

No. S294190

In the Supreme Court of the State of California

LEI LI, ET AL., *Plaintiffs and Appellants,*

v.

ARCSOFT, INC., ET AL., *Defendants and Respondents;*

DANIEL MACKEIGAN, ET AL., *Defendants.*

LEI LI, ET AL., *Plaintiffs and Appellants,*

v.

ARCSOFT, INC., ET AL., *Defendants and Respondents.*

On Request to Answer Question of State Law, U.S. Court of
Appeals for the Ninth Circuit, Case Nos. 24-2531, 24-2964

**CHAMBER OF COMMERCE OF THE UNITED STATES OF
AMERICA'S APPLICATION TO FILE AMICUS CURIAE BRIEF AND
AMICUS CURIAE BRIEF IN SUPPORT OF NEITHER PARTY**

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APPLICATION FOR LEAVE

Pursuant to California Rules of Court, rule 8.520(f), the Chamber of Commerce of the United States of America respectfully applies for leave to file the accompanying brief as *amicus curiae* in support of neither party.

The Chamber is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The certified question in this case requires the Court to construe Corporations Code section 1312. That provision makes appraisal the exclusive remedy for shareholders who contend that a merger or other reorganization has treated them unfairly. This Court's decision will affect the cost and predictability of reorganizations in California, the scope of liability that follows a reorganization, and the terms on which parties—including the Chamber's members—are willing to invest and combine.

The Chamber takes no position on the application of any legal standard to the underlying facts of this case. The Chamber's members sit on every side of the transactions that section 1312 governs: as corporations and directors that plan and finance reorganizations, and as shareholders whose interests the appraisal remedy protects.

This brief identifies interpretive precedents not yet addressed in this case that confirm that the Legislature’s omission of a fraud exception in section 1312 was deliberate. The brief also explains how a judicially created exception to section 1312 would deter and distort corporate reorganizations and invite meritless litigation—precisely the outcomes that the Legislature designed section 1312 to prevent. Finally, in the event that this Court recognizes an atextual exception to section 1312, this brief proposes substantive and procedural limits that would help ensure that the exception does not swallow the rule.

No party or counsel for any party authored this brief in whole or in part. No entity or person, other than amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

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INTRODUCTION

The California Legislature enacted Corporations Code section 1312 to ensure that corporate reorganizations in California are negotiated and financed against a known measure of liability. Shareholders who contend that a reorganization treated them unfairly may initiate an appraisal proceeding, in which a court determines the fair market value of their shares, fixed as of the moment before the reorganization's terms were announced, and the corporation pays them that amount. Section 1312, subdivision (a) ("section 1312(a)"), makes that remedy exclusive. It bars a shareholder entitled to appraisal from asserting "any right at law or in equity to attack the validity" of the reorganization outside the appraisal process, subject to two narrow exceptions. The certified question here asks whether section 1312(a) and this Court's precedent allow a shareholder to sidestep the appraisal remedy, and sue for buyout-related damages long after the buyout is completed, on the ground that the facts underlying the shareholder's fraud cause of action were not known until after the buyout was consummated.¹

¹ The parties have framed the question as whether section 1312(a) applies "when the shareholder establishes that the shareholder's consent to the buyout was procured by fraud." (Opening Brief on the Merits (OBM) 16-17; see Answer Brief on the Merits (ABM) 37 [similar].) That framing makes sense. Although the Ninth Circuit framed the certified question in general terms, as whether section 1312(a) precludes a "shareholder from seeking buyout-related damages when the facts leading to the shareholder's cause of action were not known until after the buyout was consummated," it also described the asserted exception as one for plaintiffs who "did not know about the alleged fraud until after the buyout," and it surveyed other

The answer to that question is straightforward. The text of section 1312(a) contains no exception for after-discovered fraud. The Legislature enacted the exclusive appraisal remedy in 1931, carried it through successive recodifications, and amended the statute more than once—each time declining to add a fraud exception, even as other States and the Model Business Corporation Act (MBCA) adopted one. That omission was a deliberate choice.

Rather than retracing the parties' briefing, this brief focuses on several issues not explored by the parties. First, this Court's precedents on interpreting statutes confirm the straightforward reading of section 1312(a) as precluding a fraud cause of action. Second, a judicially created fraud exception would not only contravene the statute's text, it also would invite consequences that the Legislature intended section 1312(a) to prevent. In particular, it would reopen the question the Legislature channeled into appraisal—what the shares were worth—and would do so long after the buyout, in front of a factfinder who already knows how the company fared in the months and years following the buyout. A judicially created exception would thus expose completed reorganizations to hindsight-driven litigation, deter and distort transactions that

States' treatment of "later-discovered fraud." (Certification Order 5, 8, 9-10.) What is more, fraud presents the strongest case for an exception: If section 1312(a) forecloses a damages action premised on intentional fraud, it surely forecloses one premised on a lesser theory as well. This brief therefore addresses the question as the parties have framed it.

the Legislature wanted to facilitate, and revive the strike suits that it intended to foreclose. If the policy balance the Legislature struck is to be revisited, that work should be done by the Legislature itself, which is best situated to weigh the competing interests and craft a remedy with appropriate safeguards.

Finally, if this Court nonetheless opts to recognize an exception, it should define that exception narrowly so that it supplements the appraisal remedy rather than supplanting it. The Court may borrow from existing features of California law to define those limits. In particular, any exception should be confined to intentional fraud, require fraud to be pleaded with particularity, demand reasonable diligence on the part of the plaintiff, limit damages to the fair value appraisal would have provided, and impose a limitations period running from the time of discovery. Each of those limits would help mitigate the harms that would inevitably result from recognizing a judicial exception to section 1312(a) that the Legislature never intended.

ARGUMENT

I. The Exclusive Appraisal Remedy Reflects A Considered Legislative Judgment

The Legislature made appraisal the exclusive remedy for a shareholder who attacks a reorganization. That was no accident of drafting. The text of section 1312(a) forecloses a fraud exception; its history reflects the Legislature's repeated decision to withhold one; and its purpose—to facilitate reorganizations while channeling valuation disputes into a single, efficient remedy—would be defeated by the atextual exception proposed by plaintiffs here.

A. Interpretive Precedents Confirm That Section 1312(a) Reflects A Deliberate Legislative Choice To Bar Claims For After-Discovered Fraud

Section 1312(a) bars “any right at law or in equity to attack the validity” of a reorganization. (Corp. Code, § 1312, subd. (a).) It contains no exception for after-discovered fraud. (See *ibid.*) That text is dispositive here because a court “may not broaden or narrow the scope of [a] provision by reading into it language that does not appear in it or reading out of it language that does.” (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545.) Moreover, the statute enumerates only two exceptions: one for actions testing whether a reorganization was legally approved (Corp. Code, § 1312, subd. (a)), and the other for reorganizations among commonly controlled parties (*id.*, subd. (b)). Those enumerated exceptions also militate against recognizing a fraud exception. Where a statute “specifies an exception, no others may be added under the guise of judicial construction.” (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2017) 7 Cal.App.5th 628, 641.)

Legislative history confirms the point. The Legislature recodified and amended section 1312 repeatedly without adding an exception for after-discovered fraud—even as other States and the MBCA adopted that kind of exception. And the Legislature was well informed of those developments. It “studied and analyzed” “the statutes of other jurisdictions,” and “frequently consulted” the MBCA, while it revised section 1312. (Assem. Select Com. on the Revision of the Corp. Code, Rep. on Assem. Bill No. 376 (1975–1976 Reg. Sess.) Dec. 1, 1975, p. 2, available

at Appendix in Support of Respondents’ Motion for Judicial Notice, Ex. I, p. MJN-57.) Against that historical backdrop, section 1312’s outlier status reflects a conscious legislative choice not to adopt an exception for after-discovered fraud.

The parties’ briefs address these textual and historical points in detail, and this brief will not retread that ground. The Chamber instead highlights several of this Court’s interpretive precedents, not yet addressed in this case, which independently show that section 1312(a) should not be read to contain a fraud exception.

First, cases interpreting the word “any” confirm that section 1312’s bar admits no unstated exception. Section 1312(a) forecloses “*any* right at law or in equity” to challenge a reorganization (apart from the two enumerated exceptions). (Corp. Code, § 1312, subd. (a), *italics added*.) As this Court has explained, “the word ‘any’ means without limit and no matter what kind.” (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) A statute’s use of “the term ‘any’” therefore “demonstrates the Legislature intended . . . a broad sweep.” (*People v. Rhodius* (2025) 17 Cal.5th 1050, 1061.) This precedent forecloses the contention that section 1312(a) precludes only “*some* actions for damages” arising from a reorganization. (OBM 40, *italics added*.)

Second, cases on selective amendment confirm that the Legislature’s decision to add specific exceptions while withholding a fraud exception should be viewed as deliberate. When the Legislature “fail[s] to make changes . . . [to a] statute in a particular respect” while making “changes . . . in other

respects,” that choice is “indicative of an intention to leave the law unchanged in that respect.” (*Kusior v. Silver* (1960) 54 Cal.2d 603, 618.) The history of section 1312 invites direct application of that principle. The Legislature has returned to the statute several times. In 1975, it recodified the provision and added the common-control exception now in subdivision (b); in 1976, it built out that exception through subdivision (c); and in 1988, it amended the statute again. (ABM 44-45; OBM 60.) Each time, the Legislature refined the exceptions in some respects without disturbing subdivision (a)’s bar with respect to fraud. That pattern of selective amendment is “indicative of an intention to leave the law unchanged in that respect”—that is, to withhold a fraud exception. (*Kusior, supra*, at p. 618.)

Third, case law suggests that California’s outlier status should weigh against recognizing an exception that the Legislature has declined to adopt. This Court presumes that “[t]he Legislature is . . . aware of all laws in existence when it passes or amends a statute,” regardless of “whether the statutes are in the same code or different codes.” (*Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310, 335.) And in construing related California statutes, this Court has held that where one statute “contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed.” (*In re Jennings* (2004) 34 Cal.4th 254, 273.) While those statements came in cases concerning other California statutes, not statutes from different States, this is a case where the Legislature expressly “studied”

and “analyzed” other States’ statutes before declining to follow them. (Rep. on Assem. Bill No. 376, *supra*, at p. 2.) At least in this context—where awareness is known—section 1312(a)’s omission of a fraud exception “is significant to show” that the Legislature intended to prohibit fraud claims. (*Jennings, supra*, at p. 273.)

Finally, this Court’s method of interpreting statutes “by assuming that the Legislature was aware of . . . existing judicial decisions” (*Kusior, supra*, 54 Cal.2d at p. 618) further counsels against recognizing an unstated fraud exception to section 1312. The dissent in *Steinberg v. Amplica* warned that confining shareholders to appraisal would give “corporate insiders license to commit fraud,” because a corporation “is in a position to induce appraisal at a time when shareholders may have little or no capacity to ascertain whether the enterprise is currently worth more than its past record indicates.” (*Steinberg v. Amplica, Inc.* (1986) 42 Cal.3d 1198, 1220-1221 (dis. opn. of Bird, C.J.).) That is precisely the concern plaintiffs press now. They argue that maintaining an exclusive appraisal remedy “encourages fraud” by extinguishing any remedy for a shareholder whose consent was procured by concealment. (OBM 20-21, 53.) But the Legislature amended section 1312 in 1988—two years after the *Steinberg* dissenters had voiced that same concern—and left subdivision (a) unchanged as to fraud. (ABM 45-46.) The Legislature has already confronted the policy concern underlying the certified question and declined to act on it.

B. A Judicially Created Exception For After-Discovered Fraud Claims Would Undermine The Legislature’s Objectives

As section 1312’s original drafters explained, appraisal statutes generally aim to solve “the problem of curbing extortionate corporate litigation while . . . devising adequate protection for bona fide investors.” (Ballantine & Sterling, *Upsetting Mergers and Consolidations* (1939) 27 Cal. L.Rev. 644, 649.) They allow “legitimate consolidations and mergers” to proceed “without unlimited litigation at the instance of piratical obstructionists.” (*Id.* at pp. 648-649.) In *Steinberg*, this Court recognized that section 1312 has the same objective: to allow beneficial reorganizations to proceed while assuring minority shareholders fair value for their shares, and to keep shareholders from wielding the threat of litigation to “exercise leverage for [their] own aggrandizement.” (*Steinberg, supra*, 42 Cal.3d at pp. 1204-1205, 1214, alteration in original.)

A judicially created exception for after-discovered fraud would undermine that purpose. It would deter and distort the reorganizations section 1312 aims to facilitate, while inviting the kind of extortionate litigation the statute aims to curb. Either consequence is reason enough to decline plaintiffs’ invitation to engraft a judicially created exception into section 1312(a), because this Court will not recognize “equitable exceptions” that are “inconsistent with . . . the legislative policy reflected in [a] statutory scheme.” (*Law Finance Group, LLC v. Key* (2023) 14 Cal.5th 932, 953.)

**1. A Judicially Created Exception Would
Deter And Distort Beneficial
Reorganizations**

The economic reality is that increased litigation risk deters reorganizations, even where the litigation would not unwind the reorganization. This Court recognized that reality in *Steinberg*, observing that the prospect of post-closing liability for those who arrange a reorganization would be “almost as powerful a disincentive to legitimate mergers as a threat to unwind the merger.” (*Supra*, 42 Cal.3d at p. 1210.) When it comes to the consequences of their proffered exception, therefore, it makes little difference that plaintiffs do “not . . . seek to unwind” any reorganization. (OBM 68.)

Empirical research confirms the point. One recent study found that firms facing a greater threat of shareholder litigation forgo beneficial acquisitions in favor of lower-risk alternatives. (Huang et al., *Shareholder Litigation Risk and Firms’ Choice of External Growth* (2023) 58 J. Fin. & Quantitative Analysis 574, 574-575.) It also found that when the threat recedes, those firms pursue acquisitions more readily—confirming that the prospect of suit deters transactions that firms would otherwise complete. (*Id.* at p. 577.) An after-discovered-fraud exception to section 1312 would introduce that deterrent into every California reorganization, because a shareholder could always attempt to allege that a material fact emerged only after closing.

In particular, the exception would deter reorganizations by raising the costs associated with them. Liability insurers price the risk of shareholder litigation directly into the premiums they

charge, assessing a company's governance and charging more where the risk of suit is greater. (Baker & Griffith, *Predicting Corporate Governance Risk: Evidence from the Directors' & Officers' Liability Insurance Market* (2007) 74 U. Chi. L.Rev. 487, 489-490.) The price effect is substantial: exposure to a more litigious jurisdiction raises a company's premiums for directors-and-officers insurance by roughly 40 to 60 percent. (Boyer, *The Litigation Cost of Cross-Listing Into the United States* (2025) 33 Corp. Governance: An Int'l Rev. 436, 436-437.) Tellingly, that increase is driven primarily by the greater *frequency* of suit rather than any greater severity of damages. (*Id.* at p. 437.) Open-ended, post-closing liability for fraud claims would add this significant expense to California reorganizations, both in terms of higher insurance premiums and added diligence and disclosure that boards and their advisers would need to undertake to guard against later suit. Those costs would hamper the transactions section 1312 was designed to facilitate. And the costs would fall most heavily on the closely held and emerging companies for which a buyout may be the only practicable path to new capital.

Beyond deterring beneficial reorganizations, an after-discovered-fraud exception would distort those reorganizations that manage to proceed. When litigation risk is high, those who advise the parties to a merger adjust their valuations strategically—skewing the analysis to insulate the deal from suit rather than to reflect the advisers' best estimate of value. (See, e.g., Imperatore et al., *Litigation Risk and Strategic M&A Valuations* (2024) 78 J. Acct. & Econ., art. No. 101671.) An after-

discovered-fraud exception would introduce that distortion into California reorganizations, prompting parties to price and structure transactions around the risk of later litigation rather than around value.

Indeed, this Court has prior experience guarding against a comparable dynamic. In *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, it declined to permit equitable tolling of a construction-defect statute of repose. The Court emphasized that the Legislature had enacted the statute to address its “concern about the economic effects of indefinite ‘long tail’ defect liability on the construction industry,” including “prohibitive” insurance costs that “threat[ened] the industry’s economic health.” (*Id.* at pp. 374-376.) Section 1312 reflects the same kind of considered legislative judgment in the context of corporate reorganizations. As in *Lantzy*, a judicially crafted exception would ignore the “particular considerations” balanced by the Legislature. (*Id.* at p. 379.)

2. A Judicially Created Exception Would Invite The Extortionate Litigation Section 1312 Was Enacted To Prevent

The drafters of section 1312 also sought to protect businesses against strike suits. They wanted to avoid a regime in which “any small shareholder, regardless of motive, could . . . object to changes merely to be bought off at his nuisance value.” (Ballantine & Sterling, *supra*, 27 Cal. L.Rev. at p. 644.) And they designed the exclusive appraisal remedy to allow legitimate reorganizations while foreclosing “unjustifiable suits to upset mergers or consolidations brought by piratical minorities.” (*Id.* at

p. 645.) An exception for after-discovered fraud would reopen the door the Legislature closed.

That exception would invite claims that are generally likely to fail on their merits—but not before imposing the cost and delay that give them settlement value. The Court of Appeal’s decision in *Singhanian v. Uttarwar* (2006) 136 Cal.App.4th 416 is illustrative. The plaintiffs in that case sought to escape section 1312 by alleging that the defendants had concealed the procedures for shareholders to exercise their statutory right to demand cash for their shares. (*Id.* at pp. 420, 430.) The claim failed because the plaintiffs had in fact “received a copy of the applicable statutory provisions setting out their shareholder rights and the corporation’s obligations”—the very information they alleged was withheld. (*Id.* at p. 430.) In other words, the allegation of concealment ultimately dissolved, but only after extensive litigation.

Delaware’s experience is similar. Its courts have repeatedly dismissed hindsight challenges to completed transactions. For example, following “substantial discovery,” the Court of Chancery dismissed an attack on a premium sale where the plaintiffs offered only “quibbles” with the financial advisers’ valuation. (*In re Morton’s Restaurant Group, Inc. Shareholders Litigation* (Del.Ch. 2013) 74 A.3d 656, 658, 659, 674-676.) Elsewhere, that court observed that while “proxy statements and other public filings often contain facts that, if true, would render” shareholders’ “claims wholly without merit,” plaintiffs’ lawyers

“rarely put such facts in their complaints.” (*Harbor Finance Partners v. Huizenga* (Del.Ch. 1999) 751 A.2d 879, 901-902.)

That pattern is common in after-discovered fraud claims. As section 1312’s drafters observed, “[i]t is a comparatively simple matter to make allegations which tend to give color of fraud,” even where they are ultimately meritless. (Ballantine & Sterling, *supra*, 27 Cal. L.Rev. at p. 664.) It follows that a rule permitting “such suits would vest in [shareholders] potent ‘nuisance value.’” (*Ibid.*) The drafters quoted a commentary making the point in even plainer terms: there are always plaintiffs ready to “seize upon any slight irregularity as the basis for a charge of fraud” and to intimate that “their stock may be purchased at a price, and the suit withdrawn.” (*Id.* at pp. 649-650.) Or as another state high court put it, the “obvious benefit” of a rule making appraisal the exclusive remedy “is that it makes more unlikely vexatious lawsuits by those whose goal is simply to receive more money for their stock.” (*Stepak v. Schey* (Ohio 1990) 553 N.E.2d 1072, 1075.)

The risk of meritless claims is greatest where a company’s value rises after a reorganization, such as following a later public offering. In that common scenario, a shareholder who was content with the buyout price at the time of the reorganization may recharacterize her disappointment—after the reorganized company succeeds—as evidence that she was defrauded into selling. That reasoning runs backward from outcome to inference and thus reflects hindsight bias, the documented tendency to perceive a known outcome as having been predictable all along.

(Kamin & Rachlinski, *Ex Post ≠ Ex Ante: Determining Liability in Hindsight* (1995) 19 Law & Human Behavior 89, 98.) Even judges are not necessarily immune from hindsight bias. (Guthrie et al., *Inside the Judicial Mind* (2001) 86 Cornell L.Rev. 777, 801-805.) Indeed, courts asked to detect “fraud by hindsight” have struggled to screen it reliably—a difficulty scholars have documented, and one that counsels against inviting the inquiry except where absolutely necessary. (Gulati et al., *Fraud by Hindsight* (2004) 98 Nw. U. L.Rev. 773, 780-782, 824-825.)

This concern has particular force in the context of corporate valuation. Revaluing a completed transaction with the benefit of hindsight can be “hazardous,” and the price produced by a fair, arm’s-length process is often the best evidence of a company’s value. (*DFC Global Corp. v. Muirfield Value Partners, L.P.* (Del. 2017) 172 A.3d 346, 366-367 (en banc).) Creating an atextual exception to section 1312(a) for after-discovered fraud would invite factfinders to make the very hindsight-laden judgment the appraisal remedy is designed to avoid.

Adhering to the textual prohibition on after-discovered fraud claims would be consistent with this Court’s approach in analogous circumstances. In *Small v. Fritz Cos., Inc.* (2003) 30 Cal.4th 167, for example, the Court recognized that “the danger that shareholders may bring abusive and nonmeritorious suits to force a settlement from the corporation and its officers” can justify “plac[ing] limits on the cause[s] of action” available to shareholders. (*Id.* at pp. 180, 183.) Section 1312(a) reflects a legislative judgment to the same effect: that the risk of

extortionate, hindsight-driven litigation warrants channeling shareholders’ challenges into a single, focused remedy.

* * *

Ultimately, all of these consequences of creating an exception to section 1312(a) are matters of policy. And “it is for the Legislature to weigh the competing policy considerations.” (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1299.) The Legislature is directly accountable to the voters and institutionally equipped to study the question by investigating, holding hearings, and balancing the economic costs and benefits of competing approaches. The Legislature can also craft a tailored exception with appropriate safeguards, such as pleading requirements, damages caps, or a limitations period. This Court should adhere to the statutory text enacted by the Legislature and leave it to that body to decide whether to engraft any further exceptions into that text.

II. If This Court Nevertheless Recognizes An Exception, It Should Impose Rigorous Limits On Claims

Because the text and the Legislature’s judgment should control, the Court should answer the certified question without creating any exception. If the Court were to recognize an exception, however, it should be narrow. An exception without strict limits could swallow the rule—exposing every completed reorganization to the risk of hindsight-driven litigation that the Legislature intended section 1312(a) to foreclose. Five limits described below would help mitigate (to some extent) the harms posed by a judicially created exception for after-discovered fraud claims. Each limit is drawn from established California law.

Intentional Fraud. Any exception should reach only intentional fraud: the deliberate concealment or misrepresentation of a material fact. (See Civ. Code, § 3294, subd. (c)(3).) In the ordinary case involving a lesser wrong, the Corporations Code already supplies an effective remedy. Before a reorganization is consummated, the Code mandates disclosures designed to inform the shareholder's decision whether to dissent—including, where an insider stands on both sides of the transaction, a written opinion as to the fairness of the consideration. (Corp. Code, § 1203, subd. (a).) A shareholder who has reason to doubt the offered price may then dissent and demand appraisal, a remedy this Court has deemed adequate for undervaluation resulting from negligence or breach of fiduciary duty. (See *Steinberg, supra*, 42 Cal.3d at pp. 1209-1210.) Any exception extending beyond claims for intentional fraud thus could allow shareholders to recover, under a new label, for conduct that shareholders typically can discover while appraisal remains available. At the same time, it would draw ordinary valuation disputes into damages litigation. Confining any California exception to intentional concealment, which deprives a shareholder of the informed choice assumed by appraisal, would help keep the exception tied to the justification for it.

Pleading with Particularity. Plaintiffs invoking the exception should be required to plead fraud with particularity. That is California's settled rule for every fraud claim: plaintiffs must allege "facts which 'show how, when, where, to whom, and by what means the representations were tendered,'" and must

plead the elements of fraud with specificity rather than in conclusory terms. (*Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979, 993; see also *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645; *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216-217.)

Applied in this context, the particularity requirement would advance section 1312's purpose by screening out allegations that "give color of fraud" without substance (Ballantine & Sterling, *supra*, 27 Cal. L.Rev. at p. 664), forcing the plaintiff to identify the specific concealment or misrepresentation before the expense of discovery, and providing defendants fair notice of the claim. Indeed, plaintiffs themselves recognize that the obligation to plead fraud with particularity would "cut[] against any risk of 'strike suits.'" (OBM 56.) Although the particularity requirement governs fraud claims by default, the Court should make it an express condition of any exception it recognizes here to remove any doubt that a buyout-related fraud claim must be pled with particularity at the outset.

Diligence, Materiality, and Reliance. Any exception for after-discovered fraud claims should also require the plaintiff to prove that the fraud could not have been discovered through diligent efforts before the buyout. The appropriate standard is inquiry notice, which already applies to fraud claims in California: A claim accrues on discovery of "facts that would lead a reasonably prudent person to suspect fraud." (*Debro v. Los Angeles Raiders* (2001) 92 Cal.App.4th 940, 950.) A shareholder who had reason to suspect that the offered price was wrong—and

who could have dissented, demanded information, or sought appraisal—should not be allowed to advance a fraud claim after the reorganization. That requirement would better track the design of section 1312, which depends on shareholders raising their doubts before the reorganization is consummated—while appraisal remains available—rather than stowing them away for a later suit. (See generally *Steinberg, supra*, 42 Cal.3d at p. 1209 [alleged misconduct bearing on value “may be litigated in an appraisal proceeding”].)

Relatedly, plaintiffs should be required to show both materiality (i.e., that a reasonable shareholder would have considered the concealed facts important in deciding whether to dissent and seek appraisal) and reliance (i.e., that the plaintiffs would in fact have sought appraisal had the facts been disclosed). Whereas diligence asks whether the shareholder could have uncovered the concealed facts in time to seek appraisal, materiality and reliance ask whether those facts would have changed the decision to seek it. Together, these requirements would confirm that it was the fraud—rather than the shareholder’s own inaction or indifference—that caused the loss of the appraisal opportunity, thus separating genuine deprivations of the appraisal choice from later changes of heart. (*Singhania, supra*, 136 Cal.App.4th at pp. 434-435.)

Damages Capped at Fair Market Value. Under any exception, damages should be limited to the difference between the fair market value of the shares at the time of the reorganization and the consideration the shareholder received.

That is the same amount that a timely appraisal would have produced (see Corp. Code, § 1300, subd. (a)) and thus would ensure that a shareholder “receives the exact treatment the statute advised him was his due when he invested in the shares.” (*Beechwood Securities Corp. v. Associated Oil Co.* (9th Cir. 1939) 104 F.2d 537, 540.)

Plaintiffs should not be allowed to recover lost-profits or appreciation damages, such as the gains they would have realized had they held their shares through a later public offering. Section 1300, subdivision (a), deliberately “exclud[es]” from the appraisal award “any appreciation or depreciation in consequence of the proposed” transaction. Awarding appreciation would give the plaintiff a windfall beyond what section 1312(a) is meant to restore, and would turn every post-reorganization increase in value into a potential recovery. It therefore would incentivize precisely the type of hindsight-driven claims that the appraisal remedy is designed to prevent.

Punitive damages likewise should be unavailable, or at least strictly cabined. This limit does not rest on any view that intentional fraud is too slight a wrong to punish; rather, it follows from the statutory scheme in which the exception would operate. As the drafters explained, “the crucial point” in this setting is “the value of the . . . shares,” “not . . . to inflict punishment for fraud.” (Ballantine & Sterling, *supra*, 27 Cal. L.Rev. at p. 661.) Moreover, the prospect of personal liability for punitive damages is “almost as powerful a disincentive to legitimate mergers as a threat to unwind the merger,” and the threat of such liability

supplies the settlement leverage section 1312(a) was enacted to remove. (*Steinberg, supra*, 42 Cal.3d at pp. 1210-1211.) Allowing punitive damages would reintroduce that leverage and give plaintiffs a powerful incentive to recast ordinary disputes over share value as intentional fraud. Nor would precluding punitive damages leave intentional fraud unpunished. California separately makes willful securities fraud a felony, punishable by substantial fines and imprisonment. (See Corp. Code, §§ 25540, subd. (b), 25541.)

Limitations Period. Finally, any decision recognizing an exception to section 1312(a) for after-discovered fraud claims should emphasize that those claims are subject to a fixed limitations period. California subjects fraud claims to a three-year limitations period that runs from discovery, under the same inquiry-notice standard that governs the diligence requirement above. (Code Civ. Proc., § 338, subd. (d); *Debro, supra*, 92 Cal.App.4th at p. 950.) Applying that limitation to any fraud claims brought under a judicially created exception to section 1312(a) would harmonize it with California’s general treatment of fraud.

It also would better align the exception with the objectives of section 1312(a). The drafters grounded the statute’s exclusive remedy in the recognition that, once a reorganization is consummated, “many changes of position . . . take place,” and the parties then order their affairs accordingly. (Ballantine & Sterling, *supra*, 27 Cal. L.Rev. at p. 659.) This Court has invoked the same concern in declining to authorize an equitable tolling

rule allowing for “long tail” liability. (*Lantzy, supra*, 31 Cal.4th at pp. 374-376.) A defined limitations period, running from the point at which a reasonably diligent shareholder would have suspected the fraud, would leave room for the narrow class of genuinely undiscoverable claims while better preserving the certainty on which completed reorganizations depend.

CONCLUSION

The Court should decline to create a new, atextual exception to section 1312(a). If the Court does create an exception, it should cabin it as described above.

DATED: October 16, 2026

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing application and brief contain 5,406 words as counted by the Microsoft Word processing program used to prepare the application and brief.

DATED: October 16, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, declare:

I am employed in Los Angeles, CA. I am over the age of 18 and not a party to the within action. My business address is 350 South Grand Avenue, Los Angeles, CA 90071.

On October 16, 2026, I served the foregoing document described as **CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA'S APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF IN SUPPORT OF NEITHER PARTY** on the persons listed in the attached Service List through the Court's electronic filing system operated by ImageSoft TrueFiling. I certify that all participants in the case are registered TrueFiling users and appear on its electronic service list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 16, 2026, at Los Angeles, CA.

/s/ Sushmita Udoshi

Sushmita Udoshi

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California Supreme Court Case No. S294190

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