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IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELAWARE COUNTY EMPLOYEES RETIREMENT FUND, CITY OF ROSEVILLE EMPLOYEES' RETIREMENT SYSTEM and ROBERT FRIEDMAN, Derivatively and on Behalf of SANCHEZ ENERGY CORPORATION,	:	No. 702, 2014
Plaintiffs Below, Appellants	:	APPEAL FROM THE OPINION AND ORDER DATED NOVEMBER 25, 2014 OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN CONSOL. C.A. NO. 9132-VCG
v.	:	
A.R. SANCHEZ, JR., ANTONIO R. SANCHEZ, III, GILBERT A. GARCIA, GREG COLVIN, ALAN G. JACKSON, EDUARDO SANCHEZ, ALTPOINT CAPITAL PARTNERS LLC, ALTPOINT SANCHEZ HOLDINGS, LLC, SANCHEZ RESOURCES, LLC, and SANCHEZ ENERGY CORPORATION	:	
Defendants Below, Appellees.	:	

APPELLANTS' OPENING BRIEF

DATED: February 4, 2015 (revised for formatting, February 6, 2015)

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NATURE OF PROCEEDINGS

This consolidated stockholder derivative action challenged a transaction (the "Transaction") among Sanchez Energy Corp. ("Sanchez Energy" or the "Company"), another Sanchez-controlled company called Sanchez Resources LLC ("Sanchez Resources"), and Sanchez Resources' private equity partner Altpoint Capital Partners LLC ("Altpoint"). Sanchez Energy is a unique type of public corporation. Although it has a five-person board, that board depends on privately owned entities entirely controlled by the Sanchez family for all of the Company's management, employees, facilities, information about its business, and operations. The five-person board includes the Sanchez family patriarch A.R. Sanchez, Jr. ("Sanchez Jr."), who serves as Executive Chairman; his son Antonio R. Sanchez, III ("Sanchez III"), who serves as President and CEO; the patriarch's lifelong best friend; a Sanchez family business partner; and one independent director.

The Transaction arose because Sanchez Resources, which controlled the working interest leases on 80,000 acres of land in the Tuscaloosa Marine Shale ("TMS"), wanted to develop the 40,000 acres that were not previously developed. Sanchez Resources' private equity partner Altpoint did not want to fund that development, and the Sanchez family did not want to use its own money for that purpose either. So, the Sanchez family used its complete control of every aspect of Sanchez Energy's business to cause Sanchez Energy to buy out Altpoint's interest

in Sanchez Resources and to provide the funding for the development of the 40,000 undeveloped acres. To accomplish this, Sanchez Resources transferred the working interest leases on the 40,000 undeveloped acres to Altpoint. Altpoint then sold those leases to Sanchez Energy for $61 million – an amount that Sanchez III disclosed was the price that Altpoint required to relinquish its equity interest in Sanchez Resources. Sanchez Energy then contributed those leases to a 50/50 joint venture with Sanchez Resources (which contributed the leases on the remaining 40,000 developed acres), agreed to pay Sanchez Resources an additional $14.4 million in cash, and agreed to fund the development of the first six wells on the undeveloped land at a projected cost of $22 million. Plaintiffs' investigation revealed that the reason the parties structured the Transaction in such a complex, multi-step manner (instead of just having Sanchez Resources buy out Altpoint and having Sanchez Energy provide a direct investment into the joint venture) was to hide an additional kickback that imposes on Sanchez Energy an ongoing obligation to pay Sanchez Resources a royalty on all resources extracted from wells on the 40,000 undeveloped acres. That royalty has never been disclosed to Sanchez Energy's public investors. So in the end, the Sanchez family used Sanchez Energy to (1) buy out Altpoint's interest in Sanchez Resources, (2) provide Sanchez Resources with an immediate influx of $14.4 million in cash, (3) fund the development of at least six wells at no expense to Sanchez Resources in a

supposed 50/50 joint venture, and (4) provide ongoing financing to Sanchez Resources in the form of an undisclosed royalty kickback that was deliberately hidden from the Company's stockholders.

Relying on the Court of Chancery's ruling in *In re KKR Financial Holdings LLC Shareholders Litigation*, 101 A.3d 980 (Del. Ch. 2014), and aggressively making inferences against Plaintiffs-Appellants City of Roseville Employees' Retirement System, Delaware County Employees Retirement Fund, and Robert Friedman (collectively, "Plaintiffs"), the Court of Chancery issued an Opinion[1] and Order[2], dated November 25, 2014, granting Defendants' below, Appellees' motions to dismiss for failure to plead sufficient facts to excuse demand under Court of Chancery Rule 23.1 (the "Opinion"). Appellants appeal from that judgment.

[1] Attached hereto as Ex. A.

[2] Attached hereto as Ex. B.

SUMMARY OF ARGUMENT

1. The Court of Chancery erred in holding that presuit demand was not excused under the first prong of *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984) because a majority of Sanchez Energy's five-member board of directors (the "Board") lacked independence from Sanchez Jr. and Sanchez III. In rejecting Plaintiffs' challenges to the independence of the non-Sanchez directors, the Court of Chancery improperly rejected allegations that thirty-year and fifty-year long close friendships between those directors and Sanchez Jr., together with numerous business and financial entanglements, provide a basis to question the independence of these directors. By declining to assess the demand-futility allegations as a whole, as is required under Delaware law, and to draw all reasonable inferences therefrom in Plaintiffs' favor, as required on a motion to dismiss, the Court below committed reversible error by concluding that demand was not excused under the first prong of *Aronson*.

2. The Court of Chancery also erred in holding that presuit demand was not excused under the second prong of *Aronson*. The Court of Chancery held that the business judgment rule applied, rather than evaluating the Transaction under the entire fairness doctrine. In light of the complete control that the Sanchez family has over Sanchez Energy's management, infrastructure, resources, information and personnel, generally, as well as the actual control that the Sanchez

family exercised over the specific series of transactions challenged in this case, even if the Board were independent – which it was not – it was structurally incapable of providing the type of arm's-length bargaining needed to apply the business judgment rule. Plaintiffs' Verified Consolidated Stockholder Derivative Complaint ("Complaint") also alleged sufficient facts to show that the Transaction was not entirely fair to Sanchez Energy. *First*, the detailed allegations raise substantial questions about the adequacy of the process, as Sanchez III admitted that the purchase price for the 40,000 acres Sanchez Energy acquired from Altpoint did not reflect the fair value of those leases but was simply the price that Altpoint required to give up its equity interest in Sanchez Resources. *Second*, the detailed allegations raise questions about the fairness of the price paid, as recent precedent transactions in the geographic area of the TMS occurred at prices that were a small fraction of what Sanchez Energy paid for the acreage it acquired in the deal. *Finally*, the Complaint specifically alleged that Defendants lied about the Transaction's true cost to Sanchez Energy and its public stockholders by hiding from stockholders a significant ongoing royalty kickback from Sanchez Energy to Sanchez Resources.

STATEMENT OF FACTS

A. SANCHEZ ENERGY IS ONE OF SEVERAL RELATED COMPANIES DOMINATED AND CONTROLLED BY THE SANCHEZ FAMILY

Sanchez Energy is a shell company that was established by the Sanchez family in 2011 in order to use public financing to fund a substantial part of the family's oil and gas related operations. A19, 25-27. On December 19, 2011, the Sanchez family took Sanchez Energy public, issuing 10 million shares of common stock and raising approximately $203 million in cash. A27. At all times, however, the Sanchez family retained complete and actual control over all aspects of Sanchez Energy's business, which has no employees of its own, and is completely dependent for all management, resources, facilities and operational functions on other private entities within the Sanchez family energy empire. A27-28.

In 1978, Sanchez Jr. founded Sanchez Oil & Gas Corporation ("SOG"), a private company engaged in the exploration and development of oil and gas, primarily in Texas and onshore Gulf Coast areas. A25. SOG is, and since its inception has been, a privately owned family business. Sanchez Jr. serves as SOG's CEO and Chairman, and Sanchez III serves as SOG's President. A25.

The Sanchez family has established a network of affiliated companies that the Sanchez family uses to effectuate its oil and gas business. SOG manages drilling operations and oil and gas properties for each of the related entities, including Nominal Defendant Sanchez Energy, Defendant Sanchez Resources,

Sanchez Energy Partners I, LP ("SEP I"), and Santerra Energy LLC ("Santerra"). A25-27. Sanchez Energy, Sanchez Resources, and SEP I are all headquartered in SOG's Houston, Texas headquarters. *Id*.

B. SANCHEZ FAMILY MEMBERS CONTROL AND HOLD SENIOR POSITIONS AT SANCHEZ ENERGY AND OTHER SANCHEZ-AFFILIATED COMPANIES

Family patriarch Sanchez Jr. has installed and promoted his children into leadership at each of the affiliated companies discussed above. A25-27. Sanchez III serves as Managing Director of the privately-held SEP I, formed in 2007. A26. Son Patricio Sanchez, brother of Defendants Sanchez III and Eduardo Sanchez, serves as CEO of the privately held Santerra, formed in 2010. A26. Sanchez Jr. and Sanchez III provided the initial funding for Eduardo Sanchez to create Sanchez Resources in 2010, and continue to hold significant equity interests in Sanchez Resources, with Eduardo Sanchez serving as CEO. A19, 25-27.

Sanchez Energy was formed on August 22, 2011, in order to hold significant oil and gas assets in the Eagle Ford Shale region of South Texas that were previously controlled by SEP I. A26. Sanchez III has served as President, CEO, and a director of Sanchez Energy since its formation, and Sanchez Jr. has served as Executive Chairman of the Board since November 2012. A22-23.

In order to finance development of the Eagle Ford Shale properties, the Sanchez family took Sanchez Energy public on December 19, 2011. A27. As one

independent analyst has noted, despite its public nature, Sanchez Energy "for all practical purposes appears to be a complex private financial arrangement by which [Sanchez Jr.] is handing over the reins of Sanchez Oil & Gas to his son, [Sanchez III]." A28. Indeed, despite lowering its equity stake to 21.5%, with 16% of the common stock owned by Sanchez Jr. and another 5.5% owned by Sanchez III, the Sanchez family retained complete control over Sanchez Energy's operations. A27. Sanchez Energy has no employees. A27-28. Rather, pursuant to a management agreement executed on the day of the IPO, the Company's management, administrative, and operational services are all overseen and/or performed by Sanchez family members through the wholly-owned SOG, SEP I, Santerra, and Sanchez Resources. *Id*. Simply, Sanchez Energy does not have any operations, or any real corporate existence, except through the Sanchez family.

The effect of that management agreement is that, in every meaningful way, the Sanchez family (through wholly-owned related entities) exercises actual control over 100% of the operations of Sanchez Energy. A27-28. As such, the Sanchez family has unique access to and control over information concerning Sanchez Energy's operations, finances, and strategy.

Because the Board must rely on the Sanchez family for all pertinent information about the Company, there exists a structural deficiency unique to Sanchez Energy that necessarily compromises the effectiveness of the Company's

Board, and which does not exist at corporations with their own management and operational structures. Without full and complete access to corporate information, even ostensibly independent directors cannot ensure that any resolution or action involving the Sanchez family will protect and promote stockholder interests.[3]

C. THE SANCHEZ FAMILY CONTROLS THE BOARD AND CONTROLLED THE TRANSACTION'S NEGOTIATIONS

Both Sanchez Jr. and Sanchez III sit on the Board, with Sanchez Jr. serving as Executive Chairman since November 2012, and thus are not independent. A22-23. Two of the three remaining directors, the two who constituted the Audit Committee that approved the Transaction on behalf of Sanchez Energy lacked independence due to their close, longstanding relationships with the Sanchez family. A27, 39-43. Defendant Alan G. Jackson ("Jackson") has been close friends with Sanchez Jr. for more than fifty years, and is an executive at IBC Insurance Agency, Ltd. ("IBC"). Sanchez Jr. is a director, and the largest stockholder, of IBC's parent company. A37, 40.[4] Defendant Gilbert A. Garcia

[3] This is particularly true and harmful to Sanchez Energy's public stockholders given that Section 9.2 of the Company's charter empowers wholly-owned Sanchez family businesses such as SOG to "engage … in the same or similar activities or lines of business as the Corporation," without any obligation "to communicate or offer such Business to the Corporation." A28.

[4] The Sanchez family, in fact, *founded* IBC. Jan Reid, *Tony Sanchez's New Deal*, Texas Monthly (Nov. 2001) (http://www.texasmonthly.com/content/tony-sanchezs-new-deal/page/0/2) ("For the Sanchezes, the success of the energy company enabled them to found a bank holding company, International Bancshares Corporation, that would ultimately have more than one hundred banks or branches throughout Texas"). During argument on the motion to dismiss, Plaintiffs' counsel referenced an additional article identifying Jackson as "arguably Sanchez [III]'s best friend since fourth grade," and quoting him describing Sanchez III: "He was the organizer, and it's still that way. It is very easy to let him take charge." Tricia Cortez, *Sanchez passionate on issues;*

("Garbia") has significant personal and business ties with the Sanchez family spanning over three decades. A41-42. Garcia and Sanchez Jr. invested together in Latin American Entertainment, LLC. *Id.* The Sanchez family controls Sandman Ventures, LLC, a Preferred Limited Partner in Hacienda Records, L.P., where Garcia serves as President and owns a 48% equity interest. *Id.*

D. THE SANCHEZ FAMILY NEEDED SANCHEZ ENERGY'S PUBLIC FINANCING TO BUY OUT ALTPOINT CAPITAL

The TMS region is an area of oil and gas reserves stretching across Eastern Louisiana and Southwestern Mississippi. A29. When the TMS began attracting oil companies' interest in 2010 and 2011, the Sanchez family used SOG to buy drilling rights in the heart of the TMS. *Id.*

1. Altpoint Capital Finances Sanchez Resources' TMS Investment

The Sanchez family created Sanchez Resources in September 2010 to purchase drilling rights in the TMS from SOG and other leaseholders. A29. To do so, Sanchez Resources raised capital from private equity investors, most prominently defendant Altpoint, which "put up a lot of the capital at the start" in exchange for a significant ownership interest, managerial oversight, and three Sanchez Resources board seats. A29-30, 32. Between October 2010 and April

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Family, friends speak out on future gubernatorial candidate, Laredo Morning Times (Sept. 2, 2001)(http://airwolf.lmtonline.com/news/archive/090201/pagea1.pdf; http://madmax.lmtonline.com/textarchives/090201/s1.htm).

2012, Sanchez Resources bought TMS acreage from SOG and leaseholders' oil and gas assets for $30.5 million, or approximately $184 per acre. A30.

By 2013, Sanchez Resources held the working interest in 80,000 acres in the TMS, 40,000 acres of which were developed and 40,000 acres of which were undeveloped. A30. Once the TMS reserves were proven, the Sanchez family sought to develop the 40,000 undeveloped acres, but Altpoint refused to provide new financing. *Id.*[5]

E. THE SANCHEZ FAMILY USES SANCHEZ ENERGY'S PUBLIC INVESTORS TO BUY ALTPOINT OUT OF ITS RELATIONSHIP WITH SANCHEZ RESOURCES

Faced with Altpoint's unwillingness to fund further exploration and development, and unwilling or unable to either provide funding themselves or directly buy out Altpoint, the Sanchez family looked to the publicly traded Sanchez Energy to foot the bill. A20. Specifically, in mid-2013, the Sanchez family began planning a transaction in which Sanchez Energy would acquire a 50% undivided working interest in Sanchez Resources' TMS assets in exchange for enough cash and stock for Sanchez Resources to both buy out Altpoint and invest millions of new dollars in drilling expenses. A20, 31-32, 34. As discussed below, the Transaction also included an undisclosed cash kickback to the Sanchez family in

[5] In Sanchez III's words, "[a]s this TMS really started to get hot … we approached [Altpoint] and we said look guys you guys want to start writing some checks and lets go drill some wells and they said we'd rather take your stock let's figure out how to make this a transaction that could work." A31.

the form of a future royalty stream payable by Sanchez Energy to Sanchez Resources, representing a percentage of the new venture's profits. A20, 34-37.

Sanchez Energy, Sanchez Resources, and Altpoint Sanchez Holdings, LLC (a holding company created by Altpoint and Sanchez Resources to effectuate the Transaction) entered into a purchase agreement reflecting those deal terms on August 7, 2013. A31. The deal was announced on August 8, 2013, and closed one week later, on August 15, 2013. A35. Sanchez III publicly confirmed that the Sanchez family had driven the negotiations and used Sanchez Energy's public investors "***to buyout this private equity group that has absolutely no affiliation with us***," and that "[t]he bulk of what ended up being the ultimate purchase price ***was negotiated between us and [Altpoint]***" over "a couple of months." A32-34. (emphasis added).

The Transaction proceeded in three steps: (1) Sanchez Resources and Altpoint conducted a paper "asset sale" through which Sanchez Resources transferred most of the 40,000 undeveloped acres to Altpoint; (2) Sanchez Energy purchased those assets from Altpoint for $61 million; and (3) Sanchez Energy then combined the 40,000 undeveloped TMS acres it purchased from Altpoint with the 40,000 developed acres retained by Sanchez Resources to create an 80,000 acre "Area of Mutual Interest," with Sanchez Energy and Sanchez Resources each owning a 50% undivided working interest. In addition, Sanchez Energy agreed to

(1) pay Sanchez Resources an additional $14.4 million in cash; and (2) carry the costs of six additional oil wells (estimated at $22 million). A31-32.[6] In exchange, Sanchez Resources and the Sanchez family ended up free of Altpoint, with an additional $14.4 million in cash, six newly operational oil wells, and a 50% interest in the 80,000 TMS acres. The *only* reason the Transaction was structured in such a highly complex manner (instead of a direct buyout of Altpoint by Sanchez Resources and a standalone investment by Sanchez Energy in a joint venture) was to create the new leases on the 40,000 undeveloped acres that Altpoint transferred to Sanchez Energy. And the only reason to do that was to hide an equity kickback to Sanchez Resources that, as discussed below, was deliberately concealed from Sanchez Energy's public stockholders. A32, 34.

F. THE TRANSACTION OBLIGATED SANCHEZ ENERGY TO PROVIDE AN ONGOING CASH KICKBACK TO SANCHEZ RESOURCES, WHICH WAS HIDDEN FROM THE PUBLIC INVESTORS

While the Sanchez family foisted significant costs onto Sanchez Energy's public investors to fund the Altpoint buyout, the Sanchez family – with the assistance of Altpoint – also decided to pay themselves a kickback in the form of

[6] When added to the $61 million purchase price of the TMS acreage going to Sanchez Energy, Sanchez Energy and its public investors were set to pay just shy of $100 million, or ***$2,500 per acre***, in the Transaction. A32. Moreover, in August 2013, Goodrich Petroleum Corp. ("Goodrich"), one of Sanchez Resources' competitors, paid only ***$144 per acre*** for working interests in land virtually next door to the 80,000 Sanchez TMS acres. Sanchez Energy's per-acre cost in the Transaction was ***17 times*** what Goodrich paid, only weeks prior, for similarly situated acreage. A33.

undisclosed royalties that create an ongoing payment stream from Sanchez Energy to Sanchez Resources. A34-35. In 2011, when SOG first acquired the leases on the 40,000 acres that were ultimately transferred from Altpoint to Sanchez Energy in the Transaction, SOG agreed to pay the property owners an industry-standard royalty fee (typically 12%-16% of anything produced from drilling operations on the land). A35. This same royalty obligation continued when SOG transferred the leases to Sanchez Resources. A36. On August 15 and 16, 2013, when Sanchez Resources assigned its TMS acreage to Altpoint (and before Sanchez Energy purchased that acreage), Sanchez Resources and Altpoint agreed to an overriding royalty payment on the acreage of ***25%*** of anything produced from drilling operations on that land. A35-36. That increased royalty entitles Sanchez Resources to pocket all royalties payable under the lease over the 12% to 16% payable to the landowners. A36. As part of the Transaction, when Altpoint flipped those leases to Sanchez Energy, that royalty kickback became Sanchez Energy's ongoing financial obligation. A36.

The Board of Directors of Sanchez Energy has ***never*** disclosed to the Company's public stockholders this increased royalty payment favoring the Sanchez family. In numerous filings with the U.S. Securities and Exchange Commission in connection with announcing the Transaction, Sanchez Energy omitted any mention of that increase in royalty payments. A35-36.

ARGUMENT

I. THE COURT BELOW ERRED WHEN IT DETERMINED THAT A MAJORITY OF THE BOARD WAS INDEPENDENT OR DISINTERESTED

A. QUESTION PRESENTED

Did the Complaint sufficiently allege that a majority of the Board was interested or not independent? A65-66, 70, 82-88, 192, 201-206.

B. SCOPE OF REVIEW

This Court's review of the decision on a motion to dismiss under Ch. Ct. R. 23.1 is *de novo* and plenary. *Brehm v. Eisner*, 746 A.2d 244, 253 (Del. 2000). The Court must accept all well pleaded allegations as true and draw all reasonable inferences in Plaintiffs' favor. *Beam v. Stewart*, 845 A.2d 1040, 1048 (Del. 2004).

C. MERITS OF THE ARGUMENT

A plaintiff demonstrates demand futility under the first prong of *Aronson* where, "under the particularized facts alleged, a reasonable doubt is created that: (1) the directors are disinterested and independent." *Aronson v. Lewis*, 473 A.2d 805, 814 (Del. 1984). A trial court should accept all particularized factual allegations in the complaint as true, draw all reasonable inferences in the plaintiff's favor, and deny a motion to dismiss unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof. *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 536 (Del. 2011); *In re China Automotive Sys. Inc. Derivative Litig.*, 2013 WL 4672059

(Del. Ch. Aug. 30, 2013). Because the Complaint contains particularized allegations that a majority of the five-member Board was not disinterested or independent, demand is excused under the first prong of *Aronson*, making dismissal under Rule 23.1 inappropriate.

1. The Complaint Contains Particularized Allegations Demonstrating that Sanchez Jr. and Sanchez III Were Not Disinterested

It is undisputed that the Complaint alleges that Sanchez Jr. and Sanchez III were interested in the Transaction. Ex. A at 18; A34; *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 362 (Del. 1993) ("Classic examples of director self-interest in a business transaction involve either a director appearing on both sides of a transaction or a director receiving a personal benefit from a transaction not received by the shareholders generally."). Sanchez Jr. and Sanchez III are two of the five Board members. A22-23. Thus, so long as the Complaint contains particularized allegations that at least one additional director lacks independence, demand is excused under the first prong of *Aronson*.

2. The Complaint Contains Particularized Allegations Demonstrating That Jackson Was Not Independent

Jackson and Sanchez Jr. have a close personal friendship extending over five decades, since their childhoods. A40. Jackson is an executive at IBC, a subsidiary of International Bancshares Corporation, where Sanchez Jr. is a non-independent non-executive director and the single largest stockholder. The Complaint alleges

that Jackson earned between $230,000-$310,000 in salary and bonus as an IBC executive in the year prior to the Transaction, and that he earned $165,329.04 for serving as a Sanchez Energy director in that period. Thus, the Complaint alleges that Jackson's service as a Sanchez Energy director accounted for between 30-40% of his total annual compensation. A40-41. Viewing each of these allegations in isolation, rather than collectively, the Chancery Court held that they were insufficient to raise a doubt as to Jackson's independence.

The Chancery Court's holding that Jackson is independent was in error. First, citing *Beam v. Stewart*, 833 A.2d 961 (Del. Ch. 2003), the Court held that "allegations of personal friendship that do not detail the extent of the friendship are insufficient to support a reasonable inference that a director lacked independence." Ex. A at 14. But the five-decade-long relationship between Jackson and Sanchez Jr. here was well beyond the allegations in *Beam* that the directors simply "moved in the same social circles, attended the same weddings, developed a business relationship before joining the board, and described each other as 'friends.'" 845 A.2d at 1051. The Court of Chancery incorrectly concluded that "the Complaint lacks any description of the friendship between Jackson and Sanchez Jr." Ex. A at 14. Rather, the Complaint details a friendship that began in childhood and has extended five decades, far closer to a familial relationship than merely "mov[ing] in the same social circles." *Compare In re China Agritech, Inc.*, 2013 WL

2181514, at *20 (Del. Ch. May 21, 2013) ("Close family relationships, like the parent-child relationship, create a reasonable doubt as to the independence of a director."); *Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2002) (director may lack independence on account of a familial relationship).

Second, the Complaint's allegations regarding Jackson's employment at IBC and the significance of Sanchez Jr.'s role at IBC demonstrates Jackson's lack of independence. *See In re Limited, Inc.*, 2002 WL 537692, at *5 (Del. Ch. March 27, 2002) (concluding that a director was not independent because "as a general matter, compensation from one's principal employment is 'typically of great consequence' to the employee"). By conceding in public filings that Sanchez Jr. (despite not being an IBC executive) is not an independent director, IBC acknowledged that Sanchez Jr. has the ability to "interfere with the exercise of independent judgment in carrying out the responsibilities of a director" at IBC. NASDAQ Marketplace Rule 4200(a)(15) (definition of "independent director"). There is at the very least a reasonable inference, appropriate to draw at the pleading stage, that Sanchez Jr. wields an influence over the IBC boardroom such that Jackson would not risk his position at IBC by opposing Sanchez Jr. or any other member of the Sanchez family In other words, "Jackson is beholden to Sanchez Jr. in his professional career" (A40), and the Court of Chancery erred when it disregarded Jackson's overlapping employment at IBC and his Sanchez

Energy Board service in its independence analysis. *Compare Harbor Fin. Partners v. Huizenga*, 751 A.2d 879, 889 (Del. Ch. 1999) (30-year business relationship with corporation's CEO, and service on the board of separate business controlled by the CEO, supported lack of independence); *Goldman v. Pogo.com, Inc.*, 2002 WL 1358760, at *3 (Del. Ch. June 14, 2002) (director who had previously served on the boards of two companies involved with the firm at issue, and who served as short-term high-ranking firm executive, lacked independence).

Finally, the Chancery Court erred when it considered Plaintiffs' allegations in isolation and not holistically. Ex. A at 14-15. "[T]he reality is [that] humans react for a variety of reasons, not just lucre." *In re Jefferies Grp. Inc. S'holder Litig*., C.A. No. 8059-CS (Del. Ch. Nov. 4, 2013) (TRANSCRIPT) at 62. Even if none of the allegations in the Complaint, taken separately, were sufficient to raise a doubt as to Jackson's independence, they suffice when viewed collectively and in light of all reasonable inferences. *See Cal. Pub. Emp. Ret. Sys. v. Coulter*, 2002 WL 31888343, at *9 (Del. Ch. Dec. 18, 2002). The Complaint's particularized allegations of a half-century long substantial personal and financial relationship between Jackson and Sanchez Jr, taken together, raise a reasonable doubt as to Jackson's independence. *See In re Oracle Corp. Deriv. Litig*., 824 A.2d 917, 938 (Del. Ch. 2003) ("our law also cannot assume … that corporate directors are, as a

general matter, persons of unusual social bravery, who operate heedless to the inhibitions that social norms generate for ordinary folk.").

3. The Complaint Contains Particularized Allegations Demonstrating That Garcia Was Not Independent

Garcia has been a business associate of the Sanchez family for at least 30 years. A23-24. Garcia owns a 39% stake and a 48% stake, respectively, in two companies in which Sandman – a fund controlled by Sanchez Jr. and his family – is also heavily invested.[7] A41-42. These allegations sufficiently establish Garcia's lack of independence. *See Harbor Fin. Partners*, 751 A.2d at 889 (30-year business relationship with corporation's CEO, and service on the board of separate business controlled by the CEO, supported lack of independence); *Goldman*, 2002 WL 1358760 at *3.

The Court of Chancery erred in declining to draw all reasonable inferences concerning Garcia's independence in Plaintiffs' favor. Despite acknowledging that the Complaint alleged that Garcia's business relationships with the Sanchez family are ongoing and long-term, the Court below nevertheless improperly drew the inference that, because it does not own a majority stake in the companies at issue, the Sanchez family's significant stake would not matter to Garcia. Ex. A at 16-17. The Court of Chancery was wrong. The Complaint specifically alleged that the

[7] Sanchez Jr. owns a 17% interest in Sandman, and trusts for the benefit of Sanchez Jr. and his family own a 52% interest in Sandman. A41-42.

Sanchez-controlled Sandman owns a 20% stake in the investment in which Garcia owns 39%, and is a preferred limited partner in the other investment. It is reasonable to infer that having such large personal stakes in two companies would be material to Garcia. This is especially so in the case of Latin American Entertainment LLC, where the Sanchez family's and Garcia's stakes together constitute a majority interest, giving them control over corporate decisions. Given the multiple, long-term and ongoing nature of these investments, Plaintiffs are entitled to the reasonable inference that they are material for purposes of evaluating Garcia's independence. The Court's dismissal of these allegations as "mere outside business relationships" also ignored that these multiple significant financial relationships are long-term and ongoing. Ex. A at 16-17. Taken together, these allegations are sufficient to raise a reasonable doubt as to the independence of Garcia. *Coulter*, 2002 WL 31888343, at *9.

II. THE COURT BELOW ERRED WHEN IT DETERMINED THAT THE TRANSACTION WAS ENTITLED TO THE PRESUMPTION OF THE BUSINESS JUDGMENT RULE

A. QUESTION PRESENTED

Did the Complaint sufficiently allege facts to rebut a presumption that the Transaction resulted from a valid exercise of business judgment? A64-69, 71-82, 89-102, 178-200, 206-214, 233-238.

B. SCOPE OF REVIEW

This Court's review of the decision on a motion to dismiss under Ch. Ct. R. 23.1 is subject to *de novo* and plenary review. *Brehm v. Eisner*, 746 A.2d 244, 253 (Del. 2000). The Court must accept all well pleaded allegations as true and draw all reasonable inferences in Plaintiffs' favor. *Beam v. Stewart*, 845 A.2d 1040, 1048 (Del. 2004).

C. MERITS OF THE ARGUMENT

The second prong of *Aronson* excuses presuit demand where particularized allegations give rise to a reasonable doubt that the "the challenged transaction was otherwise the product of a valid exercise of business judgment." *Aronson*, 473 A.2d at 814. When the concerns warranting closer judicial scrutiny under the entire fairness standard exist, the presumption of the business judgment rule does not apply and demand is excused under the second prong of *Aronson*. *See Montgomery v. Erickson Air-Crane, Inc.*, C.A. No. 8784-VCL (Del. Ch. Apr. 15, 2014) (TRANSCRIPT), at 72 and 64 ("Because the transaction involves a

controller, entire fairness is the standard …. Consequently … this is, at least for pleadings purposes, a full entire fairness case. The second prong of *Aronson* is the operative prong, and under that prong, demand is excused.").

If ever a case implicated the policy concerns requiring heightened judicial scrutiny, and not blind deference to a board's business judgment, this is it. "[T]he fundamental purpose of the entire fairness standard is to impose the burden on the proponents of a self-dealing transaction that was implemented without any procedures that act as a fair proxy for genuine arm's length negotiations." *Teachers' Ret. Sys. of Louisiana v. Aidinoff*, 900 A.2d 654, 675 (Del. Ch. 2006). *See also AC Acquisitions Corp. v. Anderson, Clayton, & Co.*, 519 A.2d 103, 111 (Del. Ch. 1986) ("[T]here is no alternative to a judicial evaluation of the fairness of the terms of the transaction other than the unacceptable one of leaving shareholders unprotected … where a self-interested corporate fiduciary has set the terms of a transaction and caused its effectuation").

Delaware law has long recognized that:

> the business judgment rule would protect only disinterested directors whose conduct otherwise meets the tests of business judgment, which occurs only when directors neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it … as opposed to a benefit which devolves upon the corporation or all stockholders generally.

In re PNB Holding Co. S'holders Litig., 2006 WL 2403999, at *12 (Del. Ch. Aug. 18, 2006) (quotation omitted). Accordingly, "[w]hen directors of a Delaware

corporation are on both sides of a transaction, they are required to demonstrate their utmost good faith and the most scrupulous inherent fairness of the bargain." *Weinberger v. UOP, Inc.*, 457 A.2d 701, 710 (Del. 1983). The purpose of this "entire fairness" standard is to replicate the result of an arm's-length transaction in situations where, because of some asymmetry in the parties' bargaining power, the Court cannot defer to the business judgment of the corporation's board in negotiations with an insider. *See, e.g., In re LNR Property Corp. S'holders Litig.*, 896 A.2d 169, 176 (Del. Ch. 2005) ("the court adheres to a more exacting entire fairness standard of judicial review to protect the minority shareholders, premised on the inapplicability of the business judgment rule 'where self-interest may have colored directors' actions'"); *In re Cornerstone Therapeutics Inc. S'holder Litig.*, 2014 WL 4418169, at *6 (Del. Ch. Sept. 10, 2014) ("[w]here a director is interested in the transaction [the business judgment] presumption cannot apply and the Court must substantively review the interested decision for fairness to the stockholders"). Thus, absent certain procedural protections put in place to mitigate the asymmetric bargaining positions, directors that approve a transaction with conflicted fiduciaries will be required to "demonstrate both their utmost good faith and the most scrupulous inherent fairness of transactions in which they possess a financial, business or other personal interest[.]" *Mills Acquisition Co. v. Macmillan*, 559 A.2d 1261, 1280 (Del. 1988).

In *Kahn v. Lynch Communications Systems, Inc.*, 638 A.2d 1110 (Del. 1994), this Court recognized that asymmetrical bargaining power exists, and entire fairness review applies, when a corporation enters into a transaction with a controlling stockholder. *Lynch*, 638 A.2d at 1113-14 (citing *Ivanhoe Partners v. Newmont Mining Corp.*, 535 A.2d 1334, 1344 (Del. 1987)). "A controlling or dominating shareholder standing on both sides of a transaction, as in a parent-subsidiary context, bears the burden of proving its entire fairness." *Id.* at 1115. In this regard, this Court held that a stockholder can be deemed "controlling" in one of two ways: (1) the stockholder "owns a majority interest" in the corporation; ***or*** (2) the stockholder "*exercises control* over the business affairs of the corporation." *Id*. at 1113-14. The test is a disjunctive one, and a stockholder need meet only one of the two prongs. *See, e.g., In re Zhongpin, Inc. S'holder Litig.*, 2014 WL 6735457 at *8 (Del. Ch. Nov. 26, 2014) ("[A]s the disjunctive proposition in *Kahn v. Lynch* makes clear, one may be a controller by virtue of owning a majority interest *or* exercising control over a corporation's business affairs").

Whether a stockholder exercises sufficient control to implicate the entire fairness standard is a highly fact intensive and context-specific inquiry. *See Williamson v. Cox Commc'ns, Inc.*, 2006 WL 1586375, at *6 (Del. Ch. June 5, 2006) ("The question whether a shareholder is a controlling one is highly contextualized and is difficult to resolve based solely on the complaint"). The

relevant inquiry is whether the stockholder has "'actual control of corporation conduct.'" *Lynch*, 638 A.2d at 1114 (quoting *Citron v. Fairchild Camera & Instrument Corp.*, 569 A.2d 53, 70 (Del. 1989)). Further, "[a]ctual control over business affairs may stem from sources extraneous to stock ownership, and the Court does not take an unduly restrictive view of the avenues through which a controller obtains corporate influence." *Zhongpin*, 2014 WL 6735457, at *8. Accordingly, Delaware courts have never required that a stockholder who exercises actual control possess some minimum level of equity ownership before being deemed a controller. *See PNB Holding Co.*, 2006 WL 2403999, at *9 ("no absolute percentage of voting power … is required in order for there to be a finding that a controlling stockholder exists"); *In re Crimson Exploration Inc. S'holder Litig.*, 2014 WL 5449419, at *12 (Del. Ch. Oct. 24, 2014) (surveying stockholder equity ownership in cases examining whether the stockholder was a controller).

While purporting to apply the second prong of *Lynch*, the Chancery Court ignored the disjunctive nature of the test and focused exclusively on the voting power of Sanchez Jr. and Sanchez III, despite the fact that the Company is completely reliant on the Sanchez family and a web of privately-held Sanchez family entities. The Chancery Court held that allegations of the Complaint were:

> [I]nsufficient to demonstrate that Sanchez Jr. and Sanchez III possess … ***a combination of stock voting power and managerial authority*** that enable[d] [them] to control the corporation, if [they] so wishe[d]. Rather, the assertion that Sanchez Jr. and Sanchez III should be

> treated as a control group is diminished by the Plaintiffs' admission at oral argument that those directors could not exert power to remove a dissenting director. The Complaint alleges that the Sanchez family has managerial control, but not board control, of Sanchez Energy; in fact, nearly 80% of the voting control of the Company is in the hands of independent stockholders, according to the Complaint.

Ex. A at 23 (emphasis added).[8] In other words, while the Court said that it was applying the second prong of *Lynch*, relating to *operational* control, it actually applied the first prong by focusing on *voting* power.[9]

Stock ownership is not the only way to establish control. Because Plaintiffs alleged that Sanchez Jr. and Sanchez III have absolute control over the day-to-day management and 100% of the operations of the Company, there is no minimum level of stock ownership required in order for them to be considered controlling stockholders. *See*, *e.g.*, *PNB Holding Co.*, 2006 WL 2403999, at *9; *Crimson Exploration*, 2014 WL 5449419, at *12. Where, as here, a stockholder with less

[8] The court below also relied on a recent ruling from the Court of Chancery in *In re KKR Financial Holdings LLC Shareholder Litigation*, 101 A.3d 980 (Del. Ch. 2014). *See* Ex. A at 19-20. There, like here, the defendant stockholder held a relatively small stake in the company, yet had complete control over all operations of the company (which had no employees or independent operations) and all information provided to its board by virtue of a management agreement. *See KKR Fin.*, 101 A.3d at 985. The Court nevertheless granted defendants' motions to dismiss and concluded that the allegations were insufficient to establish that the stockholder was a controller because it lacked sufficient *voting power* to control the *board*. *Id.* at 992-94. That decision is currently on appeal to this Court. *See Corwin, et al., v. KKR Fin. Holdings LLC, et al*., No. 629, 2014 (Del.).

[9] For this reason, the Chancery Court's suggestion that Plaintiffs' acknowledgement at oral argument that "neither Sanchez Jr. nor Sanchez III could remove any director from the Sanchez Energy Board" operates as some kind of "concession" as to the independence of any Sanchez Energy director (Ex. A at 14) is a *non sequitor*. Merely acknowledging the lack of *voting* control as a matter of math does not address the separate issue of *actual control*, which was ignored by the Chancery Court.

than 50% of the shares nevertheless completely dominates the corporation's business affairs generally, as well as the challenged transaction specifically, that controller must establish that the transaction was entirely fair to the corporation.[10]

1. Sanchez Energy's Unique Shell Company Structure Creates a Structural Deficiency that Compels the Application of the Entire Fairness Standard

Sanchez Energy has ***no employees or operations*** other than those provided through the management agreements in place with other Sanchez-controlled firms. The allegations of the Sanchez family's ***actual 100% day-to-day control*** of the shell company Sanchez Energy are even more extensive than those that other courts have deemed sufficient to invoke the application of the entire fairness doctrine. For example, in *Williamson*, 2006 WL 1586375, at *5, Chancellor Chandler concluded that two cable companies who together held just a 17.1% stake in a third company, At Home Corporation ("At Home"), nevertheless exercised "actual control" over the company, and therefore were required to establish the

[10] Although several Court of Chancery decisions have examined the degree to which a minority stockholder exercised control over a corporate board, the cases in which control was *not* found typically involved large stockholders that had little or no "active" control of any sort over the operations of the corporation. *See, e.g.*, *In re Morton's v. Rest. Group, Inc. S'holders Litigation*, 74 A.3d 656, 665 (Del. Ch. 2013) (27.7% stockholder not controlling where only allegations of control were designation of two board seats and involvement with retention of a financial advisor)*; Superior Vision Servs., Inc. v. ReliaStar Life Ins. Co.*, 2006 WL 2521426, at *4 n.38 (Del. Ch. Aug. 25, 2006) (44% stockholder not controlling where no allegations "reach[ed] beyond" exercising of contractual right to veto dividend payments); *PNB Holding Co.*, 2006 WL 2403999, at *9 (33.5% stockholder group not controlling where no facts that they intended to act collectively); *In re Western Nat'l Corp. S'holders Litig.*, 2000 WL 710192, at *6 (Del. Ch. May 22, 2000) (46% stockholder not controlling where plaintiffs alleged "nary a fact that could give rise to a finding of domination and control").

entire fairness of a transaction by which they sold their interests in At Home to a third-party. *Id.* at **1, 6. Because the cable companies were At Home's only significant customers, the company was reliant upon them for its earnings. *Id.* at *5. Moreover, the cable companies appointed affiliates to two seats on At Home's board, which under the terms of the company's charter gave them a veto right over board action. *Id*. Chancellor Chandler concluded that those allegations "support the inference that the Cable Companies had significant leverage over At Home and were able to dictate to At Home the terms of the March 2000 Agreements," and "[t]he complaint succeeds because it pleads a nexus of facts all suggesting that the Cable Companies were in a controlling position and that they exploited that control for their own benefit." *Id.* at *5-6.

Similarly, in *Zhongpin,* the Court of Chancery recently reaffirmed that "determining whether a stockholder exerts control is a case-specific exercise." 2014 WL 6735457, at *9 n.33. The court distinguished between "latent control" derived from voting power and "active control" derived from day-to-day operational control, and concluded that allegations of a 17% stockholder's control over the day-to-day operations of the corporation and the company's resulting reliance on that stockholder were sufficient to allege that the defendant was a controller on a motion to dismiss:

> Zhu also apparently possessed active control over Zhongpin's day-to-day operations. The Company relied so heavily on him to manage its

> business and operations that his departure from Zhongpin would have had a material adverse impact on the Company. Despite the fact that Zhu's ownership interest was much smaller than a typical controller's, Plaintiffs plead indicia of domination, sufficient to raise an inference that Zhu exercised control over Zhongpin.

Id. at *9. The Vice Chancellor continued: "[w]hether … a particular CEO and sizeable stockholder holds more practical power than is typical should not be decided at the motion to dismiss stage if a plaintiff pleads facts sufficient to raise the inference of control. To ignore real-world indicia of a stockholder's actual power would depart from this Court's precedent." *Id.* at *9 n.33.

The "real world indicia" of actual control in this case are clear: Sanchez Energy's shell company structure gave Sanchez Jr. and Sanchez III a complete informational advantage over the Sanchez Energy Audit Committee and therefore, in negotiating the Transaction, the Audit Committee necessarily was dependent on other Sanchez-controlled entities (and their employees) for all information regarding the Company. There was no independent management team, or even a single employee, that the Audit Committee or its advisors could have turned to for unbiased information about Sanchez Energy in order to adequately inform themselves with respect to the Transaction.

2. The Complaint Also Alleges Particularized Facts That Sanchez Jr. And Sanchez III Exercised Actual Control Over the Transaction Itself

Plaintiffs alleged that Sanchez Jr. exercised actual control over the

Transaction challenged here. *See Williamson*, 2006 WL 1586375, at *4 ("Plaintiff can survive the motion to dismiss by alleging actual control with regard to the particular transaction that is being challenged.") (citing *Western Nat'l*, 2000 WL 710192, at *20). Plaintiffs' Complaint alleges that Sanchez Jr. and Sanchez III initiated, negotiated and structured the terms of the Transaction with Altpoint, and controlled the information provided to the Audit Committee and its financial advisor. A23, 29, 32-37, 39-42. The Complaint specifically quoted Sanchez III claiming control of the negotiations:

> The bulk of what ended up being the ultimate purchase price was negotiated between us and the private equity group that I have previously mentioned. This was a process that took a couple of months as you can imagine we had different views and what it should transact at. We ultimately got to a purchase price of $61 million with them so two-thirds of the answer which is two-third of the purchase price is a function of negotiated price that we agreed to, basically to take them out of this position. A33-34.

Despite those allegations, the Chancery Court opined that "based on the bare allegations of the Complaint, I have no basis to know to what extent anyone … participated in the negotiation process." Ex. A at 24. The Court continued: "[w]hile the Plaintiffs suggest that Sanchez III's references to 'us' and 'we' refer to his personal participation in the negotiation process, as opposed to that of the Company, they simply do not." Ex. A at 25. There are at least two problems with the Court's perfunctory observation that "they simply do not."

First, on Defendants' motions to dismiss, the Chancery Court was required

to accept the Complaint's well pleaded allegations as true and draw all reasonable inferences in Plaintiffs' favor. *See Cent. Mortg. Co.*, 27 A.3d at 535. Even if discovery might ultimately support a conclusion that Sanchez III did not refer to his and his family's participation when he used the first-person plural pronouns "we" and "us," a reasonable inference is that Sanchez III meant he and his family, as Plaintiffs alleged.

Second, even if Sanchez III was referring to "the Company" as the Court of Chancery suggested, Sanchez III's reference to negotiations "between us and the private equity group" undisputedly referred to discussions with Altpoint. Altpoint had an equity position in Sanchez Resources, not Sanchez Energy. Thus, to the extent that Sanchez III's reference to "we" and "us" referred to Sanchez Energy, and not himself or any member of the management team (which consisted entirely of employees of SOG and other Sanchez-controlled entities), this acknowledged that *Sanchez Energy* negotiated the purchase price for *Sanchez Resources* to extricate itself from its relationship with Altpoint. Considering that Sanchez Energy had no interest in Sanchez Resources, there was no reason for a fiduciary negotiating on Sanchez Energy's behalf to engage in discussions with Altpoint *at all*. Far from removing himself or the Sanchez family from the process, Sanchez III's concession actually suggests disloyal conduct.

3. The Court Below Erred In Concluding That Plaintiffs Did Not Establish a Reasonable Doubt That the Transaction Was the Product of a Valid Exercise of Business Judgment

The Complaint also alleged particularized facts that the Transaction was not fair to Sanchez Energy. *First*, the Complaint alleged an unfair process. Sanchez III conceded that "two-thirds" of the purchase price was *not* based on the fair value of the 40,000 acres Sanchez Energy purchased from Altpoint, but rather was based on what Altpoint required to give up its equity interest in Sanchez Resources: "The bulk of what ended up being the ultimate purchase price was … ***basically to take [Altpoint] out of [its] position***." A33-34 (emphasis added). At the very least, this gives rise to a reasonable doubt that the process was in fact fair.

Second, the Complaint contains particularized allegations that the Transaction price was unfair. Whether viewed in the context of the purchase of the leases ($61 million / 40,000 acres = $1,525/acre) or the Company's total investment ($100 million / (50% of 80,000 acres) = $2,500/acre), there is a reasonable basis to believe that the price was excessive. The Complaint alleged (i) Sanchez Resources purchased the TMS assets in October 2010 for $184 per share (A30, 33); (ii) in August 2013, Goodrich acquired a 172,000 acre working interest in the area adjacent to the Sanchez TMS acreage for $144 an acre (A33); (iii) Goodrich acquired all of its over 300,000 acres in the TMS at an average cost of $185 per acre (A33); and (iv) over the three years prior to the Transaction, 1.7

million acres had been leased in the TMS at an average price of $200 an acre. (A33).

The Chancery Court rejected those allegations as inadequate, asserting that the "Complaint lacks sufficient information about the nature, quality, and duration of the Goodrich working interests to allow a meaningful comparison to those acquired by Sanchez Energy." Ex. A at 28. The Goodrich transaction – a third-party transaction for oil and gas leases in the same region and at the same time period, but at a significantly lower price – presents, along with other allegations, a reasonable basis to infer that Sanchez Energy overpaid to benefit Sanchez Resources. No more is required at the motion to dismiss stage. The Court's decision improperly imposed the burden on Plaintiffs to establish the relevancy of those precedent transactions. *Cornerstone*, 2014 WL 4418169, at *6 ('"where the fairness of such transactions is challenged the burden is upon those who would maintain them to show their entire fairness and where a sale is involved the full adequacy of the consideration"').

Third, Defendants ***deliberately hid*** an ongoing royalty kickback that Sanchez Energy now owes to Sanchez Resources. Without disputing that the kickback was hidden from Sanchez Energy's public stockholders, the Court of Chancery simply dismissed that allegation, concluding that Plaintiffs "provide no basis to infer" a nefarious motive on the part of the Defendants. Ex. A at 29. That

conclusion was in error. Sanchez Resources and Altpoint almost doubled the royalty interest on the 40,000 leased acres that were exchanged in the Transaction *only* to increase the royalty payment that would be imposed on Sanchez Energy in the deal. Plaintiffs discovered this manipulation only by pulling the underlying leases from public records in Mississippi and Louisiana.[11] The deliberate concealment of that material increase in the royalty obligation supports the inference that Defendants did not want stockholders to know that Sanchez Energy and its public investors will be funneling significant cash for the privately owned Sanchez Resources to finance its ongoing operations. Such deliberate concealment itself evidences questionable motives of fiduciaries. *In re infoUSA, Inc. S'holders Litig*., 953 A.2d 963, 1000 (Del. Ch. 2007) (action taken by a board to conceal the nature of payments made to the company's CEO supported inference of bad faith).

* * *

For the foregoing reasons, the Court of Chancery's judgment should be reversed in its entirety.

[11] The court below also complained of the fact that Plaintiffs did not make a demand to inspect Sanchez Energy's books and records under Section 220 of the DGCL. *See* Ex. A at 10-11. But this Court has never required that a plaintiff make a Section 220 demand in every case. *See, e.g.*, *Pyott v. La. Mun. Police Emps. Ret. Sys.*, 74 A.3d 612, 618 (Del. 2013). Where publicly available facts are sufficient to establish a reasonable conceivability that a stockholder exercised actual control over the company and the challenged transaction, and that the challenged transaction was not entirely fair, a separate 220 demand is not required under Delaware law.

Respectfully submitted,

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