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August 23, 2024

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Re: Buxton Helmsley Demand to Inspect Books and Records of Assertio Holdings, Inc.

Mr. [REDACTED]:

We represent Assertio Holdings, Inc. (“Assertio”), and write in response to your letter, dated August 16, 2024, on behalf of Buxton Helmsley Active Value Fund, L.P. (“Buxton Helmsley”) demanding to inspect books and records of Assertio pursuant to DGCL § 220 (the “Demand”).

Assertio is committed to cooperating with its stockholders in responding to records requests that comply with Delaware law. Section 220 permits a stockholder “who shows a specific proper purpose and who complies with the procedural requirements of the statute” to inspect “specific books and records of a corporation.” *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 564, 566-67 (Del. 1997). Section 220 defines that “proper purpose” as “a purpose reasonably related to such person’s interest as a stockholder.” 8 Del. Code § 220. “Related to” in this context “does not mean simply that the ownership interest and the purpose for which corporate records are sought arose contemporaneously, or from the same transaction or event,” but rather that “the purpose must be something that stockholders would be interested in *because of their position as stockholders.*” *Lynn v. EnviroSource, Inc.*, 1991 WL 80242, at *2 (Del. Ch. May 13, 1991), *aff’d*, 608 A.2d 728 (Del. 1991) (emphasis in original). The stockholder bears the “burden to establish that she has a proper purpose.” *Marathon Partners, L.P. v. M&F Worldwide Corp.*, 2004 WL 1728604, at *4 (Del. Ch. July 30, 2004). We are reviewing the Demand and considering whether Buxton Helmsley is entitled to inspect any of the company books and records identified by the Demand.

Based on our initial review of the Demand and the history of Assertio’s communications with Buxton Helmsley (and its principal Mr. Parker), we are concerned that Buxton Helmsley may not have a proper purpose to inspect Assertio books and records under Section 220. To facilitate consideration of the Demand, we request that Buxton Helmsley and Mr. Parker provide certain additional information to help clarify whether they have a proper purpose for making the Demand.

First, for several reasons, we have concerns that Buxton Helmsley and Mr. Parker may be seeking Assertio books and records for purposes adverse to the company and its stockholders. *See Alexandria Venture Invs., LLC v. Verseau Therapeutics, Inc.*, 2020 WL 7422068, at *5 (Del. Ch. Dec. 18, 2020) (“A purpose is not proper . . . where is it adverse to the best interests of the corporation.”).

Buxton Helmsley has a history of engaging in activist campaigns against companies in which it holds short positions (including Mallinckrodt Plc., Endo International Plc., and EchoStar Corporation). Mr. Parker's past correspondence with Assertio has expressly noted Buxton Helmsley's past short activist campaigns and suggested that those actions are relevant to Assertio's understanding of his current actions with respect to Assertio.¹ In addition, Buxton Helmsley issued a press release publicizing a statement that it commissioned from an accountant and purported "fraud examiner" stating, among other things, that while the company's accounting for the value of its assets complied with GAAP, there may have been "material positive circumstances not reflected under GAAP financial reports" which would be material to "potential or actual short sellers." Buxton Helmsley's apparent concern for "short sellers of the Company's traded securities" further suggests that Buxton Helmsley is itself a short seller or acting in a manner beneficial only to short sellers and not in the best interest of the corporation.

Moreover, while Buxton Helmsley has repeatedly represented to Assertio (and to the investing public) that it is "beneficial owner of 1% of the equity shares of Assertio," the only evidence of Buxton Helmsley's stock ownership that we have is that 100 shares of Assertio common stock were registered in Buxton Helmsley's name on May 1, 2024. While Assertio recognizes the right of all stockholders—regardless of the size of their holdings—to inspect books and records upon showing a proper purpose under Section 220, under the circumstances here we are concerned that (i) Buxton Helmsley, Mr. Parker, and/or their affiliates or others working with them, may hold a short position in Assertio stock, and (ii) Buxton Helmsley may have misrepresented to Assertio and its stockholders the size and nature of Buxton Helmsley's holdings. If so, it would suggest both that Buxton Helmsley is working for purposes adverse to the company and its stockholders, and cast doubt on the truthfulness of Mr. Parker's statements to Assertio and the investing public.

As we consider the Demand, we request that Mr. Parker confirm in a sworn statement whether he, Buxton Helmsley, and/or any of their affiliates, investors, or funders have ever held a short position in Assertio securities. We also request that you provide evidence supporting Mr. Parker's repeated public statements that Buxton Helmsley is "beneficial owner of 1% of the equity shares of Assertio."

In addition, Mr. Parker's recent correspondence with Assertio suggests the Demand is part of a larger concerted effort to extract a settlement from Assertio for Buxton Helmsley's or Mr. Parker's personal benefit at the expense of the company and other stockholders. For example, Mr. Parker's letter to Assertio's board of directors, dated August 20, 2024 (the "August 20 Letter"), warns of the purported "imminent risk" if the company declines to "follow [Buxton Helmsley's] recommended course of action," including "entering into a cooperation agreement with [Buxton Helmsley]" and pursuing a baseless False Claims Act against its own subsidiary – Spectrum – for the purpose of creating a shared "bounty." Mr. Parker's efforts to obtain a financial settlement for himself and Buxton Helmsley (and Ms. Moore) individually—rather than seeking a benefit shared by the company and all of its stockholders—strongly suggests that the Demand lacks a proper purpose.

¹ For example, Mr. Parker's April 22, 2024 letter to Assertio's board stated that Assertio "should first note [Buxton Helmsley's] [purported] involvement leading up to the bankruptcy filings of Endo International plc." and "Mallinckrodt plc.," stating that both companies "filed for bankruptcy protection just over a quarter after [Buxton Helmsley] had gone public with" accusations of fraud.

Mr. Parker's apparent coordination with Ms. Moore (a disgruntled former employee who is actively engaged in litigation adverse to the company) and, in particular, his suggestion that he would attempt to persuade Ms. Moore to drop her baseless litigation if the company accedes to his personal demands and provides some financial benefit to Ms. Moore, is not consistent with the shared interests of the company and its stockholders.

Mr. Parker's August 20 Letter also states that Ms. Moore continues to retain confidential company documents and states that Mr. Parker has "share[d]" these confidential company documents "with [Buxton Helmsley's] legal counsel." (Aug. 20 Ltr at 4.) Mr. Parker's express acknowledgment that he obtained and continues to possess improperly obtained non-public company property and his implicit threat to "broadcast improperly obtained confidential information" is further evidence that the Demand is made for improper purposes. *See Pershing Square, L.P. v. Ceridian Corp.*, 923 A.2d 810, 819 (Del. Ch. 2007).

While reserving all rights with respect to this issue, we ask that [REDACTED] immediately return all confidential Spectrum documents that it is holding for Buxton Helmsley, which it is clear Buxton Helmsley intends to improperly use for its own gain.

Mr. Parker's August 20 Letter further states that Buxton Helmsley "will not incur expenses related to [its threatened] litigation" against the company (Aug. 20 Ltr. at 1), suggesting that his campaign against the company may be funded by others, who may themselves have interests adverse to the company. To assist us in considering the Demand, we request that you disclose the identities of all parties who are funding Buxton Helmsley's or Mr. Parker's actions or otherwise coordinating with them.

Second, setting aside the serious concerns as to whether Buxton Helmsley and Mr. Parker have interests adverse to the company, on its face, the Demand does not apparently set forth any proper purpose. The Demand purports to seek Assertio books and records in order to investigate supposed potential wrongdoing at pre-acquisition Spectrum and inform a decision about pursuing a potential stockholder derivative action. But these allegations do not provide a proper purpose for inspection for several reasons.

As an initial matter, as noted above, the only evidence we have of Buxton Helmsley's status as an Assertio stockholder is the registration of 100 shares in its name on May 1, 2024. But status as a stockholder since May would not provide standing to request records to investigate supposed wrongdoing at Spectrum allegedly occurring several years ago. *See, e.g., Graulich v. Dell Inc.*, 2011 WL 1843813, at *7 (Del. Ch. May 16, 2011) (no proper purpose when "plaintiff lacks standing ... to bring a claim derivatively or directly because he was not a stockholder at the time of the alleged wrongdoing").

Even if Buxton Helmsley had standing to investigate the supposed wrongdoing alleged in the Demand, the Demand fails to present "evidence to suggest a credible basis from which a court can infer that mismanagement, waste or wrongdoing may have occurred." *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 118 (Del. 2006) (internal quotation marks omitted); *see also Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 568 (Del. 1997) ("There must be some evidence of possible mismanagement as would warrant further investigation of the matter.").

The Demand's allegations of wrongdoing rest entirely on unsubstantiated hearsay from unnamed supposed "whistleblowers," without providing any basis to conclude that the anonymous sources

of this supposed information had any grounds for their accusations. These unsupported accusations are not “evidence of potential wrongdoing”, and Buxton Helmsley concedes it has done nothing to examine the merits of such claims. As noted above, we understand from Assertio’s correspondence from Mr. Parker that the purported “whistleblower” is Ms. Moore. As Assertio has previously explained to Mr. Parker, the company is well-aware of Ms. Moore’s allegations concerning Rolvedon. If Mr. Parker or Buxton Helmsley are truly in possession of information relevant to those allegations, we would welcome the opportunity to review that information.

Moreover, even if Ms. Moore’s allegations provided a “credible basis” to infer possible wrongdoing or mismanagement *at Spectrum* during the time Ms. Moore was employed there—and they do not—assertions of alleged misconduct at Spectrum that are said to have occurred before Assertio acquired Spectrum do not provide any credible basis to infer that any wrongdoing or mismanagement has occurred *at Assertio*.

In addition, Mr. Parker has made clear that his true purpose is *not* “to investigate potential ... wrongdoing” in order “to determine whether to pursue a derivative action,” as the Demand states. (Demand at 4.) To the contrary, in his August 20 Letter, Mr. Parker states that he has already determined “to proceed with derivative litigation” if Assertio does not accept his demands, regardless of the outcome of any supposed “investigation.” (Aug. 20 Ltr. at 1.) Thus, the Demand’s purported purpose—assisting in investigating the merits of a potential derivative action—is not its true primary purpose, and so is not a proper purpose under Section 220. *See High River Limited Partnership v. Occidental Petroleum Corp.*, 2019 WL 6040285, at *7 (Del. Ch. Nov. 14, 2019) (no proper purpose where “Plaintiffs have already made their assessment of the Board’s decision-making and have found it wanting”).

Finally, absent some credible basis for suspecting wrongdoing—which is lacking here—obtaining documents to aid Buxton Helmsley in conducting a proxy contest based on disagreements with management or the Board about substantive business decisions is not a proper purpose for a Section 220 demand. *See id.* (“It is difficult to discern how a fishing expedition into the boardroom is necessary and essential to advance Plaintiffs’ purpose to raise concerns with their fellow shareholders about the wisdom of the Board’s decisions...”).

* * *

Again, Assertio is committed to cooperating with its stockholders in responding to reasonable records requests that comply with Delaware law. This letter does not constitute a rejection of the Demand. We are still considering whether the Demand presents a proper purpose for inspection of company books and records and, if so, whether the requested documents are necessary and essential to any such proper purpose. That said, as discussed above, we have concerns about whether the Demand is supported by a proper purpose. Please provide us with the information requested above as soon as practicable to assist the company in assessing whether the Demand complies with Section 220. In addition, if there is any other information you wish for the company to consider in assessing the Demand—including any information related to the concerns raised above—please promptly provide it to us.

Finally, we take note that the August 20 Letter contains numerous false and baseless factual assertions against members of the Board of Directors as well as the company’s general counsel. Your client is on notice that his role as a so-called shareholder activist does not shield him from personal liability for conduct that violates state and federal law. We will address the

matters raised in the August 20 letter in separate correspondence to you as his counsel on or before August 27, 2024.

Sincerely,

[REDACTED]

cc: Sam Schlessinger, Esq.