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Case No. 2025-0140-

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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

**MOTION TO EXPEDITE**

Plaintiffs Eric Gan and MCW HK Limited, by and through their undersigned attorneys, for their Motion To Expedite, state as follows:

1. As stated more fully in the Verified Complaint for Appointment of a Custodian and Breach of Fiduciary Duty (the "Complaint") filed contemporaneously herewith, Plaintiffs seek the immediate relief of the appointment of a custodian for Cybereason, Inc. ("Cybereason" or the "Company") under 8 *Del. C.* § 226(a)(2) to break a deadlock among the directors.

2. The Company is supposed to have seven directors on its board of directors (the "Board"). Because of conflict among the directors, however, two directors have resigned and indicated that the holders of the series of preferred stock they represent will not nominate a new director until the board dispute is resolved. Another director has informed the Company that on the advice of counsel he should not cast a deciding vote on the disputed matters before the Board and has not shown

up to the last few meetings. Thus, the Board has only 4 active directors: Eric Ga, Julian Horn-Smith, Steven Mnuchin and Daniela Llobet.

3. The dispute, and resulting deadlock, arises from the Company's need for capital. As described in the Complaint, the Company needs funds to continue to provide its cybersecurity services to protect over 2,000 global enterprises with over 5 million endpoints. The Company has been search for additional funds for at least the last six months. During that time the Board has considered at least 13 different proposals for funds. All of those proposals have been rejected by Mr. Mnuchin and Ms. Llobet because they would require their affiliates to cede certain contractual rights. Instead, Mr. Mnuchin and Ms. Llobet have proposed that their affiliates lead a funding round on terms they set unilaterally without almost no negotiation. Indeed, Mr. Mnuchin and Ms. Llobet have made it clear that the only funding transaction they will accept is their proposal.

4. The need for funds is critical. The Company's existing debt facility with Hercules Capital expires on February 15, 2025. If the Company cannot see a path to raising funds to replace the debt facility by then, it is likely that the Company will have no choice but to file a Chapter 11 bankruptcy petition. Thus, the need to break the deadlock at the board level is necessary.

5. This Court has broad discretion to order expedited proceedings. "The standard for expediting a proceeding is not a difficult one to meet. [Plaintiff] need

only 'articulate[] a sufficiently colorable claim and show [] a sufficient possibility of a threatened irreparable injury…'" *Balch Hill Partners, L.P. v. Shocking Techs., Inc.*, 2013 WL 588964, at *2 (Del. Ch. Feb. 7, 2013). "This court traditionally has acted with a certain solicitude for plaintiffs" seeking expedited proceedings and "has followed the practice of erring on the side of more hearings rather than fewer." *Giammargo v. Snapple Beverage Corp.*, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994). To justify expedited proceedings, "a plaintiff must articulate a sufficiently colorable claim and show a sufficient possibility of a threatened irreparable injury to justify imposing on the defendants and the public the extra (and sometimes substantial) costs of an expedited [] proceeding." *Cty. of York Employees Retirement Plan v. Merrill Lynch & Co., Inc.*, 2008 WL 4824053, at *5 (Del. Ch. Oct. 28, 2008). Plaintiffs satisfy this standard.

6. *First*, a deadlock plainly exists among the directors as a practical matter. The Board currently has only four active members – two directors resigned and will not be replaced until this dispute is resolved, and one has indicated he will not break a tie and has not shown up to the last two meetings of the Board. Thus, even though the Board should have seven members, as a practical matter it is deadlocked. *Cf. In re Interstate General Media Holdings LLC*, 2014 WL 1697030, at *3 (Del. Ch. Apr. 25, 2014) (describing deadlock arising from requirement in

operating agreement that two members of six person board had to approve all major actions).

7. *Second*, it is clear that irreparable harm will befall the Company if the deadlock is not broken. The Company needs funds by February 15, 2025 to avoid having to file a bankruptcy petition. The only way to obtain those funds is to break the deadlock.

8. *Third*, the stockholders cannot fix the deadlock. As indicated above, the holders of the Series A and Series B, who each can nominate a director, have informed Mr. Gan that they will not nominate any replacement directors until this dispute is resolved. The third director is a nominee of Softbank Corp. He has indicated that he has been advised by counsel not to vote on anything and has not even shown up to the last few meetings. Thus, there is no method for the stockholders to break the deadlock.

9. Accordingly, the Court should expedite this matter, at least as to Count I of the Complaint seeking appointment of a custodian. Plaintiffs respectfully request that the Court set this matter for a final hearing on the merits as soon as possible, preferably no later than the middle of March. Plaintiffs believe that setting a prompt hearing on this matter will allow the Company to negotiate with its lenders to buy additional time to raise the necessary funds.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order in the form attached hereto setting this matter for a final hearing in March 2025.

BAYARD, P.A.

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WORDS: 900/3000