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IN THE SUPREME COURT OF THE STATE OF DELAWARE

PARAMOUNT GLOBAL, Defendant Below, Appellant, v. STATE OF RHODE ISLAND OFFICE OF THE GENERAL TREASURER, ON BEHALF OF THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND Plaintiff Below, Appellee.	Case No. 129,2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0457-SEM

APPELLANT'S REPLY BRIEF

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PRELIMINARY STATEMENT

This appeal raises two important questions about where the Court of Chancery should draw the line to prevent stockholders from issuing premature Section 220 demands to search corporate books and records for evidence of hypothetical wrongdoing, thereby imposing significant and unnecessary costs on Delaware corporations. The Vice Chancellor's decision, left undisturbed, would permit inspection even where either (1) the alleged conduct underpinning the stockholder's proper purpose had not yet occurred at the time the demand was served; or (2) evidence of alleged wrongdoing exclusively comprises speculation attributed to uncorroborated anonymous sources published in the media; or both. ERSRI misleadingly attempts to re-frame Paramount's objection to such an outcome as a squabble over admissibility under the Rules of Evidence, but as Paramount has argued all along, this case is about what ***allegations*** a stockholder may rely on to support its alleged credible basis to suspect wrongdoing. Because a stockholder's credible basis must exist at the time the demand is served, it may ultimately only rely on well-substantiated allegations concerning events that had taken place as of that time.

Reversal is necessary to properly enforce the statutory regime of Section 220.

ARGUMENT

I. PARAMOUNT DID NOT WAIVE ITS RIGHT TO OBJECT TO ERSRI'S ALLEGED CREDIBLE BASIS

ERSRI's assertion that Paramount waived any argument to oppose consideration of facts not in existence at the time of the demand in support of a stockholder's alleged credible basis is entirely meritless. Appellee's Answering Brief ("Ans. Br.") at 20-21. An issue is waived on appeal if it was not "fairly present[ed] to the trial court." *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 270 (Del. 2022). Paramount not only "fairly presented" this issue to both the Senior Magistrate (both at the pre-trial conference and trial) and the Vice Chancellor (in the exceptions process), but both courts expressly ruled on it. Paramount has always maintained that a credible basis must exist at the time of the Demand. Indeed, until now, ERSRI did not even contest this underlying legal principle.

At the pretrial conference, in response to arguments in the papers, the Senior Magistrate noted: "[T]he question before me[ ] is whether the plaintiff had a credible basis to suspect wrongdoing at the time the demand was served[.]" AR0017. Then at trial, ERSRI's counsel acknowledged the same, stating: "Obviously, the test is credible basis at the time the demand was served." A0354. Paramount also stated: "As [the Senior Magistrate] noted at the pretrial conference, and as . . . my friends on the plaintiff's side agree, the question is whether the plaintiff has had a credible

basis to suspect wrongdoing at the time the demand was served." A0363; Appellant's Opening Brief ("Op. Br.") at 18. Paramount further contended that alleged ***facts*** that post-dated the April 5 Demand "could [not] possibly serve as a [credible] basis—absent time travel"—because "the measure has to be as of April 5, and what was the basis of the demand on that date." A0363. ERSRI cannot now realistically argue that a point ***it conceded at trial only later to dispute*** has been waived by Paramount.[1]

Paramount's objections or lack thereof to specific entries on the Joint Exhibit List are irrelevant. Indeed, the parties stipulated that "[t]he presence of a document on the Joint Exhibit List does not waive a Party's right to argue that any exhibit is inadmissible or may be admitted for a limited purpose only and/or to argue as to the weight or significance of such exhibits." B13-B14. Nor did Paramount strategically waive any objections by arguing that "post-demand events mooted Rhode Island's inspection." B35. Instead, Paramount argued that "[b]ecause no transaction ha[d] been finalized (or even announced), there [was] no credible basis to infer wrongdoing" at the time of the Demand. A0165. Indeed, even before trial,

[1] ERSRI's waiver argument contradicts this Court's Order Certifying Interlocutory Appeal, which certified Paramount's appeal to "provid[e] clarity on the use of certain types of evidence to establish a proper purpose in Section 220 actions." A0641. One of Paramount's discrete questions certified for review was over "the court's finding that the Stockholder properly relied in this case on articles that post-dated the Demand or the filing of the enforcement action." A0318.

Paramount sought to adjourn the proceedings on this basis until there was "more certainty as to exactly what the transaction might be," to allow ERSRI to properly articulate its credible basis and permit Paramount to "then engage with plaintiffs in a discussion that could moot the need for the trial currently scheduled." AR0005. The issue was thus not a black-and-white question of admissibility to be preserved by objection (or waived by lack thereof), but a question of the moment at which Section 220 requires the Court of Chancery to fix its credible-basis analysis. ERSRI's creative re-framing of this issue to support its waiver argument fails.

ERSRI's cited authorities offer no help. *Shawe v. Elting* held that an argument was waived when it was not raised in Chancery Court. 157 A.3d 152, 168 (Del. 2017). Here, consideration of alleged post-demand facts was vigorously contested by both parties and expressly considered by both the Senior Magistrate and Vice Chancellor. *See, e.g.*, A0395 (finding "it would be inappropriate to look at the evidence that came after the demand was served"); Ex. A at 18-26 ("The first disputed evidentiary issue is whether a stockholder can rely on evidence about post-demand events to meet its evidentiary burden. The Company argues that a stockholder is limited to evidence known to the stockholder at the time of the demand. As a general matter, a stockholder should be limited to evidence identified in a demand or what the stockholder knew at the time of demand, because that

constraint helps parties resolve Section 220 demands without judicial involvement.”).

II. THE COURT OF CHANCERY ERRED IN BASING ITS CREDIBLE-BASIS FINDING ON EVIDENCE OF POST-DEMAND FACTS

A. Section 220 And Delaware Law Require A Credible Basis—And Facts Supporting It—To Exist At The Time Of The Demand

The Court of Chancery's ruling that Section 220 permits a stockholder to premise its alleged credible basis on evidence of alleged post-demand facts and events is inconsistent with both the statute's text and purpose and with precedent. ERSRI seeks to paper over this conflict by reference to the Delaware Rules of Evidence ("DRE") and Chancery practice, conflating inapposite admissibility standards with Section 220 law. The Court should reaffirm the common-sense principle that Section 220 requires a credible basis to exist before a demand is made, not after.

1. Section 220's Text And Structure Support The Exclusion Of Evidence Of Post-Demand Facts and Events

ERSRI's statutory argument asserts that Section 220(b) does not require a stockholder to submit evidence with the demand itself, and that Section 220(c) requires the stockholder to "establish" a proper purpose in post-demand litigation. Ans. Br. at 22-23.[2] This argument sidesteps the issue presented here because it says

[2] ERSRI similarly argues that courts should consider post-demand evidence because Section 220 contains "no limitation that 'documents' must have existed or been known to the stockholder prior to the demand" because, after serving a demand, a party may take (Continued . . .)

nothing about ***when*** the stockholder must ***have*** a proper purpose for inspection; that "when" is the critical question disputed in this appeal.

Paramount asks this Court to adopt the Senior Magistrate's reading of the statutory requirement: that the court "must step back in time and ask whether there was a credible basis at the time the demand was served," and "may only consider the evidence available at [that] time." A0395. This standard does not require a stockholder to submit evidence of wrongdoing ***with*** its demand, it simply requires that facts supporting the stockholder's credible basis existed and were available at the time of the demand. The Senior Magistrate's articulation of the statutory standard would not preclude stockholders from obtaining post-demand evidence of pre-demand facts in support of their purported proper purpose between service of the demand and trial (for example, in the form of live testimony), provided such facts were available at the time of the demand and supports the existence of a credible basis as of that time. This standard is consistent with Section 220's statutory purpose

depositions or trial testimony, and use documents produced in response to a demand at trial. Ans. Br. at 24-25. That argument confuses the timing of when a credible basis to suspect wrongdoing ripens with when the stockholder must submit evidence to demonstrate a credible basis to suspect wrongdoing. In ERSRI's cited cases, the court permitted testimony of the plaintiff-stockholders as to what their true purposes were—not as evidence that a credible basis existed. *See id.* at 25 n.88 (citing *Wilkinson v. A. Schulman, Inc.*, 2017 WL 5289553, at *2 (Del. Ch. Nov. 13, 2017); *Sec. First v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 567-68 (Del. 1997)).

of disincentivizing service of premature, speculative demands, and avoiding excessive costs and waste being imposed on Delaware corporations.

The statute's structure and purpose support this standard. Section 220(b) allows a stockholder upon written demand "to inspect for any proper purpose." Section 220(c) then unambiguously provides that: "Where the stockholder ***seeks to inspect*** the corporation's books and records, . . . such stockholder ***shall first establish*** that . . . [t]he inspection such stockholder seeks is for a proper purpose." 8 Del. C. § 220(c) (emphasis added). The statute's plain language and structure impose a clear temporal sequence: The stockholder's written demand must demonstrate the existence of a proper purpose at the time a demand is served (that is the "seek[ing]"). *See* Op. Br. at 16-17. This ensures that only stockholders with legitimate proper purposes may invoke the powerful tool of inspection. ERSRI ignores Section 220(b)'s statutory language that states that a stockholder is allowed "to inspect for any proper purpose." ERSRI's reading would invert this sequence, allowing stockholders to serve demands based on speculation and, if refused, attempt to substantiate them later with facts that did not exist at the time of the demand.

2. Delaware Precedent Confirms That A Credible Basis Must Exist At The Time Of The Demand

Delaware courts have repeatedly recognized that a credible basis for a proper purpose must exist at the time the demand is made, based on pre-demand evidence

of pre-demand facts. *See* Op. Br. at 17-19 (discussing *Rudnick v. Chatham Capital Corp.*, No. 3010-VCS, Tr. at 12:10-15 (Del. Ch. Mar. 12, 2008) (TRANSCRIPT), *Plumbers & Steamfitters Local Union No. 248 Pension Fund v. Wal-Mart Stores*, No. 7726-CS, Tr. at 11:13-16 (Del. Ch. May 20, 2013) (TRANSCRIPT), and *Cutler v. Quiq, Inc.*, C.A. No. 6897-VCG, Tr. at 20:5-9 (Del. Ch. Feb. 24, 2012) (TRANSCRIPT)). A Section 220 demand must contain an already-existing proper purpose to avoid the type of "indiscriminate fishing expedition[]" that this Court has blocked as "adverse to the interests of the corporation." *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, at 122-23 (Del. 2006).

ERSRI's counterargument largely quotes the very passages of the Court of Chancery's Opinion which Paramount's Opening Brief refuted in detail, without offering any additional reasoning or authority. *Compare* Ans. Br. at 27 n.98, *with* Op. Br. at 17-20.[3] The only additional substantive distinction ERSRI offers now is that "[ERSRI] did not seek discovery in aid of its proper purpose (as was the case in Paramount's authorities)." Ans. Br. at 27 n.98. But ERSRI seeks to go even further than that – it seeks to use evidence ***of facts and events that took place after*** its Demand's service to support that it had a credible basis at the time of its Demand. Just like the stockholders in Paramount's authorities denying inspection, ERSRI

[3] ERSRI faults Paramount for "recycl[ing] on appeal the same cases it cited below." Ans. Br. at 26. This is no fault: Interpretation of these cases is the core of the dispute on appeal.

lacked a proper purpose at the time it served its Demand. *See, e.g.*, *Rudnick*, Tr. at 34:23-35:1 (reasoning a stockholder cannot "simply file a 220 action saying, 'I now want to figure out the basis for my accusation of credible wrongdoing.'").

ERSRI's attempt to distinguish *In re New Relic, Inc.* fares even worse. ERSRI asserts that *New Relic* is inapplicable because it "addressed an unrelated issue of *defendant's* attempted use of a Section 220 production[.]" Ans. Br. at 27 n.98 (citing No. 2023-1089-SEM, (Del. Ch. July 22, 2024) (TRANSCRIPT)). As Paramount has already articulated, Op. Br. at 22-23, this issue is not unrelated at all. In fact, *New Relic*'s limitation of the credible-basis inquiry to pre-demand evidence demonstrates why Paramount's position would enhance fairness and predictability of 220 litigation for all: Such a limiting rule cuts both ways, not tilting the scales in either side's favor.

3. ERSRI's Attempt To Re-Frame This Dispute As One Of Evidentiary Admissibility Fails

ERSRI invokes the DRE, asserting that DRE 401, 402, and 403 call for the consideration of any post-demand evidence in support of a stockholder's alleged proper purpose—even if that evidence pertains to facts not in existence at the time of the demand. Ans. Br. at 25-26 (arguing that "evidence post-dat[ing] a stockholder's demand or complaint" is relevant and therefore admissible unless its probative value is substantially outweighed by risk of unfair prejudice). ERSRI argues that "post-demand developments are relevant because they tend to make the

stockholder's suspicions of wrongdoing more 'probable than [they] would be without the evidence.'" *Id.* at 25 (quoting DRE 402). This argument fails because it erroneously conflates the DRE's procedural admissibility rules with Section 220's substantive legal standards. The DRE only govern the admissibility of evidence at trial; they do not and cannot determine ***when*** a credible basis for inspection must come into existence under Section 220. That timing is dictated by the statute and Delaware case law.

ERSRI's DRE argument misdirects the focus of the credible-basis inquiry away from the critical question: Did the stockholder have a proper purpose ***when it served its demand***? ERSRI's proffered evidence of "post-demand developments" is irrelevant to this question because it has no bearing on whether the stockholder had a credible basis for inspection at the critical moment required by Delaware law. ERSRI's DRE argument wrongly presumes that the credible-basis inquiry looks to whether a stockholder's speculation—unfounded at the time it was written up in a books-and-records demand—eventually bore out. If that were the standard, Section 220 would be an open invitation for sequential fishing expeditions into corporate records that have long been found contrary to this Court's precedents. *See, e.g.*, *Sec. First*, 687 A.2d at 568 ("Mere curiosity or a desire for a fishing expedition will not suffice.").

4. The Policy Underlying Section 220 Requires A Proper Purpose At The Time Of The Demand

Section 220 gives stockholders a mechanism to investigate possible wrongdoing, but only when there is a credible basis to suspect wrongdoing at the time of the demand. *See, e.g.*, *Rudnick*, Tr. at 12:10-13; *Wal-Mart Stores*, Tr. at 11:13-16. This permits corporations to make informed judgments whether to shoulder the expense of producing books and records in response to well-founded demands, or to reject speculative demands that could harm the corporation by exposing confidential facts about in-progress transactions like the one under negotiation here as of April 5. ERSRI's attempts to refute Paramount's policy arguments do not undermine the strong rationale for setting the credible-basis inquiry as of the time the demand is served. Op. Br. at 21-31.

First—repeating the Court of Chancery's erroneous reasoning, but failing to meaningfully engage with Paramount's critiques thereof—ERSRI argues that relying on post-demand facts in the credible-basis review "will not jeopardize efficient resolution of Section 220 demands." *Compare* Ans. Br. at 28 *with* Op. Br. at 21, 24. It would, though. The cost to both sides of litigating improper premature demands is inevitably higher than the cost of a stockholder revising an insufficient demand or waiting until the grounds for inspection have ripened before serving a demand in the first instance. *See* Op. Br. at 25-26 (citing *Donnelly v. Keryx*

Biopharmacueticals, Inc., 2019 WL 5446015, at *6 n.84 (Del. Ch. Oct. 24, 2019)). In fact, ERSRI served a second demand here, to which Paramount responded in good faith; drafting the revised October Demand has certainly been less costly than litigating this case, yet still ERSRI presses its April Demand. *See id.* at 13-14.

Similarly, considering evidence of post-demand facts ***will*** encourage "fishing expeditions," contrary to ERSRI's counterargument. Ans. Br. at 29. The Vice Chancellor's ruling invites stockholders to file speculative demands before any concrete facts or transactions have materialized because, if ***subsequent*** developments supply the necessary support, the Court of Chancery will order inspection and poise early-bird stockholders to get the worm of a plum spot in plenary litigation. If post-demand facts are fair game to establish a credible basis, stockholders could win inspection on demands that would be rightly rejected as improper and premature under the standard applied by the Senior Magistrate. ERSRI's assertion that "[t]here is no practical, financial, or real-world benefit to contingently compensated counsel" in litigating a premature or improper demand, *id.* at 31, is therefore false.

ERSRI's assertion that stockholders "are already incentivized to resolve [demands] extrajudicially," *id.* at 30, ignores that part of that incentive derives from the clear expectations generated by the standard applied by the Senior Magistrate, consistent with Chancery precedent. Corporations and stockholders are best poised

to resolve demands extrajudicially when stockholders articulate an actually existing—not hypothetical prospective—proper purpose. By contrast, the Vice Chancellor's ruling signals that stockholders ***may*** prevail in 220 litigation, even if they do not have a credible basis at the time the demand is served, if facts giving rise to a credible basis "develop" before trial. This either effectively invites litigation over premature demands based on rumor, or incentivizes corporations to shoulder the burdens of producing books and records in response to speculative demands. Stockholders or their counsel face little to no financial cost in floating demands whenever a rumor is printed in the news and hoping the rumor will find some validation before trial. Stockholders can also cheaply and easily serve revised, well-founded demands if and when a credible basis actually arises. Corporations, meanwhile, incur significant legal expenses to respond, produce documents, or defend litigation, regardless of the claim's merits or ultimate outcome.

The notice afforded to corporations by Section 220's procedural requirements (joint exhibit lists, etc.) neither eases corporations' burdens nor provides sufficient predictability for efficient resolution of otherwise-premature demands. The operative question is not what the stockholder will rely on at trial to prove its purpose—it is whether the stockholder had a reasonable basis to make the demand at the time it was made. Corporations need sufficient information to determine whether a stockholder has a proper purpose at the time of the demand to determine

whether to respond and save the expense of litigation, or—as Paramount did here—reject the demand as unfounded or premature. The Vice Chancellor's novel approach eschews the predictable bright-line rule applied by the Senior Magistrate and other precedents and introduces uncertainty. *See infra* § II.B.

The Vice Chancellor's standard would expand the scope of demands to which corporations will be forced to produce responsive documents, increasing the risk to corporations that the disclosure of confidential information will jeopardize ongoing transactions. ERSRI dismisses this concern, citing confidentiality protections available in Section 220 proceedings. Ans. Br. at 32. This misses the forest for trees. Here, ERSRI did not merely seek historical or routine corporate documents; in effect, ERSRI sought a "live blog" of the board's ongoing deliberations as a major transaction unfolded. Such demands would force boards to operate under constant threat of external scrutiny during the most sensitive phases of corporate decision-making, chilling candid discussion and potentially impairing the corporation's ability to achieve the best possible outcome for all stockholders. Increasing the access of stockholders—whose interests may conflict with the corporation's—to books and records before the closing of a transformational transaction like the one at issue here could threaten the successful consummation of such transactions.

B. The Vice Chancellor Improperly Relied On Articles Describing Post-Demand Events In Finding A Credible Basis

As of April 5, when ERSRI served the Demand, the record is clear: no deal had been announced, Paramount was considering multiple offers, and rumors proliferated. Op. Br. at 6-9. Paramount nonetheless offered to meet and confer in good faith on ERSRI's premature demand. *Id.* at 8. ERSRI declined and, relying on events that transpired ***after*** April 5 to support its alleged credible basis, pressed its premature demand to trial. *E.g.*, A0357 ("[R]eports surfaced that Skydance had revised its proposal, potentially in response to the public shareholder opposition, on May 30th, 2024."). Delaware law does not permit consideration of post-demand events because such events cannot possibly have formed the basis of the stockholder's purported credible basis at the time of the demand. The Vice Chancellor's ruling to the contrary was erroneous.

III. THE COURT OF CHANCERY INCORRECTLY HELD THAT UNCORROBORATED NEWS ARTICLES BASED ON ANONYMOUS HEARSAY ESTABLISH A CREDIBLE BASIS UNDER SECTION 220 TO SUSPECT WRONGDOING

A. Delaware Law Only Permits Reliance On Anonymous Hearsay In Support Of A Credible Basis If Facts Indicate Their Reliability

Delaware law does not endorse a categorical rule that news articles published by reputable outlets—let alone anonymous statements within those articles—are per se reliable for purposes of Section 220. Rather, hearsay statements must be corroborated to establish a credible basis, and courts must conduct a fact-specific inquiry into the reliability and corroboration of hearsay within news reports for this analysis under Section 220. *See La. Mun. Police Emps. Ret. Sys. v. Lennar Corp.*, 2012 WL 4760881, at *4 (Del. Ch. Oct. 5, 2012) (finding cited news articles "particularly unconvincing as evidence of . . . wrongdoing"); *In re Facebook, Inc. Section 220 Litigation*, 2019 WL 2320842, at *2 n.10 (Del. Ch. May 30, 2019) (assessing whether news reports of wrongdoing "have been acknowledged by the Company or have been corroborated by other investigations.").

B. The Chancery Court Erroneously Applied A Categorical Rule Focused On The Reputability Of News Outlets Rather Than The Reliability Of The Anonymous Statements Themselves

ERSRI argues that the Court of Chancery did not adopt a "general rule" that hearsay statements in news articles are reliable as long as they are reported in

reputable news outlets. Ans. Br. at 37. Yet that is exactly what the decision below does.[4] This is underscored by ERSRI's emphasis on the "rigorous reporting policies and practices of the reputable publishers . . . that only permit reliance on confidential sources 'if the journalist believes the information is both newsworthy and credible,'" and highlighting the experience of the relevant journalists. *Id.* at 40; Ex. A at 35-36. The clear implication from both the Opinion and ERSRI's Answering Brief is that, based on publications' stated editorial standards and their journalists' experience, hearsay statements contained within their articles are inherently reliable to support a credible basis under Section 220. This departs from established Delaware precedent requiring a fact-specific inquiry into the reliability of the hearsay statements themselves.

ERSRI's assertion that Paramount is advocating for a categorical ***exclusion*** of news articles is simply incorrect. *Id.* at 37. Rather, Paramount's position, which is fully consistent with Delaware law, is that the reliability of anonymous hearsay

[4] ERSRI alleges that Paramount suggested that the trial court's "findings on the reliability of news reports are subject to *de novo* review," Ans. Br. at 36, but that is not what Paramount suggests. ERSRI attempts to reclassify the Vice Chancellor's conclusion of law (that reputable publications lend *ipso facto* credence to the contents of anonymous statements they report) as factual findings. The endorsement of this categorical rule is what is subject to *de novo* review. *See NVIDIA Corp. v. City of Westland Police & Fire Ret. Sys.*, 282 A.3d 1, 12 (Del. 2022) (The appellate court "review[s] questions of law, including whether a proper purpose can be established with hearsay evidence, *de novo*."); *AmerisourceBergen Corp. v. Lebanon City Emps' Ret. Fund*, 243 A.3d 417, 424-25 (Del. 2020) (reviewing *de novo* the use of hearsay to establish a proper purpose).

statements in news articles must be assessed through a fact-specific inquiry that considers the circumstances, content, and corroboration of each report. Op. Br. at 33-36 (acknowledging "the fact-specific inquiry required to assess the credibility of hearsay statements adduced in support of a Section 220 demand"). Uncorroborated, vague, and anonymously sourced reports such as those relied upon by ERSRI cannot, standing alone, establish a credible basis under Section 220. As such, reliance solely on anonymous hearsay sources will often be insufficient in this context.

In its credible basis analysis under Section 220, the Court of Chancery erred by zooming out and focusing on publication standards, journalistic credentials, and other publication-level indicia of reliability, which do not carry over to the anonymous statements ERSRI relies on. The Court of Chancery and ERSRI base their assumptions of reliability on things like news outlets' use of "standard identifiers" for confidential sources, which, in the Vice Chancellor's view, "indicate[] the sources were knowledgeable individuals from public relations firms, investment bankers, lawyers, and internal personnel." Ans. Br. at 42; Ex. A at 36-38. Similarly, the ruling below broadly assumes that "[t]he sources are not random people off the street" and "know what they are talking about" based on the articles' level of specificity. *Id.* For purposes of analyzing credible basis under Section 220, however, one could not possibly know without some independent corroboration. Indeed, considering the way the articles are written, there could be but one or few

source(s)—of unknown relevance and knowledge—feeding similar stories to different news outlets.

ERSRI also wishes away the fact that anonymous sources may leak information to the press for motives that run directly counter to the corporations about which they speak. Ans. Br. at 42. ERSRI maintains that "Paramount has never identified, or even argued, that any article was written or sourced by somebody with a divergent interest to proliferate misinformation." *Id.* at 42-43. Look no further than ERSRI's Answering Brief to find several easy examples. The "current and former employees, financial advisers, and bidders" cited in the February 16, 2024, *Bloomberg* article ERSRI relied on, *id.* at 11, could represent any number of interests adverse to Paramount, NAI, or Skydance—especially "former employees" who may have an axe to grind, or "bidders" seeking to improve their relative position vis-à-vis competitors. For example, "[p]eople close to the Apollo bid" quoted in the March 20, 2024, *Wall Street Journal* article could easily have pecuniary interests aligned with Apollo and against Skydance. *Id.* at 12. As for the generic "people close to" or "people briefed," the vagueness of their descriptions underscores the problem with the Vice Chancellor's approach. No one, outside of the journalists or sources themselves, can *know* that a source is without bias or divergent interests. It is common sense that someone may be self-interested when electing to speak to the press about sensitive deal negotiations. The Vice Chancellor's approach conversely

assumes that a source ***cannot*** be biased ***absent*** specific indicia of unreliability. ERSRI goes so far as to say that Paramount not "proffer[ing] any specific evidence of bias" is "fatal to Paramount's appeal." *Id.* at 41. Again, Paramount cannot proffer specific evidence of bias when a source's identity is not known to Paramount.

C. Policy Supports Fact-Specific Inquiry To Assess The Reliability Of Anonymous Hearsay Statements In News Articles To Support A 220 Demand

Given that Delaware caselaw cuts against it, *see supra* § III.A, ERSRI resorts to unpersuasive appeals to policy and flawed logic. These arguments cannot make up for the deficits in ERSRI's legal arguments.

As in its briefing below, ERSRI soliloquizes on the importance of using anonymous sources as a constitutional matter. *Id.* at 44. This is completely irrelevant. This is not a First Amendment case, and the First Amendment does not hold that reporting from news outlets is always reliable to establish a credible basis under Section 220, and thus stockholders who cite news articles in Section 220 demands are entitled to inspection. ERSRI alleges that "Paramount does not meaningfully address this rationale . . . without explaining why," *id.*, but neither ERSRI nor the Court of Chancery clearly elucidate the import of First Amendment caselaw here. Of the two cases cited by the Vice Chancellor, one held an anti-anonymity law unconstitutional, and the other spoke generally about how "[a]nonymous pamphlets, leaflets brochures and even books have played an

important role in the progress of mankind." Ex. A at 33, 33 nn.76, 77 (citing *In re Opinion of the Justices*, 324 A.2d 211 (Del. 1974) and *Talley v. California*, 362 U.S. 60, 64-65 (1960)). Neither of these cases stem from the Section 220 or hearsay contexts, and neither are instructive when assessing the reliability of anonymous sources from a hearsay perspective in analyzing the purpose of a 220 demand.

Obviously, as the owner of one of the largest news media organizations in the world, Paramount understands, respects, cherishes, and exhorts the importance of First Amendment protections for journalists as a fundamental component of our democracy. Paramount does not challenge reporters' rights to use anonymous sources. But the First Amendment does not imbue anonymous statements with inherent credibility as an evidentiary and legal matter under Section 220. When proffered in support of a legal burden under Section 220, only independent corroboration and a fact-specific analysis can do that.

At base, to require corroboration or independent indicia of reliability for hearsay statements serves as a critical safeguard against the abuse of Section 220 as a tool for speculative, premature, or meritless demands. ERSRI's approach would also create uncertainty for corporations, as they would be left with no ability to guess which publications courts might deem "reputable," or what reporting editorial policies courts might deem strong enough to protect against unreliable sources, or whether a "standard" identifier cited in an article connotes that the source is

knowledgeable enough to be authoritative and reliable. This would undermine the statutory balance by eroding the credible basis standard that is meant to protect companies from unwarranted intrusion into their sensitive records. It would also represent a departure from established Delaware law limiting the use of unreliable hearsay to support Section 220 demands. The resulting landscape would be rife with uncertainty because this standard would rework Section 220's guidelines.

D. The News Reports Here Were Not Subsequently Corroborated To Support ERSRI's 220 Demand

ERSRI incorrectly argues that its cited news reports were corroborated for purposes of its Section 220 demand through "significant additional trial evidence." *See* Ans. Br. at 46. For one, as asserted *infra* Section II, what matters is whether a proper purpose existed ***at the time of the Demand***, and the post-Demand facts ERSRI relies on here cannot and should not be permitted to bear on that question.[5]

[5] Moreover, this purported "significant evidence" is not necessarily indicative of wrongdoing. For example, ERSRI purports its evidence shows "market reactions that were consistent with reporting, demonstrating that the market considered articles on Paramount developments reliable." Ans. Br. at 46. Guessing at market makers' motivations and conjecturing why they made certain moves with respect to Paramount stock is not sufficient to establish a credible basis under Section 220. Likewise, the post-Demand "significant changes at Paramount at the C-Suite and Board-level" could have been for a variety of reasons, and not all "deal negotiations" ultimately become reality. *Id.* Even if events in ERSRI's cited news articles may have transpired, it does not mean that they carry with them the negative implications that ERSRI suggests, nor does it justify the Vice Chancellor's consideration of unreliable hearsay in finding a credible basis under Section 220. *See* Op. Br. at 38; *Lennar*, 2012 WL 4760881, at *4 (similarly rejecting articles that merely insinuate possible wrongdoing).

ERSRI's emphasis on after-the-fact corroboration in support of dubious hearsay has troubling policy implications as well. For instance, ERSRI asserts that "[n]ews reports based on confidential sources often beat corroborating news by public sources" and that "[j]ournalists source information for scoops; not just to report on past events." *Id.* at 46-47. But ERSRI has exposed yet another vicious cycle of perverse incentives for stockholders' counsel that flow from the ruling below. The rush to break "scoops" first may cause publications to report on rumors that ultimately prove untrue or do not materialize. Such rumors then inform premature stockholder demands, and it's off to the races to serve Section 220 demands. Requiring contemporaneous corroboration at the time a demand is served—and, for that matter, barring consideration of post-demand evidence of post-demand conduct—keeps everybody honest and ensures that stockholder demands are used to achieve the goals of Section 220 and not to hurt corporations.

Because ERSRI failed to establish that the anonymous hearsay statements it cites are sufficiently reliable to support a credible basis for purposes of a Section 220 demand, this Court should reverse.

CONCLUSION

The Court of Chancery's Proper Purpose Opinion should be reversed and ERSRI's inspection request denied.

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CERTIFICATE OF SERVICE

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