were mocked, dismissed, threatened and ostracized for reporting it, while the male perpetrators kept their jobs.

81. The article notes that these female employees endured such harassment even though Ford is a multinational corporation with a professional human resources operation and even after the EEOC findings in 1999 and an independent monitor was on Ford factory floors for many years. The article also notes that the final report of the independent monitors in 2003 warned of “significant risks that need attention,” including staffers inexperienced in investigating complaints, the lack of policy against fraternization and the practice of promoting people widely viewed to be harassers and how the Company continued to struggle in those areas.

82. On February 21, 2018, Ford issued a press release after the close of the stock market concerning the departure of Raj Nair, the head of Ford’s North American operations, as a result of reports of “inappropriate behavior.” At or about the same time, the departure of Ali Vahabzadeh of the Company’s Chariot ride-sharing division was reported. The reports included reference to a letter sent to Ford’s CEO James Hackett that cited to a “toxic work culture” allegedly created by Mr. Vahabzadeh.

83. Just months after the August 2017 EEOC Settlement, a jury awarded a former Ford employee \$16.8 million for discrimination based on the employee's Arab background in April 2018. The jury found that Faisal G. Khalaf, an engineer at the Company since 1999, had been subjected to discrimination based on his Arab background and accent and was retaliated against – and ultimately terminated – after coming forward about these issues. Carol Laughbaum, one of Khalaf's attorneys, stated that “[t]here was a high-level executive at Ford Motor Co. that my client reported to ... that would berate him and criticize him week after week about his English.” Khalaf was awarded \$15 million in punitive damages in addition to \$1.7 million in retirement and pension losses and \$100,000 for emotional distress.

84. According to the complaint filed in that case, Khalaf was subjected to “regular and frequent unwarranted criticism and hostility” over his ability to speak and understand English and, as a result, he was put in “demeaning” and “servile” positions and assigned “unrealistic work goals.” The complaint states that in February 2013, when Khalaf advised one of his direct reports to go to Ford human resources after the employee complained of sexual harassment, Khalaf was demoted.

**PLAINTIFF’S SECTION 220 DEMAND AND
DEFENDANT’S INADEQUATE RESPONSE**

85. On January 17, 2018, Plaintiff Freedman, through counsel, sent a letter pursuant to Section 220 of the DGCL identifying himself as a stockholder of record in the Company and demanding inspection of certain of the Company’s books and records, including Board minutes and presentations, to enable him to analyze the Company’s response to decades long allegations of discrimination and harassment at Ford’s plants and other Company facilities and to ascertain whether board members and/or management breached their fiduciary duties or otherwise acted wrongfully with respect to responding to allegations of harassment. These are both proper purposes for inspection of books and records.

86. The Books and Records Demand clearly stated Plaintiff’s purpose for inspection, indicating that inspection was sought “for the purposes of:

(i) investigating possible mismanagement and breaches of fiduciary duties in connection with the Board’s and management’s oversight of the Company’s business practices, including the adequacy of controls with respect to discrimination and sexual harassment; (ii) determining whether the Board provided adequate oversight and/or knew of or condoned the conduct described herein; and (iii) determining whether the Company’s directors are independent and have acted, and are capable of acting, in good faith with respect to the Company’s potential misconduct.” *See* Ex. 1 at 4.

87. The right to inspect documents and the scope of the requests has been expressly authorized by the Delaware Supreme Court. *See Wal-Mart Stores, Inc. v. Indiana Elec. Workers Pensions Trust Fund IBEW*, 95 A.3d 1264 (Del. 2014). Moreover, under settled Delaware law, both of Plaintiff’s purposes are proper and reasonably related to Mr. Freedman’s interest in Ford as a stockholder. Investigation of wrongdoing is a proper purpose for inspection where a credible basis to suspect wrongdoing exists. *Seinfeld v. Verizon Commc’ns., Inc.*, 909 A.2d 117, 121 (Del. 2006) (“It is well established that a stockholder’s desire to investigate wrongdoing or mismanagement is a ‘proper purpose.’”); *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 777-78 (Del. Ch. 2016) (“[A] stockholder’s desire to investigate wrongdoing or mismanagement is a ‘proper purpose.’ To conduct an inspection, ... [a] stockholder need only show, by a preponderance of the evidence, a credible basis from which the Court of Chancery can infer there is possible mismanagement that would warrant further investigation.”). Here, more than such “credible basis” exists.

88. In furtherance of these purposes, in the Books and Records Demand, Plaintiff sought to inspect and copy nine categories of documents, including the following:⁷

⁷ Plaintiff respectfully refers the Court to the Books and Records Demand, attached as Exhibit 1 hereto, for the complete list, incorporated by reference herein.

- a. All minutes of any meeting of the Board, its Nominating and Governance Committee, or any other committee or subcommittee thereof, as well as all materials provided to or authored by any member of the Board concerning sexual harassment and/or racial discrimination at the Company or any of its facilities, including the Company's headquarters;
- b. All documents concerning any remedial measures taken in response to any complaints of sexual harassment and/or racial discrimination;
- c. All documents concerning Ford's failure to monitor its facilities for sexual harassment and/or racial discrimination; and
- d. Documents pertaining to the independence, or lack thereof, of the members of the Board, as well as any known conflicts pertaining to the independence of any Board member.

89. As of the filing of this Complaint, the Company has not produced any documents evidencing the Board's oversight, if any, of harassment and/or sexual discrimination that has been occurring for years at the Company. The other deficiencies in the Company's production pursuant to the Books and Records Demand are summarized in paragraphs 51-54, above.

90. Moreover, the Company did not produce any internal documents regarding the EEOC investigations *even though the Company had previously stated publicly* that it "conducted a thorough investigation and took appropriate action, including disciplinary action up to and including dismissal for individuals who violated the company's anti-harassment policy." See "Ford Settles Sexual, Racial Harassment Claims at Chicago Plants for \$10 million," Elejalde-Ruiz,

Chicago Tribune, August 17, 2017, available at

<https://www.chicagotribune.com/business/ct-ford-eeoc-harassment-allegations-20170817-story.html>.

91. Plaintiff made the Books and Records Demand in good faith and with proper purposes. Plaintiff also described with reasonable particularity its proper purposes and the books and records Plaintiff desires to inspect. Moreover, the books and records that Plaintiff seeks to inspect are directly connected to its proper purposes. By satisfying these criteria, Plaintiff fulfilled Section 220's requirements to inspect and copy the books and records of the Company, which is Plaintiff's right as a Ford stockholder.

92. Plaintiff has complied in all respects with the requirements of Section 220 with respect to the form and manner of making a demand for inspection. Therefore, "the burden of proof shall be upon [Ford] to establish that the inspection such stockholder seeks is for an improper purpose." 8 *Del. C.* § 220(c).

93. As of the time of the filing of this Complaint, the Company had not consented to permit the inspection of certain categories of documents demanded in the Books and Records Demand, as stated herein.

94. The documents demanded in the Books and Records Demand are in the possession of the Company or are readily available to the Company.

95. By reasons of the foregoing, Plaintiff is entitled to an Order compelling the inspection and copying of all of the requested materials.

96. Ford's insufficient response and document production, as described herein, therefore violates Plaintiff's rights under Section 220 of the DGCL to inspect and make copies and extracts of the books and records of the Company. The requested documents include, among others, Board minutes, documents and presentations, as well as documents reflecting sexual or racial harassment and discrimination claims or complaints – and payments made by the Company with respect to all such claims and complaints – all of which are necessary and essential to Plaintiff's proper purposes.

COUNT I

(Demand for Inspection of Books and Records Pursuant to 8 *Del. C.* § 220)

97. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

98. Plaintiff's Demand has complied fully with all the requirements under Section 220 of the DGCL concerning the form and manner for demanding the inspection of books and records.

99. Through its Demand, Plaintiff has demonstrated a credible basis from which to infer that there are reasonable grounds to suspect mismanagement at the Company that warrant further investigation. Plaintiff's Demand is for a proper purpose and the documents identified in the Demand are essential for that purpose.

100. The Company has failed to produce the requested documents in response to the Demand.

101. Pursuant to Section 220 of the DGCL, Plaintiff is entitled to apply to this Court for an order compelling the Company immediately to produce to Plaintiff all of the documents demanded in the Demand.

102. Plaintiff therefore seeks relief from the Court pursuant to Section 220 of the DGCL to compel inspection of Ford's books and records without further delay.

103. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- (a) An Order compelling Ford to permit the immediate inspection of all documents set forth in the Demand;
- (b) An Order requiring Ford to pay Plaintiff's costs and expenses, including reasonable attorneys' fees, incurred in the prosecution of this action; and

(c) Granting such other and further relief as the Court deems just and proper.

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Dated: January 28, 2019