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Case No. 2022-0233-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LEWIS D. BAKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No._____
	)	
QUANTUMSCAPE CORPORATION,	)	
	)	
Defendant.	)	

VERIFIED COMPLAINT PURSUANT TO 8 *DEL. C.* § 220 TO COMPEL INSPECTION OF BOOKS AND RECORDS

Plaintiff Lewis D. Baker ("Plaintiff"), by his undersigned attorneys, for this Verified Complaint against defendant QuantumScape Corporation ("QuantumScape," the "Company," or "Defendant"), alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Plaintiff, a beneficial owner of QuantumScape common stock at all relevant times, brings this action pursuant to 8 *Del. C.* § 220 ("Section 220") to enforce Plaintiff's statutory right to inspect certain books and records of Defendant.

2. In particular, Plaintiff wishes to inspect books and records relating to meetings of QuantumScape's Board of Directors (the "Board") dating from no earlier than January 1, 2020 through no later than the date of the Company's response

to the Demand (defined, *infra*) regarding materially false and misleading statements concerning the Company's solid-state batteries.

3. Plaintiff's purpose in making the Demand is reasonably related to his interests as a QuantumScape stockholder. Public information about QuantumScape and its directors' materially false and misleading statements supplies a credible basis to suspect wrongdoing that warrants investigation, including, for instance, the decision denying the Company's motion to dismiss in the Securities Action,[1] which found QuantumScape investors adequately stated securities fraud claims with respect to twenty-six statements under heightened pleading standards. That information, however, is insufficient for Plaintiff's purpose of investigating that wrongdoing and for his separate but related purpose of investigating the independence of each of the Company's directors and officers. Accordingly, Plaintiff seeks a summary Order from this Court requiring the Company to produce the demanded books and records for inspection.

[1] *In Re QuantumScape Securities Class Action Litigation*, Case No. 21-cv-00058 (N.D. Cal. Jan. 5, 2021) (ECF No. 153, Order dated January 14, 2022).

PARTIES

4. Plaintiff has been a continuous beneficial owner of QuantumScape common stock since the Company's November 27, 2020 initial public offering ("IPO").

5. Defendant is a Delaware corporation with its principal executive offices located at 1730 Technology Drive San Jose, California 95110.

SUBSTANTIVE ALLEGATIONS

6. QuantumScape was taken public on November 27, 2020 through a business combination with a special purpose acquisition company. Thereafter, and continuing until at least April 14, 2021 (the "Relevant Period") the Company and certain of its representatives – including Jagdeep Singh ("Singh"), the Chairman of the Board, made a series of claims regarding the Company's solid-state batteries which were revealed as false and misleading, and held to be actionable violations of the Securities Exchange Act by the court in the Securities Action. These false statements (detailed, *infra*) have exposed the Company to massive liability.

7. During the Relevant Period, the Company and its representatives stated, among other things, that QuantumScape's battery technology was "positioned to become a leading supplier of solid-state batteries" for electric vehicles, that QuantumScape's batteries were "designed to be safer, and to deliver greater range,

faster charge times and improved cycle life" as compared to other batteries, and that the Company's batteries enjoyed "up to 80% longer range compared to today's lithium-ion batteries." The Company and its representatives claimed further that the "science risk" of QuantumScape's technology was behind them; that its battery was "ready for commercial deployment" and all that was needed was to "scale up production and make multilayer versions of these cells"; and that its battery exceeded what was capable in lithium-ion batteries. These statements, among dozens of others, turned out to be false.

8. It would eventually be revealed that the Company and its representatives made repeated and knowing false and misleading statements that failed to disclose, *inter alia*, that: (1) QuantumScape's solid-state batteries did not have the advertised power, longevity, or energy density; (2) the Company could not adapt their batteries to be readily usable in electric vehicles; and (3) the Company failed to maintain adequate internal controls.

9. On January 4, 2021, *Seeking Alpha* published an article which concluded QuantumScape's batteries "will likely never achieve the performance they claim," that the batteries likely "will only last for 260 cycles or about 75,000 miles of aggressive driving," and that the batteries' "energy density [target for] 2028 will not beat today's state of the art, and will not be state of the art when it is

achieved." On news of this report, the Company's share price declined by approximately 40.8%, or $34.49 by closing on January 4, 2021. On April 15, 2021, *Scorpion Capital* published a report entitled "QuantumScape [ ] A Pump and Dump SPAC Scam [ ] That Makes Theranos Look Like Amateurs." According to the report, QuantumScape false claimed that its batteries resisted dendrites, performed well in low temperatures, reached 80% charge in fifteen minutes, and had long life. The report included interviews with former QuantumScape employees and several experts. Following the report, QuantumScape's stock price declined by 12.24 percent.

10. Soon after, purchasers of Company stock filed the Securities Action. On January 14, 2022, U.S. District Court Judge William H. Orrick denied defendants' motion to dismiss and found each of the following twenty-six statements sufficient to state a claim for fraud under the Securities Exchange Act in the Securities Action. (*See* Securities Action, ECF No. 153).

11. During a November 27, 2020 television interview, Singh stated: "[w]ell, what we are confident about is that the fundamental science risk is behind us." Singh also stated, "[t]he time between now and first revenue is really spent doing two things. One is ramping up production. Batteries take time to build and scale up. And two is to do the final automotive qualification process, which also

takes some time." The same day, the Company issued a press release stating, "[t]hrough its elegant 'anode-less' design, QuantumScape's solid-state lithium-metal batteries are designed to be safer, and to deliver greater range, faster charge times and improved cycle life, than today's conventional lithium-ion battery technology."

12. During a technology presentation on December 8, 2020, Singh made the following statements regarding the Company's solid-state batteries:

> Okay, so the quick summary is if you have a material that doesn't have the fundamental entitlement to serve as a solid-state separator, you can still make batteries out of that material but they only work under severely compromised test conditions and the main compromises that people use are either very low current densities, which ends up not being useful for real applications like driving a car, or the cycle efforts are being very short or the cells can only work at an elevated temperature or they require excess lithium, which lowers the energy density of the cell. These are the problems that QuantumScape has addressed.
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> [T]he solid-state separator already prevents dendrites, so there's no reason to slow down the rate of charge. You can start charging it at a really high rate and continue charging it at that really high rate until it gets all the way up to 80 percent in less than 15 minutes. This is not only better than any of the solid-state technology, but it's better than you can achieve with conventional lithium-ion batteries, which always have to manage this potential dendriting issue at higher rates of charge.
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> They are not sort of a compromised test conditions.
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> So this really demonstrates that this technology is in fact ready for commercial deployment as soon as we can scale up production and make multilayer versions of these cells.
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> [T]he data we presented today makes clear that the QuantumScape technology can address the fundamental issues.

13. On December 8, 2020, the company filed a Form 8-K Press Release with the SEC, stating in pertinent part:

> [It] has released performance data demonstrating that its technology addresses fundamental issues holding back widespread adoption of high-energy density solid-state batteries, including charge time (current density), cycle life, safety, and operating temperature.
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> QuantumScape's solid-state battery is designed to enable up to 80%longer range compared to today's lithium-ion batteries. Previous attempts to create a solid-state separator capable of working with lithium metal at high rates of power generally required compromising other aspects of the cell (cycle life, operating temperature, safety, cathode loading, or excess lithium in the anode).
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> QuantumScape's newly-released results, based on testing of single layer battery cells, show its solid-state separators are capable of working at very high rates of power, enabling a 15-minute charge to 80% capacity, faster than either conventional battery or alternative solid-state approaches are capable of delivering.
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> Unlike conventional lithium-ion batteries or some other solid-state designs, this architecture delivers high energy density while enabling lower material costs and simplified manufacturing.
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> In addition to eliminating the carbon or carbon/silicon anode, QuantumScape's solid-state design further increases energy density because it uses no excess lithium on the anode.

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> QuantumScape's solid-state separator is noncombustible and isolates the anode from the cathode even at very high temperatures — much higher than conventional organic separators used in lithium-ion batteries.

14. In its Form S-1 filed on December 17, 2020, the Company commented on its solid-state batteries, stating, in pertinent part:

> In addition, we believe our battery technology may provide significant improvements in energy density compared to today's conventional lithium-ion batteries, as shown in the figure below.
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> Our latest single layer prototype cells have been tested to over 800 cycles (under stringent test conditions, including 100% depth-of-discharge cycles at one-hour charge and discharge rates at 30 degrees Celsius with commercial-loading cathodes) while still retaining over 80% of the cells' discharge capacity.
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> ***
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> Our battery technology, and specifically our solid-state separator material, has been tested to demonstrate the ability to charge to approximately 80%in 15 minutes, faster than commonly used high-energy EV batteries on the market.
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> ***
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> Our battery technology eliminates the anode host material and the associated manufacturing costs, providing a structural cost advantage compared to traditional lithium-ion batteries.

15. On January 4, 2021, Singh commented on the Company's solid-state batteries stated during a television interview, stating, in pertinent part:

> We have something that has never been shown to the world before, a solid-state system that delivers levels of performance that are really record breaking not only in comparison to other solid-state efforts, but even in comparison to conventional lithium-ion technology. So if we

> can get this into the market, which is the task we are currently focused on, ramping up production and making these multilayer cells.

16. In an article on LinkedIn published on January 15, 2021, Timothy Holme, the Company's Chief Technology Officer, wrote:

> We believe that safety in our cell will be improved relative to lithium-ion because we have replaced the combustible polymer separator with a nonoxidizable (i.e., non-combustible) separator that is thermally stable to much higher temperatures than polymers, so it will act as a more effective barrier between anode and cathode.
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> What makes QuantumScape's performance data interesting is not just that it shows over 1,000 cycles with good capacity retention, but that it does so under commercially-relevant conditions, including high current density, close-toroom temperature, full depth of discharge, modest pressure, zero excess lithium, and commercially-relevant area and cathode loading.

17. The Company's 2020 fourth quarter shareholder letter, dated February 16, 2021, stated in pertinent part:

> The lithium-metal anode enables higher energy density than is possible with conventional anodes (as high as 1,000 Wh/L compared with approximately 711 Wh/L for conventional cells used in today's best-selling EVs), enabling longer driving range, while simultaneously delivering high rates of power (for fast charge), long cycle life, and improved safety, addressing the fundamental issues holding back widespread adoption of battery electric vehicles.

18. During the Company's QuantumScape's 2020 fourth quarter earnings call, a questioner asked, and Singh responded:

> Q: "[W]hat makes you feel like you'll have a sustainable cost advantage over the rest of the industry?" A: "[]As a result, given we believe our

> separator will be in the same order of magnitude and cost as conventional separators, we expect that the quantitative approach, what should be lower cost than conventional ion cells at any given manufacturing scale."

19. During a February 17, 2021, television interview, Singh stated: "One of the reasons why we went public last year – it was precisely because we thought most of the science -- most of the chemistry risk is behind us."

20. In its Form 10-K filed with the SEC on February 23, 2021, the Company stated, in pertinent part: "Our battery technology eliminates the anode host material and the associated manufacturing costs, providing a structural cost advantage compared to traditional lithium-ion batteries." The Form 10-K also stated, "[o]ur battery technology, and specifically our solid-state separator material, has been tested to demonstrate the ability to charge to approximately 80%in 15 minutes, significantly faster than commonly used high-energy EV batteries on the market."

21. In an interview on February 25, 2021, Singh said: "For the first time in 45 years, someone was able to show a solid-state cell that was capable of performing under uncompromised test conditions—high rates of power—long cycle lives—unelevated temperatures."

22. On January 14, 2022, U.S. District Court Judge William H. Orrick denied defendants' motion to dismiss, finding twenty-six of the twenty-seven statements alleged to be false and misleading were plead with sufficient particularity

to state a claim under heightened pleading standards. (*See* Securities Action, ECF No. 153, Order dated January 22, 2022).

23. Among other things, the court found (1) "it is reasonable to think that investors were entitled to rely on the unequivocal representation that testing results were not 'compromised.'" (*Id*. at 18); (2) "it is reasonable to think that investors were entitled to rely on the unequivocal representation that the fundamental risks facing solid-state batteries were addressed by QuantumScape's technology." (*Id*.); and (3) "if this is all taken as true, it would mean that QuantumScape falsely stated that it was ready for commercialization with the only remaining steps being ramping up production and layering the cells." (*Id*. at 19). With respect to scienter, the court concluded that,

> On the plaintiffs' theory—and taking as true the allegations in the Seeking Alpha article and Scorpion Capital report—the defendants must at least have intended to deceive investors. The reason is that the statements that the defendants made over and over were, according to the plaintiffs' allegations, verifiable falsehoods. QuantumScape insisted many times, for instance, that it used uncompromised testing conditions. According to the disclosures, however, it used compromised testing conditions and reported that data. If that is true, the defendants must have known they were not reporting the truth—there is no middle ground between the two positions. The most cogent inference that can be drawn, therefore, is that the defendants acted with scienter."

(*Id*. at 28).

24. To make matters worse, during the Relevant Period – when QuantumScape's stock price was trading at artificially inflated rates due to the false and misleading statements detailed herein - Company insiders sold QuantumScape stock while in possession of material, non-public Company information. Further, the statements misled the investing public and inflated the Company's stock price in advance of the SPO, beginning on December 31, 2020.

Plaintiff's Books and Records Demand

25. Plaintiff's Section 220 Demand Letter (the "Demand" or "Demand Letter"), dated February 14, 2022, is annexed hereto as Exhibit A and is incorporated herein by reference. Attached to the Demand Letter as Exhibit A was a true and correct copy of Plaintiff's current brokerage account statement reflecting Plaintiff's beneficial ownership of QuantumScape common stock at all relevant times. *Id.* Attached to the Demand Letter as Exhibit B was a true and correct copy of a Special Power of Attorney authorizing Rigrodsky Law, P.A. and the Grabar Law Office to act on behalf of Plaintiff in connection with the Demand. *Id*. Attached to the Demand Letter as Exhibit C was a true and correct copy of a Verification of Plaintiff. *Id*.

26. The Demand Letter was sent on February 14, 2022 via FedEx overnight delivery to the Company's principal place of business in San Jose, California. The Demand Letter was also served on the Company's Registered Agent in Delaware.

27. Plaintiff demanded that QuantumScape[2] provide him with the opportunity to inspect and copy the following books and records[3] within the Company's possession, custody, and control during the usual hours of business within five (5) business days of receipt of the Demand Letter:

> 1. Minutes of all meetings of the Board[4] from January 1, 2020 through the date of QuantumScape's response to the demand, inclusive, during which the following were on the agenda or otherwise discussed at the meetings:
>
> a. The Company's marketing materials, investor conference calls, earnings calls, press releases, promotional events, videos, or other materials or events concerning the Company's lithium-metal solid-state batteries;

[2] "QuantumScape" was defined to include "the Company's subsidiaries as defined at 8 *Del. C.* § 220(a)(2)."

[3] The term "books and records" was to be "construed as broadly as possible under Delaware precedent, including emails of directors or officers, whether or not stored on the Company's servers."

[4] The Demand Letter stated the phrase "all meetings of the Board of Directors of QuantumScape" (here, "all meetings of the Board") included, for the purposes of the letter, "all regular, special, and ad hoc meetings of the Board and all such meetings of regular, special, or ad hoc committees or subcommittees of the Board, whether held in person, telephonically, electronically, or otherwise."

b. The Company's lithium-metal solid-state batteries, including, but not limited to, their safety, range, charge times, longevity, and cycle life, and their capabilities and efficacy compared to lithium-ion batteries;

c. Scientific risks or fundamental risks associated with the Company's lithium-metal solid-state batteries, including, but not limited to, assessments and mitigation of said risks;

d. The readiness of the Company's solid-state batteries for commercial deployment, including, but not limited to, any assessments of the readiness of the Company's solid-state batteries;

e. The Company's reconciliation and/or integration of its solid-state batteries for use in electric vehicles and the readiness of the Company's solid-state batteries for use in electric vehicles;

f. Policies, procedures, and charters applicable to the Board and its subcommittees concerning product manufacturing and financial reporting;

g. The Company's internal controls and Board and Board committee reporting systems concerning product manufacturing and financial reporting, including the adequacy of said controls and systems;

h. The Board's access to internal reports, memoranda and other documents concerning the manufacturing of the Company's lithium-metal solid-state batteries and financial reporting;

i. The drop in the Company's stock price following publication of the Seeking Alpha and Scorpion Capital articles detailed herein;

j. The Company's secondary public stock offering ("SPO"), beginning on December 30, 2020;

k. Insider sales of Company stock, including by Company directors, any associated 10b5-1 trading plans, and any policies, procedures, or charters applicable to the Board and its subcommittees concerning insider sales of Company stock;

l. Director questionnaires; and

m. *In Re QuantumScape Securities Class Action Litigation*, Case No. 21-cv-00058 (N.D. Cal. Jan. 5, 2021) (the "Securities Action");

2. All of the Board's agendas, packages, presentations, reports, exhibits, official correspondence and emails, recordings, summaries, memoranda, transcripts, notes, summaries of meetings, and resolutions for all of the above-described meetings of the Board.

3. Any other stockholder books and records demand letters received by the Company regarding the above-referenced items ("Related Demands").

4. All books, records, and documents produced by the Company in response to Related Demands or related derivative actions.

5. All books, records, and documents produced by the Company in response to the Securities Action.

(Exhibit A, pgs. 2-3).

28. The Demand Letter set forth Plaintiff's desire to inspect the materials listed above for the following legitimate and proper purposes, all of which are reasonably related to Plaintiff's interests as a stockholder of QuantumScape:

A. Investigating wrongdoing, mismanagement, and breaches of fiduciary duties by the members of the Board, Company officers, and/or others, including, but not limited to, the dissemination of materially false and/or misleading

statements or material omissions, insider sales, and other wrongful conduct alleged herein;

B. Assessing the ability of the Board to consider impartially a demand for action, including a request for permission to file a derivative lawsuit on the Company's behalf, related to such issues; and

C. Taking appropriate action if the members of the Board did not properly discharge their duties, including making a demand on the Board and/or preparing and filing a stockholder derivative lawsuit, if appropriate.

(*Id*. at 3).

29. The Demand Letter also stated:

> An additional purpose to those stated above is to take appropriate action if the Board did not properly discharge its duties. This purpose relates to a stockholder's decision about how to act in the event the demanded inspection reveals impropriety or actionable conduct. Possible courses of conduct include making a demand on the Board to act or initiating litigation against the Board on the Company's behalf. Both possible courses of action are well within a stockholder's rights under Delaware law, and, thus, gathering information for this purpose is proper.

(*Id*. at 10).

30. Plaintiff designated Rigrodsky Law, P.A. and the Grabar Law Office as his agents to conduct the demanded inspection.

31. By letter dated February 23, 2022, counsel for QuantumScape declined to produce any books or records, stating the Demand was "technically deficient" and failed "to establish the required credible basis". The letter is annexed hereto as Exhibit B and is incorporated herein by reference.

32. QuantumScape's ten-page letter spent more than six pages arguing that Plaintiff's Demand "Relies on Unreliable Sources" – an argument the court has already specifically rejected in the Securities Action. Indeed, after noting that "QuantumScape overstate[d] [ ] caselaw", the court found that the *Seeking Alpha* article was "littered with factual assertions that purport to show that QuantumScape's own factual assertions are incorrect" and that the "substance of the [*Scorpion Capital*] report shows that it is sufficient to survive [defendants'] challenge at the pleadings stage." (Securities Action, ECF No. 153 at 14-15). The court concluded that, "[o]n the whole, ***it is plausible that reasonable investors would have relied on both publications***…" (*Id*. at 15) (Emphasis added). Neither Defendants' regurgitation of rejected arguments nor its other boilerplate responses provide a legitimate defense to Plaintiff's Demand.

33. Defendant has therefore failed to adequately respond to Plaintiff's lawful and proper Demand.

34. Accordingly, Plaintiff brings this action to enforce his rights under Section 220(c) based on Defendant's failure to provide books and records in response to Plaintiff's Demand.

CAUSE OF ACTION

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

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

36. Plaintiff has complied fully with all requirements under Section 220 concerning the form and manner of making a demand for inspection of QuantumScape's books and records.[5]

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

38. QuantumScape has wrongfully failed to comply with the Demand.

39. Pursuant to Section 220, Plaintiff is entitled to apply to this Court for an Order compelling inspection of QuantumScape's corporate books and records because the Company has wrongfully refused to permit the inspection after Plaintiff complied with said statute concerning the form and manner of making a demand for inspection of such documents and articulated a proper purpose for the inspection.

[5] Plaintiff's proof of ownership is attached hereto as Exhibit A to Plaintiff's Demand and incorporated herein by reference.

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

41. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. An order summarily requiring QuantumScape to permit immediately the inspection and copying of each and every requested book and record in un-redacted form as set forth in Plaintiff's February 14, 2022 Demand Letter;

B. An order directing QuantumScape to pay Plaintiff's reasonable attorneys' fees and expenses in connection with the Demand and related litigation; and

C. Such other and further relief as this Court deems just and proper.

Dated: March 11, 2022

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