



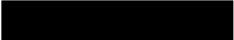
September 19, 2024

**BY EMAIL**



**Re: Demand to Inspect Books and Records of Assertio Holdings, Inc.  
Pursuant to DGCL § 220**


Mr. :

We write on behalf of Buxton Helmsley Active Value Fund, L.P. (“Buxton”), further to the August 16, 2024 demand for books and records pursuant to DGCL § 220 (the “Demand”) sent by Buxton’s former counsel, , and in response to your August 23, 2024 letter responding to the Demand on behalf of Assertio Holdings, Inc. (“Assertio” or the “Company”).

In purporting to “seek information to help clarify whether [Buxton and Alexander Parker] have a proper purpose for making the Demand,” your August 23 letter proceeds from a fundamental misunderstanding of Buxton’s burden to demonstrate a proper purpose for its Demand under Delaware law. The Demand describes in significant detail Buxton’s proper purpose related to its intention to investigate possible mismanagement, waste, and/or wrongdoing at Assertio. The Demand also provides you and Assertio with an easily ascertainable credible basis regarding its suspicions of wrongdoing, including by way of reference to the overwhelming public evidence regarding the Company’s sudden announcement of a \$157 million write down for its recently acquired Rolvedon product, among other things. In this context, the Company’s request for additional information from Buxton—and its principal, affiliates, investors or funders—to “facilitate consideration of the Demand” finds no purchase in Delaware law, and is an obvious attempt at delay and obfuscation.<sup>1</sup>

There can be no reasonable dispute that Buxton’s Demand satisfies the credible basis

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<sup>1</sup> Attached as Exhibit A hereto is a Power of Attorney authorizing  to act on Buxton’s behalf in this matter. Without admitting to its necessity under the DGCL but provided here in the spirit of cooperation, attached as Exhibit B is documentary evidence of Buxton’s beneficial ownership of Assertio stock, as requested in your August 23 letter.

standard, and under well-settled Delaware law, that is the end of the inquiry. *See AmerisourceBergen Corp. v. Lebanon Cnty. Employees' Ret. Fund*, 243 A.3d 417, 428 (Del. 2020) (“Where a stockholder meets this low burden of proof from which possible wrongdoing or mismanagement can be inferred, a stockholder’s purpose will be deemed proper under Delaware law.”). The Company’s protestations over the whether wrongdoing has in fact occurred is irrelevant as a matter of law.<sup>2</sup> As the Delaware Supreme Court has explained:

the ‘credible basis’ standard sets the lowest possible burden of proof [. . .] Stockholders need only show, by a preponderance of the evidence, a credible basis from which the Court of Chancery can infer there is possible mismanagement that would warrant further investigation—a showing that ‘may ultimately fall well short of demonstrating that anything wrong occurred.’ That ‘threshold may be satisfied by a credible showing, through documents, logic, testimony or otherwise, that there are legitimate issues of wrongdoing.’

*Seinfeld v. Verizon Commc’ns, Inc.*, 909 A.2d 117, 123 (Del. 2006) (citations omitted).

Buxton reiterates that its purpose in making the Demand is to investigate waste, mismanagement and wrongdoing, as set forth in detail in the Demand. Although much of your letter is dedicated to ascribing certain ulterior motives to the Demand, you ignore that the Demand in fact provides you with eight proper purposes. Therefore, Buxton rejects your letter’s suggestion that the Demand’s stated purpose is pre-textual (or otherwise deficient).

Your requests for additional information are also unnecessary and improper in this context, as are your additional assertions:

*First*, you request that Mr. Parker proffer 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.” Your request appears to rest on the false premise that a stockholder is not entitled to exercise its statutory information rights pursuant to DGCL § 220 if—at *any point in time*—that stockholder held a short position in the company’s stock. Indeed, your letter implies (though does not state outright) that the Company is entitled to reject Buxton’s Demand if Buxton ever held a short position in the company. Tellingly, you fail to cite a single authority to support the novel proposition that a stockholder’s current or historical short position somehow nullifies its statutory right to books and records—because none exists. To the contrary, the Delaware Court of Chancery has held outright that, for purposes of inspection rights, “a purchaser of shares from a short seller is a beneficial owner.” *Deephaven Risk Arb Trading Ltd. v. UnitedGlobalCom, Inc.*, 2005 WL 1713067, at \*7 (Del. Ch. July 13, 2005); *see also Parfi Holding AB v. Mirror Image Internet, Inc.*, 954 A.2d 911, 941 (Del. Ch. 2008) (stating in dicta that “Section 220 cases present a different context in part because § 220 creates a statutory right to books and records that is not qualified by

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<sup>2</sup> Indeed, the Company’s Board of Directors should itself be investigating any potential wrongdoing, in accordance with their fiduciary duties, but are hopelessly conflicted. *See Lebanon Cnty. Emps.’ Ret. Fund v. AmerisourceBergen Corp.*, 2020 WL 132752, at \*20, \*21 (Del. Ch. Jan. 13, 2020) (“If directors learn of information that would put them on notice of a threatened corporate trauma—the proverbial red flag—then they must take action in good faith to address it. A claim that directors had notice of serious misconduct and simply brushed it off or otherwise failed to investigate states a claim for breach of duty.”), *aff’d*, 243 A.3d 417 (Del. 2020).

a requirement that the owner actually have an economic interest in the firm’s success.”). Nevertheless, and without admitting to its necessity, Buxton confirms it does not hold—and never has held—a short position in Assertio securities.

*Second*, your August 23 letter suggests that Buxton could *never* have a proper purpose to propound a books and records request, because, as you characterize it, Buxton has a history as an “activist.” Putting aside the accuracy of your chosen descriptor, whether a stockholder is an “activist” investor is irrelevant to its ability to exercise its rights under Section 220. Again, your position is unsupported by Delaware law, which draws no distinction between the inspection rights of a so-called activist investor versus any other investor.

*Third*, you are mistaken that Buxton’s allegations concern only Spectrum and not Assertio. Buxton is investigating current wrongdoing at Assertio, as well as Assertio’s actions in writing down Rolvedon, among other assets; Buxton is also investigating whether Assertio breached its duties to its stockholders during the merger due diligence process by failing to adequately investigate wrongdoing by Spectrum.

\* \* \*

In short, your attempt to impose pre-conditions to Buxton’s exercise of its statutory inspection rights is untethered from longstanding Delaware jurisprudence establishing that when a stockholder meets its burden by showing a credible basis to infer mismanagement, waste, or wrongdoing, the inquiry ends there.<sup>3</sup> Given that the Demand plainly meets this standard, your letter appears to be a transparent attempt to place obstacles to Buxton’s exercise of its statutory information rights.

Please confirm by no later than September 25, 2024 whether the Company agrees to provide the books and records requested by the Demand. If we do not receive a definitive response by then we will construe the Company’s silence as a refusal to provide the requested books and records, and commence litigation to enforce Buxton’s inspection rights.

*Buxton reserves all legal and equitable rights and remedies and waives none.*

Sincerely,

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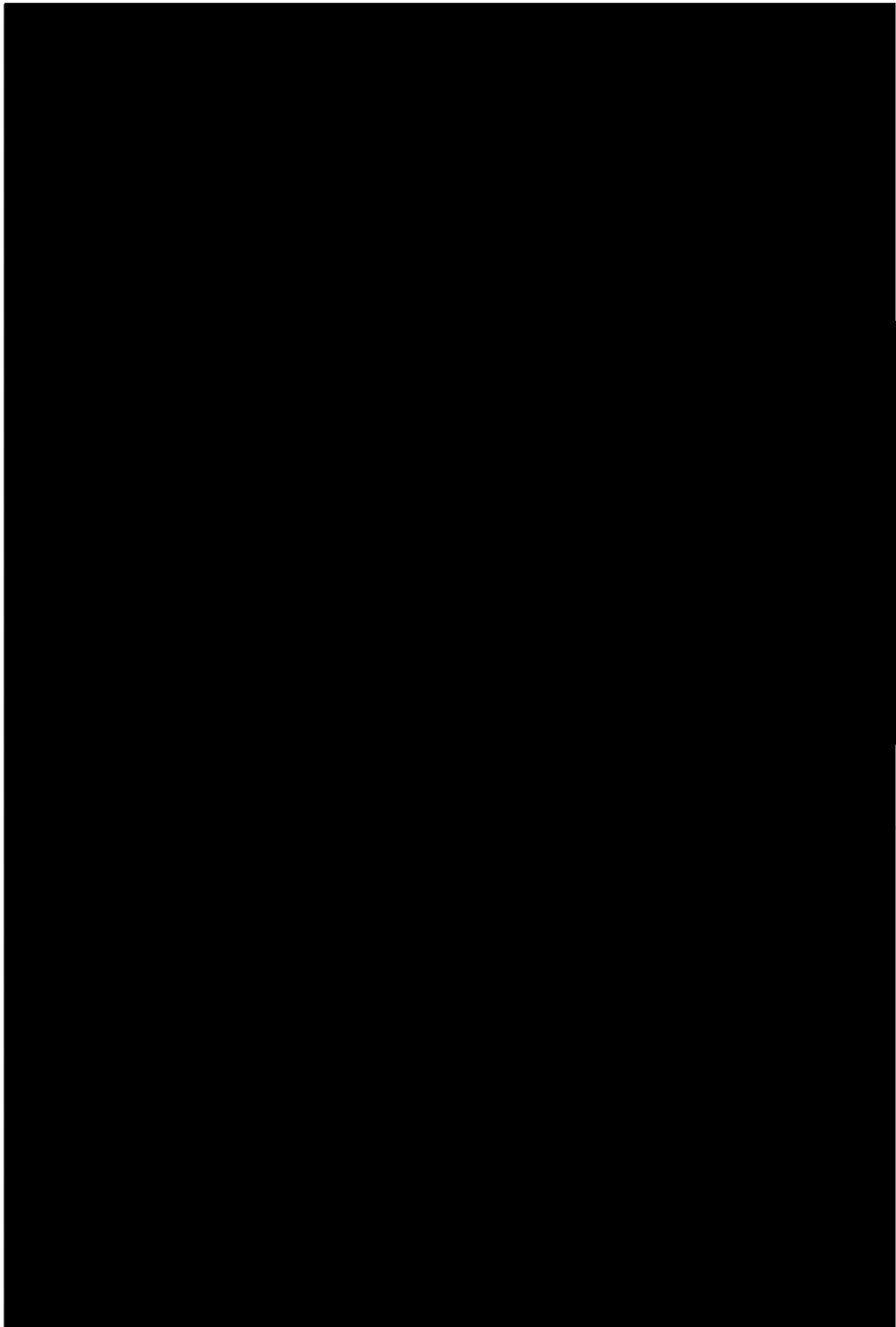
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<sup>3</sup> Even assuming *arguendo* that your request for a sworn statement was proper as to Buxton itself, your request encompasses BGH’s founder, Mr. Parker and all of Buxton’s “affiliates, investors, or funders.” As common sense dictates, Mr. Parker cannot make a sworn statement as to the holdings or positions of individuals and entities over which he has no knowledge or control.

**Power of Attorney**

[*See attached*]



**Documentary Evidence of Ownership**

*[See attached]*