IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BENCHMARK CAPITAL PARTNERS VII, L.P., a Delaware limited partnership, Plaintiff, v. TRAVIS KALANICK, Defendant, and UBER TECHNOLOGIES, INC., a Delaware corporation, Nominal Defendant.	)	C.A. No. 2017-0575-SG

DEFENDANT TRAVIS KALANICK'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS OR STAY IN FAVOR OF ARBITRATION

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INTRODUCTION

In June 2016, Uber's major stockholders—including Benchmark—gave Travis Kalanick the right to fill three new seats on the company's Board of Directors. To make that happen, they made two contemporaneous, interrelated changes to Uber's corporate documents: they amended the Voting Agreement to give Mr. Kalanick the power to choose three new directors and they amended the Certificate of Incorporation to add the three new seats promised in the Voting Agreement. These amendments were of a piece; the seats were added solely because Mr. Kalanick negotiated for, and received, the right to fill them. The amendment to the Certificate of Incorporation thus arose directly from the rights granted to Mr. Kalanick in the Voting Agreement. And there can be no dispute that each of Benchmark's claims—whether explicitly or in substance—attempts to deny Mr. Kalanick those rights. Benchmark's objection to Mr. Kalanick's right to fill those seats is the gravamen of its entire complaint.

The Voting Agreement's broad arbitration clause encompasses "[a]ny unresolved controversy or claim *arising out of or relating to* this Agreement." Voting Agreement ¶ 5.18 (emphasis added). Benchmark itself concedes that one of its claims and part of another are subject to arbitration. The question of whether Benchmark's remaining claims are arbitrable is for the arbitrator to decide—

Benchmark's arguments to the contrary are unsupportable.[1] But if the Court were to reach that issue, each of Benchmark's claims falls within the broad scope of Section 5.18; all of them plainly "relat[e] to" or "aris[e] out of" the Voting Agreement. And even if the Court were to (a) reach the issue, and (b) find any of the remaining claims is not arbitrable (though they all are), the proper course would be to honor the parties' agreement by requiring the arbitrable claims to be arbitrated and to stay the remaining claims, which rely on identical factual allegations.

At bottom, to allow Benchmark to proceed in this forum on its claims would contravene the express terms of Section 5.18 of the Voting Agreement and Delaware law, would turn the presumption in favor of arbitration on its head, and would expose the company to significant and unnecessary harm for no reason other than Benchmark's desire to use this forum to publicly slander Mr. Kalanick with its fabricated allegations.

[1] Mr. Kalanick has filed today an arbitration against Benchmark with the AAA. He seeks a declaratory judgment that the amendment to the Voting Agreement is enforceable—a claim Benchmark concedes is subject to arbitration—and that the Certificate of Incorporation is enforceable. An arbitrator will be chosen soon and, to the extent Benchmark wishes to pursue its own claims in arbitration, the arbitrator will be able to decide the arbitrability question expeditiously.

ARGUMENT

I. THE VOTING AGREEMENT DELEGATES THE ARBITRABILITY QUESTION TO THE ARBITRATOR.

Although the question of who decides substantive arbitrability is a threshold determination, Benchmark chose not to address it until the end of its brief. Its reasoning is plain to see. Both prongs of the *Willie Gary* test are easily met, and the arbitrability question is therefore committed to the arbitrator. *See James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 80 (Del. 2006). Benchmark's contrary arguments misapply *Willie Gary* and rely on an analogy to arbitration of class claims that is both irrelevant and mistaken.

A. Both *Willie Gary* Prongs Are Met.

The first *Willie Gary* prong is met if an arbitration clause "provides for arbitration of a wide array of potential claims," unless the clause's "carveouts and exceptions to committing disputes to arbitration" are "so obviously broad and substantial as to overcome" that presumption. *McLaughlin v. McCann*, 942 A.2d 616, 625–26 (Del. Ch. 2008). Benchmark does not dispute that, by covering "[a]ny unresolved controversy or claim *arising out of or relating to* this Agreement," the arbitration provision here broadly covers a wide variety of potential claims. *See Orix LF, LP v. Inscap Asset Mgmt., LLC*, 2010 WL 1463404, at *7 (Del. Ch.) ("arising out of or relating to this agreement" language satisfies prong one of *Willie Gary*); *Legend Natural Gas II Holdings, LP v. Hargis*, 2012 WL 4481303, at *5 (Del. Ch.)

(same). Nor does Benchmark dispute that the carveouts here (relating to intellectual property disputes) are irrelevant. Indeed, it does not discuss those carveouts at all. *See* Benchmark's Opp. to Mot. to Dismiss ("Benchmark Br.") at 20–24.

Instead, Benchmark contends that the first *Willie Gary* prong is not met because the parties did not substantively agree to arbitrate its Section 225 claims. In other words, Benchmark attempts to smuggle the full arbitrability analysis into the threshold *Willie Gary* determination. *See* Benchmark Br. at 20 (Benchmark arguing that, as "discuss[ed] in Sections I and II" of its brief, the Section 225 claims are not arbitrable). This maneuver is familiar to the Court of Chancery and rejected as a matter of course. As then-Vice Chancellor Strine observed in *Orix*:

> In this procedural posture, the burden on defendants is not to *conclusively* prove that their claims are within the scope of [the arbitration provision], but rather that their claims are *arguably* arbitrable. . . . That is, unless Orix can show that the defendants' position on arbitrability is 'wholly groundless' or 'frivolous,' the arbitrator and not the court must determine the question of substantive arbitrability. To do otherwise and to resolve good faith disputes about substantive arbitrability, would conflate the substantive arbitrability analysis with the arbitrability analysis proper, and usurp the role *Willie Gary* says belongs to the arbitrator.

2010 WL 1463404, at *8; *see also Legend Natural Gas*, 2012 WL 4481303, at *5 (the plaintiffs "essentially want this Court to assess definitively at the outset whether Hargis's claims arise out of or relate to the Employment Agreement. Such an assessment would amount to deciding substantive arbitrability, thereby circumventing the very purpose of *Willie Gary* . . . ."). Instead, the *Willie Gary*

analysis focuses solely on the language of the arbitration provision, which in this case could hardly be broader. *See, e.g.*, *Orix*, 2010 WL 1463404, at *7; *Legend Natural Gas*, 2012 WL 4481303, at *5.

The second *Willie Gary* prong is met if the arbitration clause "incorporates a set of arbitration rules that empower arbitrators to decide arbitrability." *Willie Gary*, 906 A.2d at 80. Benchmark rightly does not dispute that this prong is satisfied as well. The Voting Agreement requires that any arbitration shall be conducted "in accordance with the AAA rules then in effect." Voting Agreement ¶ 5.18. Under those rules, "[t]he arbitrator shall have the power to rule on his or her own jurisdiction," including questions about the "scope" of the arbitration clause. AAA Commercial Rule R-7(a).

B. Mr. Kalanick's Arbitrability Arguments Are Not "Wholly Groundless."

Because the Voting Agreement clearly commits the arbitrability determination to the arbitrator, Benchmark resorts to arguing that Mr. Kalanick's arbitrability arguments are "wholly groundless." Benchmark Br. at 19-24. The "wholly groundless" review is among the most lenient in the law. The Court does not conduct a merits review, but instead determines only whether Mr. Kalanick has "colorable and non-frivolous arguments that the dispute is arbitrable." *Legend Natural Gas*, 2012 WL 4481303, at *1; Benchmark Br. at 23 (acknowledging the "non-frivolous argument" standard). "[A]bsent a clear showing that the party

desiring arbitration has essentially no non-frivolous argument about substantive arbitrability to make before the arbitrator, the court should require the signatory to address its arguments against arbitrability to the arbitrator." *McLaughlin*, 942 A.2d at 626–27; *see also Li v. Standard Fiber, LLC*, 2013 WL 1286202, at *5 (Del. Ch.).

Here, the idea that Mr. Kalanick's arbitrability arguments are frivolous cannot be taken seriously. Benchmark *concedes* that one of its claims and part of another are arbitrable (meaning that, at worst, the remaining claims should be stayed in favor of arbitration, *see infra*). As to the remaining claims, Benchmark offers two principal contentions. First, Benchmark relies on its substantive arbitrability arguments about its Section 225 claim in asserting that Mr. Kalanick's contrary position is frivolous. Benchmark Br. at 20-21. We are confident the Court can see that is not true. *See* Opening Br. at 8–17; *infra* section II. To that end, it is notable that the only two Delaware cases that address the arbitrability of Section 225 claims confirm that such claims *are* arbitrable. *See Rohe v. Reliance Training Network, Inc.*, 2000 WL 1038190, at *8 n.16 (Del. Ch.); *Carter v. Pearlman*, 1998 WL 326605, at *1 (Del. Ch.). Although both cases featured prominently in Mr. Kalanick's opening brief, *see* Opening Br. at 16, Benchmark does not even mention either in its opposition. Its silence is telling. Mr. Kalanick's arbitrability arguments not only are non-frivolous, they are correct.

Second, Benchmark offers the irrelevant and grossly inapt analogy between this case and arbitration of class claims. It contends that, even if the parties otherwise committed the substantive arbitrability decision to the arbitrator, that result should not obtain here because this case has "broad impact on non-parties." Benchmark Br. at 21. This argument is irrelevant because there is no exception to *Willie Gary* for cases that affect non-parties. Mr. Kalanick is not aware of any authority supporting such an exception, and Benchmark cites none.

The argument also is inapt because this case is nothing like class arbitration. Benchmark's own authority notes that "'class arbitration implicates a particular set of concerns that are absent in the bilateral context.'" Benchmark Br. at 22 (quoting *Chesapeake Appalachia, LLC v. Scout Petroleum, LLC*, 809 F.3d 746, 764 (3d Cir. 2016)). This, of course, is a bilateral proceeding. There are no class members.

By Benchmark's rationale, no claim that affects Board composition would be arbitrable, because many non-parties are impacted. Delaware law, however, is to the contrary. *See Rohe*, 2000 WL 1038190, at *8 n.16 (board membership dispute subject to arbitration); *Carter*, 1998 WL 326605, at *1 (same). Indeed, Benchmark concedes that Count Four of its complaint—which if successful would rewrite the Voting Agreement signed by numerous non-parties and substantially change how two board seats are selected—is arbitrable. *See* Benchmark Br. at 24.

At all events, as a practical matter, all of Uber's significant stockholders are highly sophisticated and well-resourced, and all of them are parties to the Voting Agreement. *See* Voting Agreement ¶ 5.5 (requiring any new stockholders whose acquisitions would represent 1% of Uber's capital stock to sign agreement). They are fully able to bring an arbitration to be consolidated with Benchmark's, if they so choose. In the alternative, they may seek to intervene in this proceeding before it reaches arbitration—as two of them already have. The idea that Uber's stockholders will be unprotected unless this bilateral arbitration remains in court is demonstrably false, and Benchmark's argument that the Court should create an unprecedented exception to *Willie Gary* on this basis is meritless for this reason as well.

II. THE ARBITRATION CLAUSE IN THE VOTING AGREEMENT MANDATES ARBITRATION OF ALL OF BENCHMARK'S CLAIMS.

To compel arbitration of each of Benchmark's claims, the Court need only find that the claims "aris[e] out of or relat[e] to" the Voting Agreement. *See* Voting Agreement ¶ 5.18; *Parfi Holding AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 155 (Del. 2002). To do so, the Court need look no further than the opening paragraphs of Benchmark's Complaint describing the nature of the action. Benchmark represents that it has sued to redress an alleged "fraud" by Mr. Kalanick designed "to entrench himself on Uber's Board of Directors and increase his power over Uber for his own selfish ends. Kalanick's overarching objective is to pack Uber's Board with loyal allies …" Compl. ¶ 1; *see also id.* ¶ 2 (alleging that Mr.

Kalanick's actions were to "fraudulently obtain[] control of three newly created seats"). As Benchmark claims, this alleged objective was accomplished through the execution of both the amendment to the Certificate of Incorporation and to the Voting Agreement "grant[ing] him the absolute right to designate directors to occupy three newly created Board seats." *Id.* ¶ 4.

That the rights secured by the 2016 amendment to the Voting Agreement—Mr. Kalanick's ability to select three new directors—also necessitated the simultaneous amendment of the Certificate of Incorporation does not provide Benchmark a vehicle for abrogating its obligation to arbitrate. Just the opposite: it demonstrates that the two agreements not only are "related," but one (the amendment to the Certificate) occurred only because of the other (the amendment to the Voting Agreement). Because the Voting Agreement's arbitration clause is "broad in scope," it "extends the arbitration clause beyond the four corners of the agreement. *Li*, 2013 WL 1286202, at *6. It thus requires arbitration of "all possible claims that *touch on* the rights set forth in" the Voting Agreement." *Parfi*, 817 A.2d at 155 (emphasis added). If the claims "implicate any of the rights and obligations provided for in the [Voting Agreement]," then arbitration is required. *Id*.

Benchmark's claims, whether styled as Section 225 claims or fraudulent inducement claims, and whether seeking to invalidate the Voting Agreement itself or the amendment to the Certificate of Incorporation required to effectuate it, do not

merely "implicate" Mr. Kalanick's rights under the Voting Agreement, they seek to vitiate those rights entirely.

Benchmark cites no case in which a Delaware court has ever declined to compel arbitration in circumstances even approaching those present here: where the parties entered into an agreement clearly compelling arbitration of all disputes "arising out of or relating to" that agreement, and to effectuate that agreement the parties simultaneously entered into another agreement; where the gravamen of each of the claims is the promise secured by the agreement requiring arbitration; and where the relief sought—invalidation of the amendments to the Voting Agreement and/or the Certificate of Incorporation—would completely vitiate the rights provided in the agreement requiring arbitration. To decline to compel arbitration here would render the Voting Agreement's broad arbitration provision nugatory, and would contravene Delaware's "strong public policy in favor of arbitration," *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 295 (Del. 1999), as well as the Delaware Supreme Court's holding in *Parfi*.

Benchmark nonetheless argues that, although Count Four and at least part of Count Three are arbitrable, Benchmark Br. at 24–25, it may evade arbitration on Counts One and Two, which are pleaded as Section 225 claims. Its arguments are without merit.

A. The Voting Agreement Is Central To Benchmark's Claims.

Benchmark predicates its argument, at least in part, on the assertion that its Section 225 counts "do not refer to the parties' voting agreement . . . or depend on its existence." Benchmark Br. at 1. Benchmark bases this claim on the supposed fact—repeated multiple times—that "[n]owhere do the Section 225 Counts even refer to the Voting Agreement." Benchmark Br. at 12; *see also id.* at 14. This assertion is both untrue and misleading. It is untrue in that both of the Section 225 claims incorporate the first sixty-two allegations of the complaint, in which the terms of the Voting Agreement figure prominently. Compl. ¶¶ 63, 70; *see* Ct. of Ch. R. 10(c) ("Statements in a pleading may be adopted by reference in a different part of the same pleading …"); *cf. Hydrogen Master Rights, Ltd. v. Weston*, 228 F. Supp. 3d 320, 337 (D. Del. 2017) ("A claim may … rely on allegations adopted by reference …"). The assertion is misleading in that it is the very existence of Mr. Kalanick's right to appoint three new directors—granted by the amendment to the Voting Agreement—that forms the gravamen of each of the causes of action, and it was the amendment to the Voting Agreement itself that gave rise to the necessity to (simultaneously) amend the Certificate of Incorporation to create those three new seats. In every meaningful sense, the Section 225 claims "aris[e] out of" the Voting Agreement; at a bare minimum they indisputably "relat[e] to" it.

Benchmark cannot even articulate how its Section 225 claims make any sense whatsoever without reference to the parties' rights under the Voting Agreement. This is most obvious with respect to Count Two, which is brought under Section 225(a) and seeks to "determine the validity of" Mr. Kalanick's "appointment" as director. 8 *Del. C.* § 225(a); *see* Compl. ¶ 71. That appointment was made by virtue of Mr. Kalanick exercising his rights under the Voting Agreement.

Even Count One makes little sense without reference to the Voting Agreement. If the Voting Agreement did not exist, and if one assumes that Benchmark is correct that Mr. Kalanick effectively controlled the Class B common shares in June 2016, *see* Compl. ¶ 65, then the parties would not be here. Because the board had two preferred seats and six common seats at the time, Mr. Kalanick already would have controlled a super-majority of the board and no seats would have been added. It is only because there was an existing Voting Agreement that allocated the seats differently—one which contained the exact same arbitration clause, as Benchmark admits, *see* Benchmark Br. at 5—that Mr. Kalanick controlled only the seat he occupied as CEO. Benchmark's baseless allegations that Mr. Kalanick engaged in fraud in order to control the board are nonsensical without the Voting Agreement giving him the right to control the new three seats.

The Voting Agreement is thus central to Benchmark's Section 225 claims, and not as a mere "source of information," Benchmark Br. at 16–17 (internal

quotation marks omitted), or as part of "a common nucleus of operative fact," *id.* at 14. Rather, it is the specific way the Voting Agreement allocates rights to Mr. Kalanick, Benchmark, and the other signatories that underlies all of Benchmark's claims. And each of Benchmark's claims would have the effect of nullifying the promises made, and rights granted, to Mr. Kalanick in the Voting Agreement.

B. The Authority Cited By Benchmark Demonstrates Why Arbitration Is Required.

Benchmark principally relies on the Delaware Supreme Court's decision in *Parfi Holding*, and several cases following *Parfi*. But *Parfi* demonstrates precisely why arbitration is appropriate here. In that case, the arbitration clause was in an Underwriting Agreement, which concerned itself (as such agreements do) with "the type of security to be issued, the price and any special features of the security," and similar issues. *Parfi*, 817 A.2d at 157 (internal quotation marks omitted). Those provisions were not implicated, the Court held, by later transactions that dealt with *other* share issues to *other* parties. *Id.* at 158. Significantly, the Court explained that, in determining arbitrability, "[t]he issue is whether the [allegedly non-arbitrable] claims implicate any of the rights and obligations provided for in the" agreement requiring arbitration. *Id.* at 155. In *Parfi* they did not. Here, in contrast, each of the Section 225 claims do not just "implicate" Mr. Kalanick's rights under the Voting Agreement—they seek to void those rights entirely.

The other cases relied upon by Benchmark likewise are readily distinguishable. In *Chandler*, the court found that claims did not arise from the agreement containing an arbitration clause because they were wholly unconnected. *Chandler v. Ciccoricco*, 2003 WL 21040185, at *15 n.65 (Del. Ch.). That is not even arguably the case here.

In *Majkowski*, the party seeking arbitration was trying to enforce a clause in a contract to which *neither side* litigating the case was a party and, indeed, the contract containing the arbitration provision was not even entered into until after the parties had entered in the contract that formed the basis for the lawsuit. *Majkowski v. Am. Imaging Mgmt. Servs., LLC*, 913 A.2d 572, 576, 584 (Del. Ch. 2006). The plaintiff in that case had a choice between enforcing two separate agreements, providing separate rights. *Id.* at 584 & 584 n.28. In that circumstance, not present here, the Court found that the choice to proceed under the agreement without an arbitration provision was properly left to the discretion of the plaintiff. And notably, the Court in *Majkowski* found that had the parties timely raised the issue, the Court "would have been required to dismiss or stay th[e] action pending an arbitrator's determination of the substantive arbitrability issue." *Id.* at 581 n.13 (citing *Willie Gary*, 906 A.2d at 80).

Finally, Benchmark's reliance on *Hough* is similarly unavailing. *See* Benchmark Br. at 18. As an initial matter, the discussion of integration clauses in

Hough is not relevant here because in that case *both* the relevant contracts were *separately* integrated. *Hough Assocs., Inc. v. Hill*, 2007 WL 148751, at *2 (Del. Ch.) (noting that "*each* of the Agreements has an integration clause" (emphasis added)). Here, the Certificate of Incorporation contains no integration clause. Moreover, this Court has held that integration clauses do not in themselves bar the application of an arbitration agreement in one contract to another. *See, e.g.*, *Li*, 2013 WL 1286202, at *7 (integration clause "[did] not conclusively establish" that arbitration clause in prior version of agreement was no longer operable). Furthermore, *Hough*'s holding relied on the fact that the two contemporaneous agreements were "designed to satisfy their own unique objectives." *Hough*, 2007 WL 148751, at *6. The opposite is true here: the contemporaneous June 2016 amendments to the Certificate of Incorporation and the Voting Agreement did not have "unique objectives," they had one objective—to increase Mr. Kalanick's ability to appoint board members. *See, e.g.*, Compl. ¶ 24 (alleging that Kalanick requested "*amendments* to the Certificate of Incorporation and Prior Voting Agreement" because these "*amendments* would dramatically increase Kalanick's power over Uber's Board" (emphases added)). There is simply no authority for the proposition that a plaintiff can bring a lawsuit that seeks to nullify rights set forth in an agreement requiring arbitration of all disputes "arising out of or relating to" that agreement simply by the collateral means of attacking a related agreement that was entered into

solely to effectuate the promises set forth in the first agreement. Such a holding would directly conflict with the Delaware Supreme Court's recognition that such contract language "has a broad scope" and signals "an intent to arbitrate all possible claims that touch on the rights set forth in their contract." *Parfi*, 817 A.2d at 155.

III. IF THE COURT FINDS THAT ANY CLAIMS ARE NOT ARBITRABLE, IT SHOULD STAY THOSE CLAIMS PENDING ARBITRATION OF THE OTHERS.

Even if the Court were to (a) reach the issue of arbitrability, and (b) find that one or more of Benchmark's claims is not arbitrable, it should require the arbitrable claims to be arbitrated and stay the remaining claims.

Where fewer than all claims are arbitrable, the Court has the "inherent power to manage its own docket" by staying the non-arbitrable claims "on the basis of comity, efficiency, or common sense." *Legend Natural Gas*, 2012 WL 4481303, at *9 (staying case where "several of the [plaintiff's] claims" were sent to arbitrator for determination of arbitrability). "In cases . . . where a substantial majority of related claims arising out of a series of transactions governed by contract are referable to arbitration under that contract, notions of judicial economy dictate that the entire suit b[e] stayed pending resolution of those issues subject to arbitration." *Harman Elec. Const. Co. v. Consol. Eng'g Co.*, 347 F. Supp. 392, 397–98 (D. Del. 1972); *see also Appforge, Inc. v. Extended Sys., Inc.*, 2005 WL 705341, at *10 (D. Del.) (staying

entire case where non-arbitrable claims were "similar, if not identical" to arbitrable ones).

That result also is dictated by the need to avoid conflicting rulings. *See LG Electronics, Inc. v. InterDigital Comms., Inc.*, 114 A.3d 1246, 1252 (Del. 2015) (noting, in arbitration context, need to avoid "'inconsistent and conflicting rulings and judgments and an unseemly race by each party to trial and judgment in the forum of its choice'" (quoting *McWane Cast Iron Pipe Corp. v. McDowell–Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970))). That need is especially pronounced here because, as Benchmark acknowledges, each of its claims is based on the identical factual allegations. *See* Benchmark Br. at 1–2 (claiming Mr. Kalanick "fraudulently secure[d]" amendments to both the Certificate of Incorporation and Voting Agreement "through the same misconduct"). So, for example, a finding in arbitration that Benchmark was not defrauded into executing the Voting Agreement amendment would be irreconcilable with a contrary finding as to the Certificate of Incorporation. In fact, the arbitrator's findings regarding the Voting Agreement will be preclusive, which is yet another reason to stay any claims that are found to be non-arbitrable. *See Katsoris v. WME IMG, LLC*, 237 F. Supp. 3d 92, 111 (S.D.N.Y. Feb. 27, 2017) (where some claims are arbitrable, "a stay is warranted in part because the prior litigation or arbitration is likely to have preclusive effect over some or all of the claims not subject to arbitration" (internal quotation marks omitted)).

Benchmark's contrary suggestion—that instead the arbitrable claims should be decided in court—stands Delaware's presumption in favor of arbitration on its head. *See Elf Atochem*, 727 A.2d at 295. If there are arbitrable and non-arbitrable claims, the courts favor arbitration first and foremost, not the other way around. Nor is there anything to Benchmark's assertions that the arbitrable claims should be litigated because doing so would be efficient and public. *See* Benchmark Br. at 24–25. The arbitration inevitably would be more efficient because the arbitration clause allows for only "limited discovery" consisting of an exchange of documents and witness lists, party depositions, and no other depositions except upon a showing of good cause. Voting Agreement ¶ 5.18. And the privacy of arbitration is a benefit, not a drawback. Benchmark desires to publicly attack Mr. Kalanick, and to peddle its allegations to the media, but that conduct is directly contrary to the interests of Uber, as announced by its Board of Directors.

CONCLUSION

For all of the foregoing reasons, Benchmark's claims should be dismissed pursuant to Court of Chancery Rule 12(b)(1) or, in the alternative, stayed in favor of arbitration.

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