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Blackwells Onshore I LLC 8 Del. C. § 220 Demand for Inspection of Books and Records

Dear Mr. Elbaum and Mr. Gadson:

We represent The Walt Disney Company (“Disney” or the “Company”) and write in response to your client’s letter dated February 16, 2024, to Jolene Negre, Associate General Counsel and Secretary, on behalf of Blackwells Onshore I LLC (“Blackwells” or “stockholder”), demanding to inspect certain Company documents under 8 Del. C. § 220 (the “Demand”).

To obtain inspection of corporate books and records, a stockholder must first demonstrate that it has a proper purpose for making its demand. 8 Del. C. § 220(b). The stockholder “must do more than state, in a conclusory manner, a generally accepted proper purpose”; it must say “what it will do with the information, or an end to which that investigation may lead”. *W. Coast Mgmt. & Cap., LLC v. Carrier Access Corp.*, 914 A.2d 636, 646 (Del. Ch. 2006).

Where, as here, a stockholder’s stated purpose is to investigate alleged wrongdoing, the stockholder must show by a preponderance of the evidence that a credible basis exists upon which wrongdoing or mismanagement can be inferred. *Seinfeld v. Verizon Commc’ns, Inc.*, 909 A.2d 117, 123 (Del. 2006) (explaining that for a Section 220 demand, a stockholder must show “some evidence” to suggest “a credible basis from which the Court of Chancery can infer there is possible mismanagement that would warrant further investigation”). Delaware corporations are entitled “to deny requests for inspections that are based only upon suspicion or curiosity”. *Id.* at 118. Demands cannot be justified simply by intoning allegations of mismanagement, wrongdoing or breaches of fiduciary duty; rather, to demonstrate a specific proper purpose and meet the credible basis standard, a stockholder must come forward with “documents, logic, testimony or otherwise” that suggest “there are legitimate issues of wrongdoing”. *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 568 (Del. 1997). This is “a burden the plaintiff seeking inspection must bear; it is not a formality”. *Haque v. Tesla Motors, Inc.*, C.A. No. 12651-VCS, 2017 WL 448594, at *4 (Del. Ch. Feb. 2, 2017).

Requests for inspection must also be narrowly tailored to the stated purpose; books and records that are not necessary and essential to that purpose need not be produced. *Brehm v. Eisner*, 746 A.2d 244, 266 (Del. 2000) (“[P]laintiffs may seek relevant books and records of the corporation under Section 220 of the Delaware General Corporation Law, if they can ultimately bear the burden of showing a proper purpose and make specific and discrete identification, with rifled precision, of the documents sought.”); *Espinoza v. Hewlett-Packard*

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Co., 32 A.3d 365, 371 (Del. 2011) (explaining that a demanding stockholder has the burden “to show that the specific books and records he seeks to inspect are ‘essential to [the] accomplishment of the stockholder’s articulated purpose for the inspection” (quoting *Thomas & Betts Corp. v. Leviton Mfg. Co.*, 681 A.2d 1026, 1035 (Del. 1996))).

As discussed further below, the Demand does not support inspection rights because it fails to satisfy any of these foregoing requirements.

A. The Demand Fails To State a Proper Purpose That Would Merit Inspection Because It Lacks Evidence Supporting a Credible Basis To Infer Wrongdoing.

Blackwells purportedly seeks to investigate: (i) the alleged withholding of “the Information-Sharing Agreement” between Disney and ValueAct Capital Management L.P. and (ii) alleged “breach[] [of] one or more duties to stockholders such as their duty of candor to stockholders with respect to the Information-Sharing Agreement and public statements that have resulted from it”. (Demand at 2.) But a demand brought for the purpose of investigating potential wrongdoing must contain evidence to establish “a credible basis from which the Court of Chancery [could] infer there is possible mismanagement that would warrant further investigation”. *Seinfeld*, 909 A.2d at 123.

The Demand offers no evidence of a credible basis to infer wrongdoing. Nor is there any such basis. Blackwells takes issue with the Company “referring to and utilizing statements from ValueAct as part of its solicitation of stockholder proxies for the Annual Meeting”. (Demand at 2.) Without any further support, your client alleges that there is a “credible basis to conclude that the Board and senior management engaged in wrongdoing in connection with solicitation of proxies for the Annual Meeting”. (Demand at 3.) Your client’s conclusory assertions and broad speculation of wrongdoing are insufficient to support the requested “indiscriminate fishing expedition”. *Lebanon Cnty. Emps.’ Ret. Fund v. AmerisourceBergen Corp.*, C.A. No. 2019-0527-JTL, 2020 WL 132752, at *8 (Del. Ch. Jan. 13, 2020) (“To protect the corporation from ‘indiscriminate fishing expeditions’ and from demands grounded in nothing more than curiosity, [a] mere statement of a purpose to investigate possible general mismanagement, without more, will not entitle a shareholder to broad § 220 inspection relief”) (quoting *Seinfeld*, 909 A.2d at 122)); *Okla. Firefighters Pension & Ret. Sys. v. Amazon.com, Inc.*, C.A. No. 2021-0484-LWW, 2022 WL 1760618, at *1 (Del. Ch. June 1, 2022) (denying plaintiff’s demand because it “amount[ed] to a fishing expedition and lack[ed] the precision [Delaware] law requires”). Stated simply, this is nothing more than an impermissible fishing expedition.

B. The Requested Documents Are Not Necessary and Essential to Any Stated Purposes.

Even if the Demand articulated a proper purpose, your client still would not be entitled to inspect the documents requested because the requests are overbroad in time and scope. Under Section 220, the stockholder making the demand “bears the burden of proving that each category of books and records is essential to the accomplishment of the stockholder’s articulated purpose for the inspection”. *Sec. First Corp.*, 687 A.2d at 569. The Demand fails to articulate how “[a]ny and all board-of-directors-level documents or materials” that “describe, reflect or discuss the Information-Sharing Agreement in any way”, “[a]ny information that the Company has shared with ValueAct covered by” the agreement, “[a]ll public statements of the Company . . . that include within them statements by ValueAct” and “[a]ny Board-Level Materials that concern or discuss any [of those] public statements” (Demand at 1-2), are essential to accomplish the stated purposes. *See Woods, Trustee of Avery L. Woods Trust v.*

Sahara Enters., Inc., C.A. No. 2020-0153-JTL, 2020 WL 4200131, at *16 (Del. Ch. July 22, 2020) (noting that a request for “all documents” concerning a topic “is more akin to discovery in plenary litigation than a Section 220 request”); *see also Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 114 (Del. 2002) (noting that Section 220 “does not open the door to the wide ranging discovery that would be available in support of litigation”); *Brehm*, 746 A.2d at 266 (stating that plaintiffs bear the burden to make requests that are “specific and discrete”).

The scope of the Demand is thus not narrowly tailored to meet the stockholder’s articulated purpose or “circumscribed with rifled precision” as required under Delaware law. *Sec. First Corp.*, 687 A.2d at 569-70.

* * *

In sum, for all the reasons stated above, the Company has adequate grounds to reject the Demand.

The Company does not concede the accuracy of the characterizations or factual allegations contained in the Demand, and nothing in this letter, shall be interpreted as an admission that your client’s Demand states a proper purpose for inspection or as a waiver or forfeiture of any argument, objection or contention by the Company concerning: (i) the sufficiency, propriety and/or scope of your client’s Demand or (ii) any of the underlying facts and events discussed therein.

Regards,

/s/ Kevin J. Orsini

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