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

Dear Mr. Charlson:

We represent The Walt Disney Company ("Disney" or the "Company") and write in response to your letter dated March 20, 2024, to Jolene Negre, Associate General Counsel and Secretary of Disney, on behalf of Blackwells Onshore I LLC ("Blackwells" or "Stockholder"), demanding to inspect certain Company documents under 8 *Del. C.* § 220 (the "March Demand"). Because you renew the demand you made by letter on February 16, 2024 (the "February Demand") in the March Demand, the Company incorporates by reference the letter we sent to you on February 26, 2024 (the "February Response") and our email (the "Response Email") sent on March 22, 2024 in response to your March 12, 2024, email requesting that the Company reconsider its position in the February Response. The March Demand, which is rife with misinformation, does not remedy the deficiencies of the February Demand. Accordingly, the March Demand does not support inspection rights because it fails to satisfy any of Section 220's requirements.

As you concede, 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). A demand brought for the purpose of investigating potential wrongdoing must contain evidence to establish "a credible basis from which the Court of Chancery c[ould] infer there is possible mismanagement that would warrant further investigation". *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 123 (Del. 2006).

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

Blackwells asserts in the March Demand that it seeks to: (i) investigate potential breaches of fiduciary duty or corporate wrongdoing related to the Company's "dealings with and disclosures related to ValueAct Capital Management, L.P. and its affiliates" ("ValueAct"); (ii) investigate the independence and disinterestedness of the Company's board of directors (the

"Board"); (iii) investigate the propriety of the Company's sharing of information; (iv) determine whether to bring a lawsuit; (v) determine whether to seek an audience with the Board or senior management; and (vi) determine whether to take other action. (March Demand at 1.) The March Demand then expands solely on the alleged breaches of fiduciary duty and corporate wrongdoing with a purported explanation of the relationship between the Company and ValueAct.

However, you fail entirely to establish a credible basis to infer wrongdoing or mismanagement to support investigating any of these issues. Instead, you make only unsupported and speculative assertions that there must have been some improper conflict of interest and wrongdoing that led ValueAct to enter into the Information-Sharing Agreement and to publicly support the slate put forward by the Board for election at the Annual Meeting. This is nothing more than an improper fishing expedition. *See 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").

First, you assert that the press release issued by the Company on January 3, 2024, stating that it entered into an Information-Sharing Agreement with ValueAct (the "Press Release") failed to disclose *other* information, such as the "history of negotiations", the content of the information and the motivation for the agreement. (March Demand at 2.) Without any other evidence, you argue that the timing of the Press Release, which also stated that ValueAct would support the Board's recommended nominees for election, provides a "credible basis" to believe the Company engaged in corporate wrongdoing. (*Id.*)

Second, you argue that the credible basis is "enhanced" by recent conduct, including the Company's "refusal to provide any meaningful disclosures" about the Information-Sharing Agreement. (*Id.* at 3.) Again, you speculate that, "[a]bsent wrongdoing", the Company would disclose details about the agreement and the information shared. (*Id.*)

To be clear, the Company was not obligated to have made any of the disclosures you complain it failed to make. And you cite no such obligation. The alleged failure to disclose certain information that there is no obligation to disclose obviously cannot give rise to a credible basis from which a court could infer wrongdoing. Moreover, you ignore the fact that the Company *did* disclose the purpose of the Information-Sharing Agreement. The Company specifically explained in the Press Release that the Company and ValueAct entered into the agreement to "enable[] the company to provide information to the investment firm and consult with ValueAct on strategic matters, including through meetings with the Disney Board and management". (Press Release (Jan. 3, 2024), available at https://thewaltdisneycompany.com/the-walt-disney-company-and-valueact-capital-enter-into-information-sharing-arrangement-to-facilitate-strategic-consultation-during-companys-transformation/.) Nothing in the March Demand supports your allegation that the agreement was "the product of some sort of corporate *quid pro quo*". (March Demand at 3). A stockholder should 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). Logic and the evidence here point away from wrongdoing, not toward it.

Third, there is absolutely nothing other than speculation to support your allegation that there was some sort of *quid pro quo* between the Company and ValueAct that led to the Information-Sharing Agreement and ValueAct's statements of support for the Board's slate. Specifically, you claim that ValueAct "managed, and may still manage, tens of millions of dollars' worth of the Company's pension fund assets" and this "longstanding relationship" provides a further basis to "infer that the Company may have used its relationship with ValueAct" to influence its endorsement. (March Demand at 3.) You follow this allegation with a series of "ifs", all of which—as we pointed out in our email on March 22, 2024—are untrue. You assert that "if ValueAct continues to profit from managing" the assets, "if ValueAct's asset-management relationship with the Company was recently terminated" and if there is a "conflict of interests", then ValueAct's endorsement is suspect. (*Id.* at 4,) But the *Board* did not appoint ValueAct as manager of certain pension fund assets; that decision was made by the Investment Administrative Committee (the "IAC")—which has an independent mandate, is made up of employees of Disney and its subsidiaries who are *not* members of the Board and has the authority to designate and remove managers of pension fund assets. Because the Board does not determine the managers of pension fund assets, ValueAct's endorsement would not "preserv[e]" or "renew" any "arrangement beneficial" to them. (*Id.*) Moreover, as the Company has already informed you, the pension fund asset management arrangement with ValueAct began *in 2013*. The fact that ValueAct's arrangements began more than 10 years ago directly contradicts the insinuation that its support was in exchange for any business opportunity with the Company, particularly one you insinuate arose a decade later.

One additional fact bears noting: your entire theory is that the Board has acted improperly by allegedly leveraging the Company's relationship with ValueAct as a pension fund manager to obtain its endorsement of the Company's slate. But as we already told you, the pension fund management agreement between the Company and ValueAct expired in July 2023, months *before* the Information-Sharing Agreement was signed and months *before* ValueAct stated its support for the Board's slate. This fact fatally undermines your alleged theory of misconduct and conflict of interest.

Fourth, you argue that the Company misrepresented that ValueAct is a "long-term shareholder[]" of the Company. (*Id.*) But you take the statement out of context in an attempt to bolster your deficient evidence. The full quote from the Press Release is,

> "ValueAct Capital has a track record of collaboration and cooperation with the companies it invests in, and its Co-CEO Mason Morfit has been very constructive in the conversations we've had over the past year. We welcome their input as long-term shareholders," said Robert A. Iger, Disney's Chief Executive Officer.

(Press Release (Jan. 3, 2024).) Your attempt to spin a statement about the expected long-term constructive engagement between ValueAct and the Company into an "inconsistent representation" because ValueAct's investment as a stockholder began in 2023 is not evidence of a credible basis of wrongdoing. (March Demand at 4.)

In sum, while you assert that a stockholder need "only" show a credible basis to infer mismanagement or wrongdoing (*id.* at 5), the requirement is not a mere formality. A stockholder must make the showing by a preponderance of the evidence. *Seinfeld*, 909 A.2d at 123. You fail to do so, and the Company is entitled "to deny requests for inspections that are based only upon suspicion or curiosity". *Id.* at 118.

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

Even if the March Demand articulated a proper purpose, your client still would not be entitled to inspect the documents requested because the requests in the March Demand are still 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; *Espinoza v. Hewlett-Packard 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))).

The March Demand seeks for the Company to produce certain documents from January 1, 2023 to the present (the "Relevant Time Period"): the Information-Sharing Agreement, "[a]ny and all" communications between the Board/senior management and ValueAct, "[a]ll information" shared with ValueAct under the Information-Sharing Agreement and "[a]ll Board Materials and Senior Management Materials" (both of which include at least "all documents" provided to and discussed by the Board and executive officers) about "the propriety of making information differentially available". (March Demand at 5-7.) Despite defining a "Relevant Time Period", you seek the following "[w]ithout limitation" to any time period: "Board Materials and Senior Management Materials relating to or reflecting" 11 categories of information related to the Information-Sharing Agreement and ValueAct's endorsement and the same "relating to or reflecting" any relationship between ValueAct and the Company. (*Id.*) Especially in light of the misstatements in the March Demand, you fail to demonstrate how these documents are essential to accomplish your stated purpose. The requested documents are not "circumscribed with rifled precision" as required under Delaware law. *Sec. First Corp.*, 687 A.2d at 570; *see also 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"); *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").

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In sum, for all the reasons stated above and in the February Response, the Company has adequate grounds to reject the March Demand.

The Company does not concede the accuracy of the characterizations or factual allegations contained in the March Demand, and nothing in this letter shall be interpreted as an admission that the March or February 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 the February or March Demand or (ii) any of the underlying facts and events discussed therein.

Nonetheless, in an effort to finally put to rest your false narrative concerning ValueAct, we are willing to meet and confer about a targeted production confirming that the agreement whereby ValueAct served as a pension fund manager—selected not by the Board, but instead by the IAC nearly a decade ago—expired months before any discussions about the Information-Sharing Agreement or this proxy contest. Any such document or documents will

only be produced following the execution of a mutually agreeable confidentiality agreement. Please let us know your availability to meet and confer later this week.

Regards,

/s/ Kevin J. Orsini

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BY EMAIL