



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERIC GAN and MCW HK LIMITED,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 2025-_____
)	
CYBEREASON, INC., STEVEN MNUCHIN,)	
DANIELA LLOBET, LIBERTY)	
STRATEGIC CAPITAL (CBR) HOLDINGS,)	
LLC, and SVF II ELLIPSE (DE) LLC,)	
)	
Defendants,)	

VERIFIED COMPLAINT FOR APPOINTMENT OF A CUSTODIAN AND BREACH OF FIDUCIARY DUTY

Plaintiffs Eric Gan and MCW HK Limited, by and through their undersigned attorneys, for their Verified Complaint for Appointment of a Custodian and Breach of Fiduciary Duty, allege as follows:

NATURE OF THE ACTION

1. Cybereason, Inc. (“Cybereason” or the “Company”) provides its customers AI-driven cybersecurity to recognize, expose, and end malicious cyber attacks before they take hold. The Company needs capital to provide full comprehensive technical support to serve and protect over 2,000 global enterprises with over 5 million endpoints. Under its current capital structure, defendants Liberty Strategic Capital (CBR) Holdings, LLC (“Liberty”) and SVF II Ellipse (DE) LLC (“SVF”) have veto rights on, among other things, issuance of new securities by the

Company unless the securities are junior to existing preferred stock. Liberty and SVF also are entitled to appoint a member of the Company’s board of directors (the “Board”). Their nominees on the Board, Steven Mnuchin and Daniela Llobet, have refused in their capacity as directors to approve the last 13 financing proposals (in 2024: July 4, July 16, August 13, August 26, September 12, September 17, October 7, November 18, and December 17; in 2025: January 21, January 24, January 27, and February 7) presented to the Board and the Finance Committee (chaired by defendant Steven Mnuchin) on the grounds that their affiliates intend to exercise their rights to reject those proposals.

2. The intransigence of the Liberty and SVF directors to consider financing proposals from sources other than themselves has led to turmoil among the members of the Board. Liberty and SVF directors have systematically rejected financing proposals, solely to preserve their control and financial advantages. Pursuant to a Voting Agreement, the Board is supposed to have seven members. Two of those members – directors representing the majority holders Series A and Series B preferred stock –resigned just before the January 27, 2025 meeting of the Board and indicated that the majority holders of each series will not appoint a new director until the Board conflict is resolved. Softbank Corp. (“SBKK”) also is entitled to appoint a director. Its nominee, Ken Miyauchi, also has expressed dismay over the conduct of the SVF and Liberty directors through emails and multiple

conference calls with Mr. Gan including the last one on January 26, 2025. Because of the conflicts, Mr. Miyauchi abstained from participating in Board meetings due to internal conflicts and, per instructions from SBKK's legal counsel, declined to engage in discussions, recommendation or voting.

3. Mr. Miyauchi's refusal to attend meetings of the Board means that only four directors are attending meetings – Eric Gan, Sir Julian Horn-Smith, Steven Mnuchin and Daniela Llobet. At the most recent meeting of the Board on February 7, 2025, the Board considered two financing proposals: one from Mr. Gan and one from Liberty and SVF. Mr. Gan proposed definitive documents (amended and restated certificate of incorporation, Stockholder Agreement and Stock Purchase Agreement) for his family private office to lead a fundraising round seeking at least \$150 million through issuance of a new Series 1 Preferred Stock. Mr. Gan's proposal contemplates that all of the existing preferred stock be converted into common stock and the Company would be managed by a board of seven directors: one appointed by the Chief Executive Officer; one appointed by the Series 1 investors; and five independent directors to restore healthy corporate governance and protect *all* shareholders. When stockholders vote on any corporate decision — including the sale of the company, mergers, acquisitions, issuing new shares, or other major changes to governance or financial structure — Series 1 Preferred Stockholders are entitled to votes based on the number of Common Stock shares

their Preferred Stock could be converted into at that time. This voting practice proposed by MCW HK would ensure a good governance balancing the Board vote (with majority independent directors) and all shareholders vote in the best interests for the Company and rights and benefits of all shareholders

4. Liberty and SVF, on the other hand, proposed raising at least \$100 million and up to \$150 million through a non-binding Series H term sheet which had expired already prior to the February 7, 2025 Board meeting. The Liberty/SVF proposal contained a “Pulled-Through Prior Preferred” or pay to play provision designed to punish any existing investor who failed to participate in the funding round and only benefit select “Strategic Investors” by allowing them to exchange their Common Stock for a new series of Preferred Shares with certain rights and benefits. The expired, non-binding term sheet also included excessive protective provisions for holders of preferred stock and contemplated a new Board structure of five directors – two representing Liberty and SVF, two representing the “Strategic Investors” and one for SBKK (in exchange for its consent). The proposed governance structure deliberately excludes management and any independent oversight, further concentrating power in the hands of Liberty and SVF. The expired, non-binding term sheet also has an exclusivity provision to limit the Company to raising capital from only Liberty, SVF and the two Strategic Investors. Under the Liberty/SVF proposal, all existing shares of preferred stock would be

converted into common stock on a one-to-one basis (not according to the conversion ratio in the certificate of incorporation). Existing holders of preferred stock could avoid the effects of the conversion only by participating in the funding round.

5. After considering both proposals at the February 7 meeting, the directors in attendance were deadlocked – two votes in favor of Mr. Gan’s proposal and two votes in favor of the Liberty/SVF proposal.

6. Unless this deadlock can be broken, the Company will be irreparably harmed. If immediate financing is not secured, the Company will be forced into Chapter 11 bankruptcy, inflicting catastrophic losses on employees, customers, and shareholders, a crisis manufactured entirely by Liberty and SVF’s intentional obstruction.

7. Thus, Plaintiffs seek appointment of a custodian of the Company under 8 *Del. C.* § 226(a)(2) to break the current deadlock and allow the company to raise the funds it desperately needs.

PARTIES

8. Plaintiff Eric Gan is the Chief Executive Officer (“CEO”) and a director of the Company. In 2000 Mr. Gan founded eAccess, a mobile telecommunications company. His success with that company led him to become president of a SoftBank subsidiary and then Executive Vice President of SoftBank itself. Mr. Gan and his

family office, plaintiff MCW HK Limited, collectively hold approximately 6.8% of the Company's shares on a fully-diluted basis.

9. Defendant Cybereason is a Delaware corporation with a principal place of business in La Jolla, California. Cybereason is a cybersecurity company founded in 2012 with offices in the United States and around the world serving over 2,000 enterprises with over five million endpoints.

10. Defendant Steven Mnuchin is the former Secretary of the Treasury and a current director of Cybereason. Mr. Mnuchin currently leads Liberty Strategic Capital, a private equity firm focused on investing in dynamic global technology companies. Defendant Liberty Strategic Capital (CBR) Holdings LLC, an affiliate of Liberty Strategic Capital, holds a majority of the outstanding shares of the Company's Series F Preferred Stock and has the right to nominate one director. Liberty owns approximately 6.6% of the Company's outstanding shares on a fully-diluted basis. According to a news source on September 21, 2021, SoftBank Group is also an investor in Liberty.

11. Defendant Daniela Llobet is a Vice President at SoftBank Capital. Ms. Llobet is the director nominee of SVF, which holds a majority of the outstanding shares of the Company's Series E Preferred Stock and has the right to nominate one director. SVF's total holdings amount to approximately 20% of the Company's outstanding stock on a fully-diluted basis.

12. Non-party SoftBank Corp. holds a majority of the outstanding shares of the Company's Common Stock Series C and Series G Preferred Shares. Under the Voting Agreement, SBKK is entitled to nominate one director. Currently SBKK's director nominee is Ken Miyauchi. SBKK collectively holds about 31% of the Company's outstanding shares on a fully-diluted basis.

BACKGROUND

13. The Company completed its first closing for the Series G round of financing in approximately April 2023. Since that time, the Board increased the amount to be raised in the Series G round from \$100 million to \$120 million to provide the Company with more operating capital.

14. By November 2023, Mr. Gan and other members of management informed the Board that the Company needed an additional \$100 million in equity financing due to the Company's cash position and auditor's concerns regarding their work on the 2023 financials. Mr. Gan and other members of management made clear to the Board that the delay in equity and debt financing prevented the Company's accountant from signing off on the Company's 2023 audited financials, which itself caused further delay in debt and equity fundraising. Cybereason currently has outstanding debt with JP Morgan Bank due for redemption on March 11, 2025.

15. Mr. Gan presented a plan to raise up to \$100 million in a combination of debt and equity to the Board at its July 3, 2024 meeting. The Board resolved that Company's management work with the Finance Committee to explore different financing options.

16. At the Board's next meeting on September 17, 2024, Mr. Gan presented to the Board several alternative options to address the Company's current cash needs, including (i) as a standalone company with continued Series G and debt financing; (ii) acquiring a company (Trustwave) with Series G and debt financing; (iii) the acquisition of the Company and Trustwave by the Company's current shareholders; (iv) Cybereason being acquired by a competitor; and (v) Cybereason as a standalone company with debt financing only. At this meeting Ms. Llobet indicated that she was opposed to the acquisition of Trustwave and SVF would exercise its veto rights to block such a transaction. Mr. Gan and Mr. Miyauchi escalated the Board dispute to the CEO of SoftBank Corp. and the CEO of SoftBank Group immediately after the Board meeting.

17. At the next meeting of the Board on October 2, 2024, the Board again considered the Trustwave acquisition. This time Ms. Llobet expressed concern about the acquisition but said she would abstain from voting after receiving the direct email order from the CEO of SoftBank Group and the CEO of SVF Alex Clavel that SVF will not oppose the Trustwave acquisition. All of the directors voted in favor

of the acquisition except Mr. Mnuchin, who voted against, and Ms. Llobet, who abstained.

18. The Board held another meeting on December 17, 2024, at which it discussed various financing proposals. The Board discussed a non-binding proposal submitted by Liberty and SVF contemplating a \$25 million investment by each of Liberty, SVF and SBKK subject to a requirement that the Board form a Sale Committee which could overrule the Board regarding a sale of the Company. Messrs. Gan, Horn-Smith and Miyauchi express serious concern over a sale of the Company and governance issues arising from the Sale Committee. The Board ended the meeting without taking action on the non-binding proposal. In addition, Mr. Gan informed the Board that the audit had been completed but was not being issued yet due to the cash needs of the Company. Mr. Gan told the Board that its auditors required the Company to demonstrate sufficient liquidity for 12-15 months to issue a clean report.

19. On January 7, 2025, SBKK informed Mr. Gan and Ms Llobet that SBKK would not participate in the term sheet proposed by Liberty and SVF on December 17, 2024. On January 18, 2024, Mr. Gan submitted an alternative proposal of raising \$150 million equity led by an existing investor. On January 25, 2025, Ms. Llobet and Mr. Mnuchin informed Mr. Gan they will use their veto to oppose his proposal. Instead Liberty and SVF pressured the Board to consider their

counterproposal of a non-binding term sheet with only \$25 million investment each from Liberty and SVF contingent on the Company beginning a sale process. Mr. Gan informed all other directors that their proposal would NOT resolve the liquidity issue in the short term before February 17, 2025 (the expiring of a critical debt facility with Hercules Capital) and long term if the Company fails to find a buyer through the proposed sale process.

20. On January 27, 2025, both Izhar Amony from Charles River Venture (“CRV”) and Santo Politi from Spark Capital submitted their resignation as directors to the Board prior to its scheduled meeting. Mr. Gan reached out to both directors but they both expressed their concern regarding conflict of interests at the Board level and deadlock issues. In an email from Mr. Amony to Mr. Gan on January 27, 2025, Mr. Amony stated, “I wanted to give you a heads up that I concluded, on the advice of counsel, that I should resign from the board. I will send a formal resignation to you shortly, cc-ing board members. I appreciate very much your tireless efforts to turn Cybereason around. I have tried to be supportive to you and your team. However, differences of opinions among shareholders have paralyzed the board from taking any decisive action when it was badly needed, Izhar.” Mr. Amony had served as the Series A director since CVR invested in Cybereason in February 2014.

21. Mr. Among later (on February 6, 2025) confirmed that CRV has no intention to appoint a new Board member, however, Mr. Among confirmed in his email that CRV has a contractual right to the Series A board seat and intended to appoint a board member in the future. On February 7, 2025, Santo Politi also confirmed that Spark has a contractual right to nominate the Series B director and intended to appoint a board member in the future. Mr. Politi's firm invested in Cybereason in 2016 and Mr. Politi had served as the Series B director since that time until his resignation.

22. At the Board meeting on January 27, 2025, the only directors present were Messrs. Gan, Horn-Smith and Mnuchin and Ms. Llobet. Messrs. Among and Politi had resigned, and Mr. Miyauchi did not attend. The Company's management discussed the dire cash needs of the Company. Mr. Mnuchin reported that he was hopeful to receive two proposals for debt financing by the next day. Mr. Mnuchin also stated that Liberty's proposal addressed some of the SBKK concerns, but the SBKK representative present could not confirm SBKK would approve Liberty's proposal.

23. The Board also discussed filing a Chapter 11 petition. Mr. Mnuchin said he believed the Board should not approve a Chapter 11 plan if financing was available.

24. Although the Board had another meeting scheduled for January 30, 2025, early on that date SBKK informed the Board that it had not received the term sheets and would not be able to review them until at least the following Monday. SBKK asked that it be given sufficient time to review any proposal given its veto rights over material actions. In light of SBKK's position, Mr. Gan postponed the Board meeting scheduled for that day until further notice.

25. On February 3, 2025, the Board received a non-binding term sheet from All Blue Capital, a potential investor, requesting exclusivity and requiring the Company to engage in a sale process. On February 4, 2025, Mr. Mnuchin asked that the Board schedule a meeting that week. Mr. Gan scheduled a meeting for February 7, 2025. The Board received a final term sheet from All Blue on February 6, 2025 that had expired by its own terms on February 5, 2025. Mr. Gan informed the Board that at the February 7 meeting the Board would consider the proposal from Mr. Gan's family office and the All Blue Capital proposal.

26. The Board met again on February 7, 2025. Immediately prior to the meeting, Mr. Mnuchin informed Mr. Gan that Liberty would veto Mr. Gan's family office proposal. Again the only members of the Board present were Messrs. Gan, Horn-Smith and Mnuchin and Ms. Llobet. At this meeting the Board discussed the Liberty/SVF proposal and the proposal from Mr. Gan. Mr. Gan noted that his proposal included a binding term sheet whereas the Liberty/SVF proposal was only

a non-binding term sheet with significant matters to be negotiated further. Despite the availability of Mr. Gan's binding term sheet, only he and Mr. Horn-Smith voted in favor of it. Mr. Mnuchin and Ms. Llobet voted against Mr. Gan's proposal because their affiliates would exercise their veto power against it and in favor of their own proposal. Mr. Mnuchin and Ms. Llobet tried to threaten Mr. Horn-Smith into voting in favor of the Liberty/SVF proposal, but he refused to change his mind despite their threats.

27. Sir Julian Horn-Smith (independent director) asked Ms. Llobet whether she was engaging with potential buyers including her previous conversation with Arctic Wolf. She confirmed that she has had no contact with any potential Buyers. Mr. Gan expressed concerns about running out of cash again before finding a Buyer, and risks of losing Key Employees and Customers during the Company Sale Process. Mr. Gan also explained to the Board that "history repeats itself" that the same sale process which was conducted right after Series F led by Liberty in 2022 also failed. As a result of that process, Cybereason lost key employees and customers. Indeed, Mr. Gan, (EVP of SoftBank Corp who was responsible for Corporate Business Development including the investment in Cybereason since 2015), had to step in to the Board and raised a \$120 million Series G round to save Cybereason in April 2023.

28. Steven Mnuchin proposed to have another Board meeting in the week starting February 10, 2025. Mr. Gan told the Board that all directors need sufficient time to read the final definitive documents for any transaction as warned by SoftBank Corp. The next Board meeting was scheduled for February 14, 2025. However, Mr. Gan stated that the Company could host the Board meeting earlier providing all Board members have sufficient time to read all documents and prepare for next Board meeting.

29. Thus, for the [third] straight meeting only four directors were present, they were deadlocked on the proposals before them, and there was also no reasonable hope that Mr. Miyauchi would attend or that the Series A or B holders would appoint new directors. Further, Mr. Mnuchin and Ms. Llobet informed the Board that their affiliates would use their veto power as to any proposal but their own.

COUNT I

Appointment of a Custodian Pursuant to 8 Del. C. § 226(a)(2)

30. Plaintiffs repeat and reallage each and every preceding paragraph as if fully set forth herein.

31. Currently the Board has only four members: Mr. Gan, Mr. Horn-Smith, Mr. Mnuchin and Ms. Llobet. The nominees of the Series A and B holders have resigned and indicated that they would not renominate anyone as director until the Board dispute is resolved. Mr. Miyauchi has indicated that he is reluctant to involve himself in the Board dispute and, indeed, has failed to attend the last three board

meetings despite the Company's critical situation. Thus, the Board is deadlocked and the stockholders cannot break the deadlock.

32. The deadlock threatens irreparable harm. If the Company cannot see the path to raising significant funding before February 17, 2025, it will run out of money and be forced to file a Chapter 11 petition.

33. Plaintiffs are entitled to an order appointing a custodian to break the deadlock under 8 Del. C. § 226(a)(2).

COUNT II
Breach of Fiduciary Duty
(Against Mnuchin, Liberty, Llobet and SVF)

34. Plaintiffs repeat and reallage each and every preceding paragraph as if fully set forth herein.

35. As directors of a Delaware corporation, Mr. Mnuchin and Ms. Llobet owe fiduciary duties of care and loyalty to Cybereason and its stockholders. Those duties require the utmost good faith and require them to make decisions in the best interests of all stockholders of the Company, not just the stockholders who nominated them.

36. Liberty and SCF, as holders of veto rights over certain transactions, including without limitation the Trustwave acquisition and any financing proposal, are the functional equivalent of controlling stockholders of Cybereason. Controlling

stockholders also have fiduciary obligations to the other stockholders of companies they control.

37. By blocking the only binding financing option and forcing a self-interested transaction and only informing Mr. Gan one minute before the February 7 meeting started, Mr. Mnuchin and Ms. Llobet acted in bad faith and violated their fiduciary duties. Mr. Mnuchin and Ms. Llobet failed to satisfy their duty of loyalty by acting intentionally for a purpose other than that of advancing the best interests of the Company. Mr. Mnuchin and Ms. Llobet placed their interests above those of the Company and its stockholders by refusing to approve the Gan transaction at the instruction or behest of their affiliate stockholders.

38. Those stockholders also breached their fiduciary duties because they have the power to control, influence and cause the Company to take or refrain from taking certain actions. Liberty and SVF exploited their control to dictate the terms of a self-interested transaction, crafted solely for their benefit, with no genuine negotiation, in blatant disregard of their fiduciary obligations. .

39. Plaintiffs have been damaged by these breaches of fiduciary duty in an amount to be determined at trial.

40. Plaintiffs are without a remedy at law.

WHEREFORE, Plaintiffs respectfully request that the Court enter its Orders, Judgments and Decrees:

- A. Appointing a custodian for Cybereason pursuant to 8 Del. C. § 226(a)(2);
- B. Declaring that Mr. Mnuchin and Ms. Llobet breached their fiduciary duties;
- C. Declaring that Liberty and SVF breached their fiduciary duties;
- D. Awarding Plaintiffs damages resulting from the breaches of fiduciary duties;
- E. Awarding Plaintiffs their reasonable attorneys' fees and costs for prosecuting this action;
- F. Awarding such other and further relief as the Court deems just and equitable.

BAYARD, P.A.

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Dated: February 10, 2025