



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JONATHAN CAIN,

Petitioner,

v.

NEAL SCHON,

Respondent,

-and-

FREEDOM 2020, INC.,
a Delaware Corporation,

Nominal Respondent.

C.A. No. 2024-0791 JTL

**PUBLIC VERSION FILED:
JULY 30, 2024**

**VERIFIED PETITION FOR THE
APPOINTMENT OF A CUSTODIAN**

Petitioner Jonathan Cain (“Cain” or “Petitioner”), by and through his undersigned counsel, hereby petitions the Court, pursuant to 8 *Del. C.* § 226, as well as the Court’s equitable powers, for the appointment of a custodian to act as a third, deadlock-breaking director for Freedom 2020, Inc. (“Freedom 2020” or the “Company”), and alleges as follows:

NATURE OF THE ACTION

1. This Petition arises out of the undisputed deadlock of the two-person board of directors of Freedom 2020. Freedom 2020 is the operating entity of the world-renowned American rock band, Journey (“Journey” or the “Band”). The

directors – Petitioner, Journey’s keyboardist, and Respondent Neal Schon (“Respondent”), Journey’s guitarist – each hold 50% of the Company’s voting stock and fundamentally disagree on significant aspects of the management and operation of the Company.

2. Journey is currently on tour on the Band’s 50th Anniversary Freedom Tour (the “Freedom Tour”). However, the deadlock between the Company’s directors is now interfering with the Company’s ability to taken even the most basic actions and is causing significant disruptions in the smooth operation of the Company.

3. Petitioner has repeatedly requested that Respondent consent to the appointment of a third, independent director; however, Respondent has denied Petitioner’s requests. Instead, Respondent now claims (without any support at all) that, in the face of director deadlock, his role as President of the Company authorizes him to unilaterally act on behalf of the Company. The acts Respondent has taken on behalf of the Company are not in the Company’s best interests.

4. The ongoing director deadlock and now, Respondent’s unilateral acts on behalf of the Company, pose a severe threat of harm to the Company and to Journey’s storied history of musical greatness.

5. Therefore, Petitioner seeks the immediate assistance of this Court to resolve the ongoing deadlock between Petitioner and Respondent by appointing a custodian to act as a third, independent director of the Company.

PARTIES

6. Petitioner is an adult individual who resides in Florida. Petitioner is a director and the Vice President and Treasurer of the Company. Petitioner holds 500 shares of stock, which is 50% of the Company's stock. Petitioner and Respondent are the only directors of the Company.

7. Respondent is an adult individual who resides in California. Respondent is a director and the President and Secretary of the Company. Respondent holds 500 shares of stock, which is 50% of the Company's stock. Petitioner and Respondent are the only directors of the Company.

8. The Company is a Delaware corporation with a principal place of business located at 12 West 37th Street, 10th Floor, New York, New York 10018. The Company's registered agent for service of process in the State of Delaware is eResidentAgent, Inc., 1013 Centre Road, Suite 403S, Wilmington, DE 19805.

JURISDICTION

9. This Court has jurisdiction over this matter and the venue is proper pursuant to 10 *Del. C.* § 341 and 8 *Del. C.* § 226.

10. This Court has personal jurisdiction over Respondent, a director of the Company, pursuant to 10 *Del. C.* § 3114.

11. This Court has personal jurisdiction over the Company because it is incorporated in and organized under the laws of Delaware.

FACTUAL BACKGROUND

A. Journey, the Iconic American Rock Band.

12. Journey, a quintessential American rock band, formed in 1973, has left an indelible mark on the music industry with their powerful ballads and anthems. Journey achieved monumental success throughout the 1980s, producing chart-topping hits like “Don't Stop Believin’,” “Open Arms,” and “Separate Ways (Worlds Apart).”

13. After many years of unparalleled success, in 1987, the Band took a hiatus to explore other creative avenues. Years later, the Band reunited, and through the 2000s, experienced even greater success and further solidified its place as a symbol of rock ‘n’ roll greatness.

14. In the late 2000s and the years that followed, Journey experienced a shake-up during which several of the original members of the Band departed, and new talent joined. With Petitioner and Respondent (two of the Band’s original members) and a new lead vocalist (Arnel Pineda), Journey was once again revitalized.

B. Journey's Present-Day Revitalization Through the Company

15. As part of the Band's revitalization, on June 29, 2021, the Company was formed for the purpose of owning and maintaining Journey's assets relating to the Band's touring.

16. Upon the Company's formation, Petitioner and Respondent were elected as the Company's only two directors. *See* Minutes of a Meeting of the Initial Director and the Board of Directors of Freedom 2020, Inc., attached hereto as **Exhibit A**, at 4. Upon formation, Respondent assumed the roles of President and Secretary, while Petitioner assumed the positions of Vice President and Treasurer. *Id.* Further, Petitioner and Respondent each own five hundred shares of Freedom 2020 stock, and are each a 50% stockholder of the Company. *Id.* at 8.

17. The Bylaws of the Company dictate that the Board of Directors appointed upon the Company's inception "shall hold office until the first annual meeting of stockholders or until his or her successor is duly elected and qualified." *See* Bylaws of Freedom 2020, Inc. ("Bylaws"), attached hereto as **Exhibit B**, at Art. II, § 2. "At the first annual meeting of stockholders and at each annual meeting thereafter, the stockholders shall elect directors each of whom shall hold office for a term of one year or until his or her successor is duly elected and qualified . . ." *Id.*

18. The Bylaws further provide that "[t]he annual meeting of the stockholders shall be held, each year, at" 9:00 AM on the first Monday in January

and at such annual meetings, “the stockholders shall elect a Board of Directors, consider reports of the affairs of the corporation, and transact other business as may be properly brought before the meeting.” *Id.* at Art. 1, § 1. Special meetings of stockholders “may be called at any time by the Board of Directors.” *Id.* at Art. 1, § 2. At a stockholders’ meeting, the presence of the holders of a majority of the shares is required for a quorum. *See* Ex. B at Art. I, § 5. Further, to elect new directors, the “plurality of the votes” is necessary. *See id.* at Art. I, § 7.

19. The Bylaws further permit “any action required or permitted to be taken at any annual or special meeting of the stockholders . . . be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of the outstanding stock having not less than the minimum number of votes that would be necessary to authorize and take such action at a meeting . . .” *Id.*, Art. I, § 10.

20. No annual meetings of stockholders or special meetings of stockholders have been successfully held since the Company’s inception. Accordingly, the two current directors have been sitting as holdover directors, well past the expiration of their terms within having been reelected.

21. The Company’s Bylaws further provide that “a majority of the votes entitled to be cast by the directors present at a meeting a which a quorum is present

shall be the act of the Board of Directors.” *Id.*, Art. II, § 6. Thus, because there are only two directors, both directors’ approval is required for any Company action.

22. Finally, under the Bylaws, the powers and duties of the Company’s officers are “subject to the control of the Board of Directors.” *Id.* at Art. IV, § 2.

C. The Company Faces Director Deadlock

23. Shortly after the Company's formation, the two directors – Petitioner and Respondent – experienced deadlock, finding themselves unable to agree on a multiple of matters critical to the Company's operations. Over the past year, the deadlock between the directors has only worsened, extending to both day-to-day decisions and more significant management decisions. Indeed, Respondent has recently conceded that he and Petitioner are at an “impasse.” Such impasse has effectively compromised the Company’s ability to function effectively.

24. Journey is currently out on the Freedom Tour. The Freedom Tour, which commenced on February 9, 2024, is comprised of six different legs, and is currently scheduled to conclude in the United Kingdom on November 17, 2024. Presently, the Band is on leg three of the Freedom Tour which includes performances in twenty-five stadium venues across the United States with Def Leppard. The Band’s actual onstage performance is, at the moment, one of the only aspects of the business that has not suffered due to the director deadlock.

25. The deadlock experienced between the two directors is far-reaching and includes (but is not limited to) the Company's finances, the Company's management of crew members and personnel, and the routine management decisions made by the Company's business manager. The deadlock has recently led to Respondent contending that his role as the President of the Company authorizes him to act unilaterally on behalf of the Company, even in instances where Petitioner expressly disapproves such acts. Such a position is expressly rejected by the Company's Bylaws. *See* Ex. B at Art. IV, § 2.

26. The Petitioner and Respondent are routinely deadlocked with regard to the Company's finances. Such deadlock is demonstrated in various ways including (but not limited to) payment of the Company's expenses related to the Tour, the budgeting and spending of the Company's funds, and the use of the Company's credit card.

27. One specific area of deadlock between Petitioner and Respondent concerns the advances that are available to the Company during the Freedom Tour. In connection with the Freedom Tour, the Company has contracted with promoter AEG Presents, LLC ("AEG"). Under the contract with AEG, the Company is guaranteed a minimum amount of profit following the Freedom Tour. The contract with AEG allows the Company to take advances, or upfront payments to cover the Company's expenses during the Freedom Tour. Money that is not advanced during

the Freedom Tour will later be distributed to the Company's stockholders once the Freedom Tour concludes.

28. At the present time, Respondent is demanding that the Company take a \$1.5 million advance; however, Respondent has never explained why an advance of \$1.5 million is necessary or what Company expenses the advance is intended to cover. Petitioner objects to this advance, and has counter-proposed a \$500,000 advance to the Company. Petitioner's more-modest proposal was based upon the Company's budget and conversations with the Company's business manager and accounting firm concerning the Company's expenses. Respondent rejected Petitioner's counterproposal and continues to demand without justification that a \$1.5 million advance be taken. The current deadlock regarding these issues has caused a major rift between Petitioner and Respondent.

29. Relatedly, Petitioner and Respondent are further deadlocked regarding various expenses of the Company related to the Freedom Tour and Respondent's exorbitant and wasteful spending. One current issue involves expenses relating to Band's and its crew members' hotels and airfare.

30. By way of background, the Company imposes a reasonable limit of \$1,500 per night for hotel accommodations during the Freedom Tour. Although this limit was previously agreed upon by the Company's two directors, Respondent has seemingly reneged on such a limitation, and routinely exceeds the limit. Indeed,

during the Freedom Tour, Respondent has spent up to \$10,000 per night for hotel rooms for him and his wife. Such expenses have never been approved by Petitioner. Further, Respondent (and his wife) unilaterally authorize the Band's crew members to stay in hotel rooms in their home cities and when their home is only miles away from the venue, and to fly in business class.

31. Most recently, Respondent unilaterally authorized more than ten (10) crew members to fly in business class, which caused the Company to incur \$80,000 of unanticipated expenses. Again, Petitioner has never approved these expenses and instead objected to them.

32. Petitioner and Respondent are similarly deadlocked concerning the Company's excessive expenditures relating to private jets. Respondent (and his wife) incur significant expenses (in the hundreds of thousands of dollars) on behalf of the Company for their (and various crew members') use of private jets. Again, Petitioner has repeatedly objected to such expenses and has attempted to identify alternative travel arrangements at more reasonable price points. Respondent, however, disregards Petitioner's objections, and continues to unilaterally expend hundreds of thousands of dollars on behalf of the Company so that he, his wife and some of the Band's crew member can travel by private jet during the Freedom Tour.

33. Worse yet, such expenses (and many other unauthorized expenses) are not timely provided to the Company's business manager and accounting firm.

Instead, Respondent routinely provides invoices relating to his unauthorized expenditures to the Company's business manager and accounting firm only days before payment is due, and Respondent demands that such invoices be immediately paid. As further discussed below, Respondents' manipulative conduct limits the Company's ability to effectively plan and budget, and further contributes to the mistrust underlying the Company's morale.

34. Petitioner and Respondent are further deadlocked regarding the use of the Company's American Express credit card ("Amex"). The Amex, which is in Petitioner's name and not the Company's, has a \$1 million limit, and is the main method by which the Company pays its vendors. Petitioner and Respondent are both authorized users of the Amex and each have their own card connected to the account; however, Respondent's charges to the Amex far exceed Petitioner's charges. Further, the Amex is solely intended for *Company* expenses; however, Respondent and his wife have used the Amex for personal expenses that are not approved by Petitioner.

35. To prevent such unauthorized expenditures and to effectively manage the Company's expenses, a \$30,000 limit was placed on Respondent's Amex card. Petitioner voluntarily placed the same limit on his own Amex card. Nonetheless, Respondent (and his wife) obtained access to an Amex card by working through the

Company's travel agent , and are once again charging exorbitant unauthorized expenses to the Amex.

36. Although the Company frequently maxes out the Amex, at the same time, Respondent refuses to authorize the Company's payment on the balance of the Amex. Specifically, in July, the Company's budget (which was previously agreed upon by Petitioner and Respondent) contemplated a scheduled payment of \$423,000 on the balance of the Amex. To make the payment, both Petitioner and Respondent must provide their approval to the Company's accounting firm. At the time the payment was due, Respondent refused to respond to the accounting firm's requests to approve the payment.

37. To be able to cover upcoming Company expenses that were scheduled to be charged to the Amex the next week, a \$423,000 payment towards the balance of the Amex was ultimately made by the Company without Respondent's express approval. Such action caused Respondent (through his counsel) to threaten the Company's accountant and incorrectly declare himself as the sole decisionmaker of the Company. *See* July 18, 2024 email communication from J. Rosenberg, Esq. to M. Leverette attached hereto as **Exhibit C**. As discussed below, such emails sent on behalf of Respondent to the Company's agents present irreparable harm to the Company.

38. At the present time, and again because of Respondent's excessive charges to the Amex, another payment by the Company on the balance of the Amex is necessary. Petitioner has approved the payment. However, Respondent is again ignoring all requests to approve the payment.

39. Indeed, conflicts between Petitioner and Respondent over the Amex are not new and have been occurring for well over a year. Petitioner and Respondent have previously litigated disputes concerning the Amex in the Superior Court of California (the "California Action"). *See Neal J. Schon v. Jonathan Cain et al.*, No. C22-02337 (Cal. Super. Ct. filed oct. 31, 2022) (seeking access to the Amex records).

40. Furthermore, Petitioner's and Respondent's deadlock goes beyond the Company's financials and is routinely displayed in the Company's business dealings with its own business manager. In May 2024, in an effort to eliminate the pattern of exorbitant spending, the Company entered into an independent contractor agreement with Archangel Enterprises LLC (the "Business Manager") to oversee and manage various financial, administrative, and operational aspects of the Band's business affairs (the "Business Manager Contract"). A copy of the Business Manager Contract is attached hereto as **Exhibit D**. The Business Manager Contract expressly requires that "any and all of the Company's approvals, actions and decisions under the Agreement must be approved by both shareholders of the Company (i.e., Neal

Schon and Jonathon Cain).” *Id.* at § 6.11. However, given the deadlock between Petitioner and Respondent, it has become virtually impossible for the business manager to get approval to take any actions on behalf of the Company. Worse yet, Respondent has directed the Business Manager that he should not contact him directly, thereby making it impossible for the Business Manager to obtain Respondent’s approval for any action whatsoever.

41. Moreover, Petitioner and Respondent are deadlocked with regard to issues concerning the hiring and firing of Company employees and Band crew members. In instances involving this issue, it is common that one director will terminate an employee or crew member, and hours or days later, the other director will rehire that same individual.

42. Petitioner and Respondent are currently deadlocked over the issue of whether an additional security guard is needed for the Band during the Freedom Tour. By way of background, AEG, the Band’s promoter, provides security to the Band and the other acts at each of the venues during the Freedom Tour. In spite of this, Respondent has insisted on hiring six (6) additional security guards for the Band. The roles of these six (6) security guards are entirely duplicative of the security provided to the Band by AEG. Regardless, Respondent is sought to expand the security team by hiring a close personal friend who has no experience in security to serve as the Band’s “Venue Security Liaison,” a position that is already held by not

one, but two members of the security team. Despite Petitioner's unequivocal and repeated disapproval of the hiring of this seventh security guard, Respondent unilaterally hired his close friend to serve in the proposed role.

43. Additional areas of deadlock that the directors have recently faced include: (i) the Company's purchase of Non-Appearance/Cancellation Insurance related to the Freedom Tour; (ii) payments to Band members, crew members, and the Band's vendors; (iii) advances made to the directors in for management fees when the Band is not on tour; and (iv) the directors' payment of chargebacks to the Company.

D. Petitioner's Repeated Efforts to Appoint A Third, Independent Director.

44. As noted above, there has been no annual or special meetings of stockholders since the Company was formed.

45. Because of the 50-50 division between the Company's two stockholders – Petitioner and Respondent – neither party can effectively call a meeting. Further, even if a meeting were had, it would be futile. *See* Ex. B at Art. I, § 7 (requiring the “plurality” of stockholder votes to elect a director).

46. Accordingly, Petitioner has repeatedly requested that he and Respondent consent to the appointment of a third, independent director of the Company to break the ongoing deadlock.

47. Most recently, on July 11, 2024, Petitioner (through his counsel) made such a request in writing to Respondent. See July 10-12, 2024 email communications between J. Rosenberg, Esq., C. Sabec, Esq. and others, attached hereto as **Exhibit E**, at 3. The next day, on July 12, 2024, Respondent stated that he was “disinclined to agree to a third director.” *Id.* at 2.

48. Then again, on July 16, 2024, Petitioner (again through his counsel) made yet another a request that Respondent consent to appoint a third, independent director. See July 16, 2024 letter from C. Sabec, Esq. to J. Rosenberg, Esq., attached hereto as **Exhibit F**.

49. Two days later, on July 18, 2024, Respondent again denied Petitioner’s request. See July 18, 2024 email from J. Rosenberg to C. Sabec, Esq., attached hereto as **Exhibit G** (“I next address . . . your mantra-like request for the appointment of a third director. Since apparently you didn’t ‘hear me’, let me repeat my prior advice to you on that issue, . . . Mr. Schon rejects that proposal.”).

E. The Director Deadlock Is Causing or Threatening to Cause the Company Irreparable Harm.

50. The fundamental division between Petitioner and Respondent concerning the management of the Company’s affairs has already had and will continue to have profound repercussions on the Company.

51. First, the ongoing director deadlock is a very much public battle between Petitioner and Respondent and is impacting the Band’s reputation

throughout the music industry. In the past, and particularly following the initiation of the California Action, the Band has faced negative publicity due to the director deadlock and ongoing disagreements. Such negative publicity may potentially impact the Band's fan base, and has also tarnished (and will continue to tarnish) the Band's trust and credibility with vendors and personnel within the music industry. Strains on the Band's relationships with vendors and personnel is likely to lead to a loss of business opportunities for the Band, and difficulty in attracting and retaining talent and crew members. Indeed, the Band has lost multiple members of its crew because of such tensions over the past several months. The Company's current business manager, who was hired only two months ago, is the Company's seventh business manager and has already outlasted many of the preceding business managers.

52. Moreover, the deadlock between Petitioner and Respondent has created a toxic internal environment during the Freedom Tour. Rather than focusing on the Band's performances during a major international tour, the Band's business manager, lead vocalist and crew members now find themselves caught in the middle of the directors' disputes, afraid of performing their job responsibilities, and pressured to align with one director or another. Together, all of this leads to internal strife among the crew members and personnel. Further, the uncertainty caused by the deadlock has drastically eroded morale, as employees have become disillusioned

with the lack of leadership and direction from the Band's leaders – Petitioner and Respondent.

53. Finally, the inability of the Company to make decisions or the unauthorized, unilateral decisions made by Respondent places the Company in precarious financial situations. By way of example, Respondent will unilaterally demand the Company's immediate payment of invoices for hundreds of thousands of dollars of which the Business Manager and accountant were not even aware of. However, such demands do not contemplate the balance of the Company's bank account, or other scheduled payments set to be made on behalf of the Company. Such demands result in severe cash flow shortages for the Company.

54. The unforeseen strains on cash flow experienced by the Company has led to the Company missing scheduled payments at various times. For instance, in the Spring of 2024, the Company faced such tight cash constraints that it was compelled to skip paying the Band's crew members. In other instances, the Band has skipped paying the production company of the Freedom Tour, 24/7 Productions. The inability of the Company to meet its financial obligations poses irreparable harm to the Company.

55. Worse yet, when the Company faces these precarious financial situations, Respondent (and his wife) begin to accuse Petitioner, the Band Manager, the Company's accountant, and other Company personnel of stealing Company

money. This conduct further triggers internal strife and a decline in Company morale as detailed above.

COUNT I

Appointment of a Custodian Pursuant to 8 Del. C. § 226(a)(1)

56. The allegations of the foregoing paragraphs are hereby incorporated by reference as if fully set forth herein.

57. Section 226(a)(1) of the Delaware General Corporation Law provides, in pertinent part, that:

(a) The Court of Chancery, upon application of any stockholder, may appoint 1 or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

(1) At any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors[.]

58. As described above, the two-director board of the Company is deadlocked over the re-election or replacement of the Company's directors, as well as the decision to appointment a third, independent director.

59. To this date, the holdover directors remain seated past their terms without having been reelected.

60. No lawful action can be taken by the board during the irreconcilable deadline, and management of the Company will remain at a standstill until the deadlock is broken.

61. Petitioner requests that the Court, acting pursuant to 8 *Del. C.* § 226(a)(1), appoint a custodian for the Company to serve as the third Board member to issue the tie-breaking vote.

62. Petitioner does not have an adequate remedy at law.

COUNT II

Appointment of a Custodian Pursuant to 8 *Del. C.* § 226(a)(2)

63. The allegations of the foregoing paragraphs are hereby incorporated by reference as if fully set forth herein.

64. Section 226(a)(2) of the Delaware General Corporation Law provides, in pertinent part, that:

(a) The Court of Chancery, upon application of any stockholder, may appoint 1 or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

...

(2) The business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division[.]

65. As described above, the two-member Board, which consists of Petitioner and Respondent, is irreconcilably and undisputedly deadlocked concerning a multiple number of financial and management decisions of the Company.

66. By virtue of this deadlock, the Board is unable to act for the benefit of the Company and its stockholders.

67. The Board's deadlock is causing the Company to suffer irreparable injury or a threat of irreparable injury because the directors are so divided respecting the management of the affairs of the Company. That deadlock leaves the Company in limbo, as Petitioner and Respondent disagree on numerous issues relating to the Company's business, including (but not limited to) the Company's finances, the Company's management of crew members and personnel, and the routine management decisions made by the Company's business manager.

68. Because Petitioner and Respondent each hold equal 50% voting power, stockholders are unable to terminate the division of the Board.

69. Petitioner requests that the Court, acting pursuant to 8 *Del. C.* § 226(a)(2), appoint a custodian for the Company to serve as the third Board member to issue the tie-breaking vote.

70. Petitioner does not have an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court enter an Order:

A. Appointing a custodian pursuant to 8 *Del. C.* § 226;

B. Ordering Respondent to cooperate with the custodian and provide information as requested by the custodian.

- C. Awarding Petitioner his attorneys' fees and costs in this action.
- D. Granting such additional relief as it deems just and proper.

FOX ROTHSCHILD LLP

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Dated: July 24, 2024

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