SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SEAN RAD, Plaintiff/Counterclaim-Defendant, - and - PAUL CAFARDO, GARETH JOHNSON, ALEXA MATEEN, JUSTIN MATEEN, and RYAN OGLE, Plaintiffs, - against - IAC/INTERACTIVECORP, MATCH GROUP, INC., and MATCH GROUP, LLC, Defendants/Counterclaim-Plaintiffs.	Index No. 654038/2018 Part 3 Hon. Joel M. Cohen Motion Sequence No. 022

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE EVIDENCE RELATING TO THE INTERNAL INVESTIGATION OF CEO GREG BLATT

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PRELIMINARY STATEMENT

Some people can't take a hint. In defiance of this Court's express warning not to do it, Defendants have prematurely filed their motion in limine to exclude evidence of their investigation into Match CEO and Chairman Greg Blatt. Defendants do not want the jury to learn that on the eve of the 2017 valuation, the Match Board was confronted with explosive allegations that Blatt—the architect and master of their scheme to corrupt the valuation and deprive Plaintiffs of billions of dollars—had sexually assaulted a subordinate at Tinder's 2016 holiday party. Defendants know that if the jury sees the evidence that their investigation of Blatt was a sham and a whitewash—that the investigation was so egregiously deficient compared to how companies normally handle these situations—the jury will conclude that Defendants' motive was to protect Blatt, to keep him in place, and to ensure that he remained at the controls to execute Defendants' corrupt scheme by engineering a lowball valuation.

The parties are in the midst of discovery into the events surrounding Defendants' investigation. Plaintiffs have a pending motion to compel the production of Defendants' notes and summaries of witness interviews from the investigation. And over the next several weeks, the parties will take and defend at least four depositions concerning the investigation. If Defendants had filed this motion in a timely and orderly fashion on a complete record after discovery closed, Plaintiffs would have welcomed the opportunity to respond on the merits. But Defendants chose a different path. They elected to race to the courthouse with this ill-timed tactical gambit, demanding that this Court rule on an incomplete factual record, and rejecting the Court's admonition that they wait until their motion is ripe so that all motions in limine could be coordinated and resolved once discovery is complete.

[redacted]

The Court should deny the premature motion in limine with prejudice. As the Court warned Defendants, "I would prefer to have the motions in limine when discovery is complete," and "if you file the motion and it is the wrong time, I am not sure I am going to let you file it again at the right time." Ex. 1 (April 15 Hearing Tr.) at 52–53. Defendants filed at the wrong time. Discovery is ***not*** complete. Plaintiffs' motion to compel is pending and there are four upcoming depositions scheduled that all concern the Blatt investigation, and another may be added. The Court should deny Defendants' motion without leave to refile.

If the Court were inclined to take the extraordinary step of ruling on the merits of a motion in limine while the parties are still taking discovery that bears directly on that motion, the Court should deny it. Evidence concerning Defendants' sham investigation is relevant to the central issues in this case—including whether Blatt and Defendants corrupted the Tinder valuation—and it would be error to keep this highly probative evidence from the jury.

At the end of 2016, Tinder was one of the fastest growing technology companies in history. This posed a serious problem for executives at Tinder's corporate parents—Defendants InterActiveCorp ("IAC") and Match Group, Inc. ("Match")—in that many Tinder employees, including Plaintiffs, had the contractual right to sell stock options at a value to be set by Tinder's upcoming 2017 valuation. Defendants knew that a fair valuation would cost them billions. For that reason, the valuation was the most significant corporate event in the company's history.

Defendants began plotting a corrupt scheme to undervalue Tinder. The scheme's principal architect was Greg Blatt, the CEO and Chairman of Match who was installed as "interim" CEO of Tinder months before the valuation. His mission was to deny the banks performing the valuation the information they needed to make a fair and accurate assessment. By withholding financial information and internal projections that would establish Tinder's true value, Blatt would corrupt the process by leading the banks to radically undervalue Tinder and deny Plaintiffs and other Tinder employees the billions of dollars they had earned.

But on the eve of the valuation, a shocking event threatened to upend Defendants' plans. Blatt's subordinate, Rosette Pambakian, accused him of sexually assaulting her at Tinder's holiday party. If the Match Board fired Blatt, or even suspended him temporarily, a new CEO would step into his shoes and take charge of conveying Tinder's financial information to the valuing banks. That posed an unacceptable risk to Defendants, as there would be no assurance that a new CEO

would continue down Blatt's corrupt path. Blatt was a longtime and loyal subordinate of Barry Diller, the chairman of IAC who controlled the IAC family of companies, including Match and its subsidiary Tinder. If the new CEO were honest and gave the banks the information they needed for a fair and accurate valuation, it would cost Defendants billions.

But Defendants could not simply ignore the allegations. They decided to launch an investigation that was anything but an honest truth-seeking inquiry. Quite the opposite—it was a sham and a whitewash designed to create the false appearance of a genuine investigation, when in reality its purpose was to keep Blatt in power and at the helm of the corrupt scheme, at least until the valuation was complete and Blatt could be let go. And that is precisely what happened.

Plaintiffs will show the jury that the rigged investigation was so inadequate in light of the severity of the allegations—so patently deficient compared to how companies normally handle these types of inquiries—that the only reasonable inference is that Defendants were driven by a desire to ensure Blatt could execute their corrupt scheme to undervalue Tinder. Evidence concerning the sham investigation goes directly to the issue at the heart of this case: how Defendants, through Tinder CEO Blatt, corrupted the valuation by feeding the banks false information and withholding the information necessary for a fair and accurate assessment of Tinder's value.

The motion in limine should be denied.

BACKGROUND

On December 8, 2016, Tinder co-founder Sean Rad was replaced as CEO by Greg Blatt, effective immediately. At the time, Blatt was the Match CEO and Chairman, and a longtime right-hand to Barry Diller, the CEO of IAC, Match's parent company.

Plaintiffs allege, and will prove at trial, that a principal reason for Blatt being installed as Tinder's CEO was to enable him to take control of the company so that he could engineer the

scheme to corrupt the 2017 valuation of Tinder. The contracts governing the valuation called for ***Tinder management*** to provide the valuing banks with financial information and forecasts about Tinder. As "interim" CEO, Blatt could commandeer the upcoming valuation process and provide the banks with false and misleading financial information about Tinder. That way, Defendants could engineer a massive undervaluation that would deprive Plaintiffs and other Tinder employees of billions of dollars they were entitled to.

Blatt succeeded in his corrupt mission. But he was only able to do so because the Match Board decided to keep him in place as Tinder CEO despite what he did during the early morning hours of December 10, 2016.

I. The Holiday Party.

On Friday, December 9, 2016, the day after Blatt's appointment as CEO, Tinder held a company holiday party at the SLS Hotel in Los Angeles. [redacted]

After the party, Pambakian went to a hotel room with two friends and colleagues: [redacted], a communications manager at Tinder; and [redacted], Blatt's executive assistant. Blatt went to the room around 2:00 a.m. [redacted]. [redacted]

Pambakian testified that, without consent, Blatt "climbed on top of [her] and was groping" her breasts and in between her thighs as he kissed her arm, shoulder, and neck. Ex. 3 (Pambakian Tr.) at 139:2-141:12. Pambakian testified she pulled away and turned her head to avoid Blatt's

continued, unwelcome groping. *Id*. After Blatt left the hotel room, Pambakian, [redacted], and [redacted] stayed behind, "stunned and shocked by what happened." *Id.* at 136:25-138:8.

The following Monday, when they returned to the office for work, Blatt met individually with Pambakian, [redacted] and [redacted] apologized to them, and asked them to keep quiet about what had happened. *See id*. at 292:21-294:24; Ex. 4 ([redacted] Tr.) at 174:15-175:21; Ex. 5 ([redacted] Tr.) at 128:21-130:17.

II. Defendants Scheme To Steal Billions Of Dollars From Tinder Employees.

The holiday party occurred just months before the most important event in the history of Match: the private valuation of Tinder. At the time, Tinder was one of the fastest growing technology companies in history, and Plaintiffs and other Tinder employees had a contractual right to sell stock options at a value to be determined through the private valuation. Billions of dollars were on the line.

Tinder employees could exercise their stock options on four specific future dates called "Scheduled Puts." Ex. 6 (PLS0013879) § 2(a). In connection with each Scheduled Put, Tinder was required to undertake a "Qualifying Valuation Process." Two banks would provide their "independent" determinations of Tinder's standalone value based on information provided by Tinder management. *Id.* § 2(a) & Sch. A.

Long before the first Scheduled Put in May 2017, Defendants knew they had a problem. Tinder employees collectively owned vested stock options worth approximately 30% of the value of Tinder. Defendants knew they would be on the hook to pay Tinder employees billions of dollars for the explosive growth those employees had created—a liability Defendants had never accurately disclosed to the market. In private emails, Blatt and other Match executives valued Tinder in the range of $7.05 to $11.75 billion. *See* Ex. 7 (MAT_RAD00114027). Yet in its 2016 Form 10-K, Match stated the "aggregate intrinsic value of all subsidiary denominated equity" (i.e., the value

of the stock options) was only $329.1 million, meaning the value of Tinder as a whole was less than $2.2 billion. Ex. 8 at 84. Separate and apart from the cost of the payouts themselves, the vast discrepancy between what Match was telling the public—and what its executives were acknowledging behind closed doors—created extreme risk for the company and the possibility of serious legal consequences, including government enforcement actions or shareholder litigation.

And the May 2017 Put was just the first Scheduled Put. Tinder employees could choose whether to exercise their vested options in May 2017 or wait until the next exercise opportunities in 2018, 2020, or 2021. Ex. 6 §§ 2(c), 2(d)(ii). The more valuable Tinder became, the more Defendants would have to pay employees. As Tinder's value continued to skyrocket, Defendants would be on the hook time and again for fair—and enormous—payouts.

Defendants hatched a scheme to underpay Tinder employees and then extinguish their contractual rights. First, Defendants would corrupt the 2017 valuation by providing false information to the banks and compromising the banks' independence through a secret pressure campaign. Second, immediately after the valuation, Defendants would merge Tinder into Match and claim that the merger allowed them to terminate the contracts and all future valuations of Tinder.

Defendants installed Blatt as Tinder's CEO and the scheme's central player. In January 2017, Blatt began executing the scheme. He hired J.P. Morgan to conduct—in Match's own words—a "shadow valuation" of Tinder, and used this secret engagement to reverse engineer the lowball valuation Defendants desired. Ex. 9 (MAT_RAD00498240); Ex. 10 (MAT_RAD00173715); Ex. 11 (MAT_RAD00173714). [redacted], he proposed to Rad that they avoid

the independent bank-valuation process the contracts required. Rad rejected the idea and insisted the parties follow the contracts.

Blatt ensured the banks would receive similarly phony projections. When he discovered the Tinder Finance team had started preparing its own projections, he erupted. Blatt emailed Match CFO Gary Swidler that this was "**totally going to fuck us**" and instructed him: "That should not be happening right now. Please stop it if it is. ... **This is really bad. We need to be controlling everything here**. We're effectively in litigation and you can't have [Tinder Finance] running around doing things." Ex. 12 (MAT_RAD00229353) (emphases added); Ex. 13 (MAT_RAD00352086). Swidler pledged he would "stop" the creation of the Tinder Finance projections, Ex. 14 (MAT_RAD00609791), which he did.

On April 20, 2017, Blatt wrote a smoking-gun email to IAC executives, including Diller, making clear what was at stake for Defendants:

> This valuation process is going to be ugly. **We can get to a good valuation for us** [Defendants] but the process will put a lot of pressure on the organization, on an already fragile employee situation, and will take up a lot of time (as well as cost us about $4 million in fees). **I'd like to try to make a deal** [with Rad], but the time to make it is right now, while our stock is strong. … **I would try to do this as an IAC acquisition which forever extinguishes the program**. … **Given the fact that this significantly limits the extent to which employees can benefit from continued upside at Tinder**, I would add an additional Tinder related incentive to existing employees going forward, but not to Sean/Justin, who own about 80% of the total value of the program. … **(Without collapsing the program, there is no way to prevent Sean from retaining his Tinder equity for at least one more valuation cycle 18 months away)**.

Ex. 15 (MAT_RAD00557256) (emphases added). But Blatt was unable to "make a deal" because Rad rejected his lowball settlement offers and insisted on moving forward with the Scheduled Put. Faced with the reality of having to go through with the rigorous valuation process required by the

contracts, Defendants knew they needed to get a "good valuation" in 2017 and then "collaps[e]" the Tinder option program forever. *Id*.

III. Defendants Conduct A Sham Investigation And Whitewash Blatt's Misconduct To Keep Him In Power.

Before the 2017 valuation process began, Pambakian told Rad what Blatt had done to her at the holiday party. Rad told his attorney, Marty Korman of Wilson Sonsini, and the two of them notified Match's General Counsel, Jared Sine. *See* Ex. 16 (Korman Tr.) at 246:23-249:20. After Blatt learned that the allegation had been reported, he accused Rad of "trying to burn down the house" and **said that Diller** "**threatened to go after [Rad] for everything that he has, his parents have, and anyone he knows has**." Ex. 17 (MAT_RAD00839676).

The Match Board had no interest in conducting a genuine investigation into Pambakian's allegations. Blatt was managing the scheme to corrupt the valuation and Defendants could not afford to lose him. Instead of hiring outside counsel, the Board appointed two Match employees and Blatt loyalists to interview witnesses: Sine and Lisa Nelson, Match's then-Vice President of Human Resources. *See* Ex. 18 (McDaniel Tr.) at 189:13–190:9. These were not just any employees. Sine and Nelson reported directly to Blatt—still Match's Chairman and CEO at the time—and Nelson had worked under him for many years.

On May 1, 2017, on the eve of the valuation, Sine and Nelson interviewed Pambakian and [redacted] On May 3, Pambakian met with Sine and Ed Ferguson, IAC's Associate General Counsel. Pambakian testified she repeatedly made clear in both interviews that Blatt's actions were neither welcome nor consensual. Ex. 3 (Pambakian Tr.) at 141:16-142:10, 154:16-158:10. The same day, Blatt met with Ferguson and Gregg Winiarski, IAC's Executive Vice President and General Counsel. [redacted]

[redacted]

On May 4, Blatt emailed Pambakian and [redacted] asking to meet over videoconference. Pambakian informed Sine, Nelson, and Ferguson about Blatt's email, stating she was scared for her "job, career, reputation and safety" and did not "feel comfortable going into the office." Ex. 19 (MAT_RAD00842821). Pambakian did not agree to meet with Blatt, but [redacted] did. Afterwards, [redacted] texted Nelson and Pambakian that the conversation "made [her] very uncomfortable," and that she would "no longer like to be involved" in the investigation. Ex. 20 (PLS0010957, 59). Pambakian responded similarly: "I'm not comfortable talking about this further until I get some counsel from a lawyer." *Id.*

On May 6, the Match Board's Compensation and Human Resources Committee met to discuss the allegations. *See* Ex. 21 (MAT_RAD00840884). Also in attendance were Sine, Winiarski, and Neil Abramson, Match's labor and employment lawyer at Proskauer Rose LLP. *Id.* At the meeting, the Committee rejected Rad's request for the Tinder Board to conduct its own investigation. *Id.* Korman testified he expressed concerns to Match's in-house and outside counsel "that the matter was not being taken seriously and that no independent investigation was taking place." Ex. 16 (Korman Tr.) at 249:21-250:20 ("[I]t was being swept under the rug."). The Committee also decided to have Defendants' longtime counsel at Wachtell, Lipton, Rosen & Katz review the matter, even though Blatt previously worked there and the law firm had represented Diller and his companies for many years. *See* Ex. 21 (MAT_RAD00840884). Wachtell was also representing Defendants in the valuation process, with some of the same corporate lawyers involved in communications about the sexual assault investigation.

On May 11, 12, and 22, the Match Board met again, along with Sine, Abramson, and Wachtell lawyers. *See* Ex. 22 (MAT_RAD00563805, 06). At the same time, in parallel, Blatt was hard at work corrupting the valuation process. At its May 22 meeting, the Match Board received a report from Wachtell and Proskauer regarding the investigation. *Id*. [redacted]; Ex. 18 (McDaniel Tr.) at 199:10-200:10; Ex. 3 (Pambakian Tr.) at 118:17-18. At the May 22 meeting, the Board found "there has been no negative impact in the work place with respect to the two employees principally involved in the events"—even though Pambakian's and [redacted]'s communications with Nelson said the opposite. Ex. 22. The Match Board concluded Blatt should remain as Tinder's CEO for the time being, and that he should "receive a reprimand from the Board regarding his conduct" and "participate in executive leadership training." *Id.*

No one at Match, IAC, Wachtell, or Proskauer ever interviewed [redacted], the fourth person in the hotel room. Had they done so, [redacted] would have corroborated Pambakian by telling them that Pambakian "seemed uncomfortable" at the holiday party, Ex. 5 ([redacted] Tr.) at 38:2–40:12; that he, Pambakian, and [redacted] had a conversation in the hotel room "about the fact that [they] did not want [Blatt] to come to the room," *id.* at 55:13–59:6; that when Blatt arrived, he was "visibly drunk" and "kind of stumbled in," *id.* at 63:22–65:10; that he did not see or hear anything that night to indicate that Blatt's conduct as it relates to Pambakian was consensual or welcomed by Pambakian, *id.* at 77:21–78:10, 144:15-146:7; and that he did not hear Pambakian ask or otherwise motion Blatt to get on the bed, *id.* at 80:10-21. [redacted] **testified that he believed Blatt's conduct toward Pambakian was "not consensual"—critical evidence that the Match Board chose not to learn at the time.** *Id*. at 144:19-20.

Although Board Member Ann McDaniel initially testified that the Board decided not to interview [redacted] because he "asked not to speak to anybody" and "didn't want to be involved," Ex. 18 (McDaniel Tr.) at 197:5-198:7, 201:7-16, she later submitted an errata sheet reversing her testimony to say it was because Pambakian "expressed concern about confidentiality in the workplace" Ex. 24 at 2. [redacted] Ex. 5 ([redacted] Tr.) at 133:13-134:2, 136:12-137:14.

IV. Blatt Corrupts The Valuation Process.

The formal bank valuation process began in mid-May 2017, at the same time the Match Board decided to give Blatt a nominal slap on the wrist and allow him to stay on as Tinder's CEO. Tinder retained Barclays and Deutsche Bank to provide the "independent" valuations of Tinder. But Blatt made sure the banks received corrupted financial projections—developed by Match over the prior months—to yield a lowball valuation. Blatt went to great lengths to ensure the final valuation would be no higher than $3 billion, including by delaying the launch of transformative new features. *See* Ex. 25 (MAT_RAD00423796). [redacted] Blatt also bullied and intimidated Tinder employees to prevent them from telling the banks the truth, *see* Ex. 27 (MAT_RAD00152411); by his own admission, "argue[d] negative things" about Tinder to the banks even though he thought Tinder was an "incredible business," Ex. 28 (MAT_RAD00351784); lied to the banks about the existence of an updated forecast, *see* Ex. 29 (MAT_RAD00610483); Ex. 30 (MAT_RAD00499894); and allowed frequent, undisclosed

back-channel communications with the banks to pressure them to lower their valuation, *see* Ex. 31 (MAT_RAD00222963-71).

In June 2017, Barclays and Deutsche Bank delivered their preliminary valuations of Tinder of approximately $2.4 billion and $3.4 billion, respectively. Garbage in, garbage out. [redacted] Rad pleaded with the banks to speak to Tinder management directly, without Defendants' involvement, to determine the true valuation of Tinder, which he knew to be much higher. Blatt prevented that from happening. He did all he could to wrap up the process as quickly as possible, so that Tinder's actual performance, which increasingly outpaced his phony projections, could not be taken into account. [redacted]

V. Blatt Rushes To End The Valuation Before His Misconduct Would Become Public.

In early July 2017, Rad was contacted by a reporter seeking information about a story that would publicly reveal Blatt's sexual misconduct. Rad promptly notified the Match Board. On July 3 and 4, 2017, the Board met to discuss the matter and suggested to Blatt that he promptly resign his positions at Tinder and Match. *See* Ex. 32 (MAT_RAD00181683); Ex. 33 (MAT_RAD00571935, 36). Blatt was prepared to resign and drafted a company-wide resignation letter in which he admitted he "did a stupid thing at the Tinder Christmas party this year." Ex. 34 (MAT_RAD00506726).

The Match Board, however, soon changed course and determined that it "[was] comfortable with the original decision" it made in May—to keep Blatt on a little longer as Tinder's

CEO. Ex. 18 (McDaniel Tr.) at 227:8-228:14; *see* Ex. 33 (MAT_RAD00571935, 36). Diller testified that Marty Lipton, Wachtell's founding partner, initially advised the company that it had an obligation to disclose Blatt's misconduct upon his resignation. Ex. 35 (Diller Tr.) at 356:12-357:10. Both Diller and the late Jack Welch, former Chairman and CEO of General Electric and longtime advisor to IAC and Diller, were dissatisfied with Lipton's advice. *See* Ex. 36 (JW_RAD00000717). Diller subsequently notified Welch that Lipton had "changed his opinion," noting: "[N]ow we're all right – protecting GB is the right thing to do but GB also makes it harder every day." Ex. 37 (JW_RAD00000718).

Blatt expressly recognized that public exposure of his misconduct—and the consequences, including his termination, that could result—threatened the scheme to corrupt the valuation. On July 8, 2017, he sent an email making explicit the connection between the investigation of his misconduct and the valuation, writing: "**I hate to have the paths cross**, but the most important thing for the company (and me) is to not have a story break. I think completing the conversion is the best protection against a story breaking." Ex. 38 (MAT_RAD00496032) (emphasis added). Blatt and his Match subordinates rushed the banks to finish the valuation before a press story revealing his misconduct would be published.

VI. Blatt Resigns Two Weeks After Corrupting The Valuation And Cancelling The Contracts.

On July 13, 2017, Barclays and Deutsche Bank delivered their final reports, resulting in a $3 billion valuation of Tinder. The same day, Defendants merged Tinder into Match, converted all outstanding Tinder options into Match options (at the corrupted valuation), and terminated the Tinder option contracts (and optionholders' rights to future valuations in 2018, 2020, and 2021).

Only after the valuation and merger were complete did Defendants replace Blatt as Tinder's CEO. The August 1, 2017 press release announcing Blatt's departure made no mention of his

misconduct. In fact, the Board allowed Blatt to continue vesting into tens of millions of dollars' worth of stock options in exchange for no more than 80 hours of work per year. Ex. 39 (MAT_RAD00484287). Then, at the end of 2017, Match gave Blatt a $3 million bonus. Ex. 40 (4/30/2018 Match Group, Inc. Schedule 14A) at 24. Although the Board had considered "reducing or denying" Blatt's bonus because of his "inappropriate behavior" at the holiday party, the Board ultimately decided—upon Diller's urging—to grant Blatt the full, multimillion-dollar bonus because of the "very good results" he delivered for Defendants. Ex. 41 (MAT_RAD00842975); Ex. 42 (MAT_RAD00840050).

LEGAL STANDARD

"[A]ll relevant evidence is admissible at trial unless admission violates some exclusionary rule." *People v. Alvino*, 71 N.Y.2d 233, 241 (1987). "[E]vidence is relevant if it tends to prove the existence or non-existence of a material fact, i.e., a fact directly at issue in the case." *People v. Primo*, 96 N.Y.2d 351, 355 (2001). The party seeking to exclude the evidence bears the burden of demonstrating that "its probative value is outweighed by the prospect of trial delay, undue prejudice to the opposing party, confusing the issues or misleading the jury." *Id*.

ARGUMENT

I. Defendants' Motion Is Premature And Should Be Denied With Prejudice.

Defendants did exactly what this Court warned them not to do—prematurely file their motion in limine at a time when discovery remains ongoing and their motion is not ripe. Plaintiffs are still conducting discovery into the sham investigation and at least four witnesses that will testify about matters relating to the investigation have yet to be deposed.

Plaintiffs have a pending motion to compel the production of notes, interview summaries, and other materials concerning Defendants' interviews of Blatt and other witnesses. This Court cannot rule on the admissibility of investigation-related evidence when Plaintiffs are still gathering

that evidence. Nor can Defendants deny a connection between the investigation and the valuation when they are refusing to turn over documents that may contain further evidence linking the two. Indeed, Defendants have admitted they filed their premature motion in a preemptive effort to "moot" Plaintiffs' motion to compel. MIL 5. That is a clear signal that the interview notes and narratives either make an explicit link between the investigation and the valuation, or will otherwise undermine their effort to keep this information from the jury.

In addition, there are at least four depositions, scheduled over the next several weeks, that will provide crucial testimony concerning the investigation:

Judy Kalisker is a leading expert in how companies conduct internal investigations. She will testify that Defendants' investigation violated widely accepted human resources practices. In particular, she will testify that the investigation was deeply flawed in key respects: It was neither objective nor impartial; it was not thorough; Blatt was improperly allowed to influence witnesses and decision-makers; and the outcome was irreconcilable with Blatt's conduct, suggesting that the investigation was compromised.

Barbara Ziv is a highly respected forensic psychiatrist and expert in sexual assault. She will testify as to how victims of sexual assault sometimes have subsequent, even friendly, contact with the perpetrator. She will debunk Defendants' argument that Pambakian's subsequent interactions with Blatt suggest that his assault was consensual.

Renee Binder is a Professor of Psychiatry at the University of California San Francisco. Like Ziv, she will testify about how victims of sexual assault interact with their perpetrators.

Ginger McRae is a consultant. She will testify about whether Defendants' investigation was consistent with their own policies and generally accepted human resources practices.

In addition, Defendants have asked to resume Rad's deposition. His testimony will also address the investigation.

All of these depositions will add to the quantum of relevant evidence because the more biased the investigation was—the more it deviated from widely accepted corporate practices—the more likely the jury will find that the purpose of the investigation was ***not*** to find the truth but to keep Blatt in power so that he could corrupt the valuation.

Defendants knew better than to file their motion before discovery was complete. During the April 15 hearing, the Court gave Defendants clear and direct advice:

> I told you what I would prefer. The risk in filing a motion in limine, just to be candid, is that if I do find it premature, I'll just deny it, or potentially just deny it, and that'll be the only time I'll hear it. So, you know, it better be ripe …. I think it is pretty clear it is going to be met with an argument that it can't be decided now because of X, Y or Z; and you may have a very good response to that; but if it turns out that it really was in fact inefficient and at a time when the record was incomplete, I think one possible outcome of that is, is that you will lose the motion and not have the ability to bring it up again.

Ex. 1 (April 15 Hearing Tr.) at 52–53.

Defendants do not have a "very good response" as to why they filed prematurely in the midst of discovery. Indeed, they offer ***no*** response for why they filed before Plaintiffs' motion to compel has been decided. And their prediction that "nothing from expert discovery will bear upon this motion," MIL 4, is clearly wrong; all four experts discussed above will provide evidence concerning Defendants' investigation. The Court should deny Defendants' premature motion in limine without leave to refile.

II. If The Court Reaches The Merits, The Motion Should Be Denied.

A. Evidence Concerning Defendants' Investigation Is Directly Relevant To Their Scheme To Corrupt The Valuation.

The bar for relevance is low and this evidence easily clears it. Defendants rigged the corrupt investigation to ensure a corrupt valuation. The investigation into Blatt was occurring in

early-to-mid May 2017, just as Blatt and other Match executives were developing false financial projections to be submitted to the banks and the valuation process entered its final and most critical stage. If Blatt were abruptly removed as Tinder's CEO just as the banks were getting ready to assess the financial projections and make their valuations, his replacement could cost Defendants billions if the new CEO refused to follow the corrupt script and gave the banks a complete picture of Tinder and its financial future. Blatt was uniquely situated, by virtue of his 20-year history with the company, to carry out the scheme. He was a well-known bully who amassed enormous power as Match CEO and Diller's consigliere. *See* Ex. 26 (Dubey Tr.) at 120:2-14 (Match CEO Shar Dubey testimony that people called Blatt a "bully" and that he made her cry).

Everything depended on keeping Blatt in power. So when Pambakian's allegations surfaced, Defendants conducted what they portray as a legitimate investigation but what in reality was a cover-up. The objective was to protect the CEO and keep him in power so he could execute the scheme. The whitewash worked. Blatt stayed in place and kept firm control over the valuation. Two weeks later, having served his purpose, Blatt was out.

The probative value is clear. When confronted with serious, potentially career-killing allegations against their CEO, Defendants were willing to go to extreme lengths to rig an investigation and keep him in power to execute their corrupt scheme. The valuation was the most important event in the company's history; engineering a favorable outcome was Blatt's most important duty; and the investigation was occurring at the same time the valuation was happening. The investigation was inextricably interconnected with the valuation because Blatt could corrupt the valuation only if he remained as CEO—and he could only remain as CEO if the investigation came out the right way for Defendants.

The investigation is also relevant as an integral part of the events giving rise to this lawsuit. Plaintiffs challenge the 2017 Tinder valuation. Yet the story of the valuation cannot be accurately told if it omits the central fact that Defendants enabled Blatt's chicanery only by engaging in chicanery of their own. The jury will not be given a complete picture of the events surrounding the valuation if it is not told that the principal engineer of the scheme to corrupt the valuation was under internal investigation by Defendants with his job and public reputation on the line at the very moment he was wielding his considerable power and influence to bring Defendants' scheme to fruition. *See People v. Kozlowski*, 11 N.Y.3d 223, 239 (2008) (evidence of internal investigation was relevant and admissible where "used to establish how the company reacted once it became aware of evidence suggesting that [defendant] may have violated company . . . procedures"); *id*. at 240 ("It is fundamental that facts" concerning an internal investigation "are the appropriate subject of evidence") (cleaned up).

Defendants ignore all of this in contending that "the Tinder holiday party is irrelevant." MIL 11–15 (cleaned up). But this trivializes and mischaracterizes the issue here. Plaintiffs have no interest in litigating what Blatt did or did not do in the hotel room for its own sake. Rather, what is relevant is Defendants' ensuing ***investigation***, and how Defendants sought to keep their valuation scheme on track by going to extreme lengths to protect Blatt. Defendants quote Justin Mateen as purportedly admitting that he did not believe the events at the holiday party had anything to do with the valuation. MIL 14 (citing Mateen Tr. at 256: 3-7). But as the context makes clear, Mateen was making a totally different and unrelated point: that ***Rad's decision to report Blatt's assault*** had nothing to do with the valuation. *See* Tr. at 255:21 – 257:18. Mateen was not talking about Defendants' investigation. And while Defendants say there was no explicit "link" between the investigation and the valuation, MIL 14, ***Blatt himself conceded the link*** when he sent the

email acknowledging that the "paths" had "cross[ed]"—that is, the investigation of his misconduct at the holiday party and the potential press disclosure of his misconduct in May through July 2017, was jeopardizing Defendants' scheme to undervalue Tinder. *See* Ex. 38 (MAT_RAD00496032). Even Blatt recognizes the obvious connection that Defendants so strenuously refuse to admit.

Finally, Defendants recite the various reasons they think their investigation was legitimate. MIL 12–15. They are wrong, as Plaintiffs have shown above, and as Judy Kalisker will testify in her upcoming deposition. But none of this has any bearing on whether Plaintiffs' overwhelming evidence to the contrary is ***admissible***.

B. The Evidence Is Not Unduly Prejudicial.

Virtually all relevant evidence is "prejudicial," in that it helps one side and harms the other. The question is whether the evidence is ***unduly*** prejudicial—that is, whether the unfairly prejudicial effect substantially outweighs the evidence's probative value. Here, as shown above, Defendants cannot seriously contend that evidence of their sham investigation lacks significant probative value.

Defendants argue that the repellent nature of Blatt's conduct will cause them undue prejudice. MIL 15-17. But Defendants do not get a free pass because Blatt was investigated for sexual assault rather than, say, embezzlement. The main focus is on the investigation, not the underlying offense. If Blatt had been investigated for embezzlement, evidence of what triggered the investigation would undeniably be admissible—and the same is true here. Defendants' reliance on *Mazella v. Beals*, 27 N.Y.3d 694 (2016), is misplaced for that reason. There, the court reached the unremarkable conclusion that evidence of "unrelated bad acts" that "lacks probative value concerning any material factual issue" should not be admitted. *Id*. at 710. That is not the case here, where evidence of the Blatt investigation is related to a central component of Plaintiffs' case

and thus has substantial probative value. *See Kozlowski*, 11 N.Y.3d at 238 (testimony about "internal investigation[]" was "not unduly prejudicial").

Defendants' pious claim that "[n]one of this has any place in a Commercial Division" dispute—that the ears of Commercial Division judges and juries should not be fouled with testimony about an investigation into sexual misconduct—is an echo from another era. MIL 3. Jurors are more intelligent and less prudish than Defendants believe. They are perfectly capable of considering and weighing this evidence calmly.

It is important to appreciate that Defendants' undue prejudice argument is focused on what they call the "prurient details" of what happened at the hotel. MIL 16-17 (citing questions asked at depositions). But that is a red herring. The overwhelming bulk of the evidence at issue in this motion does not concern the events at the hotel, but instead what happened ***afterward***—namely the internal investigation and cover-up. Even if Defendants' hand-wringing about "prurient" testimony was well founded—and it is not—it would not support excluding the entirety of the investigation evidence. Defendants' concerns about unnecessary "prurient details" can easily be addressed at trial by appropriate limiting instructions to the jury. Any theoretical risk of undue prejudice does not "substantially outweigh" the probative value of this highly relevant evidence.

C. The Evidence Will Not Waste Time Or Confuse The Jury.

Defendants' speculation that allowing evidence of their sham investigation might add "up to two weeks" of additional trial time, MIL 3, is absurd and provides no basis for exclusion. At most, allowing this evidence would add one day of trial time.

Defendants march out the old "trial-within-a-trial" objection, MIL 18, but that concern does not apply here. Plaintiffs are not attempting to prove what actually happened in the hotel room, and the jury will be instructed that it is not being asked to decide that question. Rather, the jury will consider whether Defendants conducted a genuine investigation—or engaged in a

whitewash intended to keep Blatt at the helm in order to corrupt the valuation. *See People v. Harris*, 117 A.D.3d 847, 855-58, (2d Dept. 2014) ("defendant was not improperly subjected to a trial within a trial" where evidence "was not tantamount to an attempt to prove the defendant's involvement in an uncharged crime" but was "necessary to help the jury understand the case in context").

Defendants identify various places where the deposition testimony of witnesses was ambiguous or conflicting, in hopes of manufacturing the impression that there are many discrete factual questions the jury will need to decide and that will take time to resolve. MIL 19–22. But there is no reason to believe the jury will be required to decide all of these questions, or even most of these questions. This Court is perfectly capable of managing trial proceedings in a way that avoids the presentation of cumulative or repetitive evidence. Defendants' concern that testimony about the investigation could consume too much trial time is properly addressed by managing proceedings and limiting the testimony as necessary, not through a blunderbuss motion in limine that would prevent the jury from hearing ***any*** of this critical, highly relevant evidence.[1]

CONCLUSION

Plaintiffs respectfully request that this Court deny Defendants' motion to exclude evidence relating to the 2016 Tinder holiday party.

[1] Defendants' throwaway request that the Court grant their motion based on their "paid witness" claim presented in a different baseless motion, MIL 23, is not just misguided but completely irrelevant to resolving their motion in limine.

Dated: New York, New York
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ATTORNEY CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17

I, Orin Snyder, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because it contains 6,984 words, excluding the parts of the memorandum exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law.

Dated: New York, New York
May 26, 2021

/s/ Orin Snyder
Orin Snyder