

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

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RE: *Dahle v. Pope*, C.A. No. 2019-0136-SG, Supplemental Briefing

Dear Counsel:

This matter is before me on the Defendants' Motion to Dismiss a derivative complaint under Rules 23.1 and 12(b)(6). As the parties are aware, the Defendants' motion turns in part on whether a communication by the Plaintiff stockholder requesting action by the board of directors should be considered a demand on the board, in which case the Plaintiff has implicitly conceded that the board is capable of exercising business judgement in the matter. The communication at issue has some of the features of a typical demand under Rule 23.1, but explicitly states that it is *not* a demand under that Rule; to refute the

allegation that he has made a demand, the Plaintiff relies in part on what might be termed the Magritte defense.¹

At oral argument yesterday, counsel made me aware that the same counsel are litigating a Motion to Dismiss on the same grounds, featuring a similar letter but different parties, before Vice Chancellor McCormick, *Solak ex rel. Ultragenyx Pharmaceutical Inc. v. Welch*, C.A. No. 2018-0810-KSJM. Decision in that matter is pending. After consulting with the Vice Chancellor, it appears to me that litigants' and judicial economy is best served by my deferring consideration of the instant motion pending decision in *Ultragenyx*, and then allowing the parties to supplement the briefing to incorporate the Court's ruling in that case. The parties should confer on a schedule for supplemental memoranda.

To the extent the foregoing requires an order to take effect, it is SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

¹ See René Magritte, *La Trahison des images*, 1929, oil on canvas, 23.75 by 31.94 in., Los Angeles, Los Angeles County Museum of Art.