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IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERTA ANN K.W. WONG LEUNG REVOCABLE TRUST U/A DATED 03/09/2018,	)	No. 103,2026
Plaintiff-Below, Appellant,	)	Court Below: Court of Chancery of the State of Delaware
v.	)	C.A. No. 2023-1251-BWD
AMAZON.COM, INC.,	)	**PUBLIC VERSION FILED MAY 5, 2026**
Defendant-Below, Appellee,	)	

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Dated: April 20, 2026

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NATURE OF PROCEEDINGS

Plaintiff Roberta Ann K.W. Wong Leung Revocable Trust U/A Dated 03/09/2018 ("Plaintiff") appeals an order from the Court of Chancery imposing a strict Delaware Court of Chancery-only forum provision (the "Forum Restriction") in the confidentiality agreement the Court required Plaintiff to enter into as a condition to inspect the internal books and records of defendant Amazon.com, Inc. ("Defendant," "Amazon" or the "Company").[1] The Forum Restriction provides that Plaintiff may only bring a derivative action in Delaware Court of Chancery.[2] It provides no exception to allow Plaintiff to intervene in instances where a different stockholder files a derivative action outside of Delaware that could have a preclusive effect on a potential derivative action. Nor does it provide any exception for circumstances where the Delaware Court of Chancery lacks personal or subject

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[1] Plaintiff's demand was made on October 24, 2023 (the "Demand") (A567–91), and thus, the amendments made to 8 *Del. C.* § 220 under the recent S.B. 21 do not apply to this action, and instead, the Court of Chancery applies the law in effect at the time of the Demand. *See* Letter Opinion of Vice Chancellor Bonnie W. David (Del. Ch. Nov. 5, 2025) ("Opinion") (attached as Exhibit A) at 9 n.18 (citing Del. S. Sub. 1 for S.B. 21, 153rd Gen. Assemb., Reg. Sess. § 3 (Del. 2025) (enacted) ("Sections 1 and 2 of this Act do not apply to or affect any action or proceeding commenced in a court of competent jurisdiction that is completed or pending, or any demand to inspect books and records made, on or before February 17, 2025.")).

[2] *See* February 12, 2026 Order Implementing the Opinion at 4–5 (attached as Exhibit B).

matter jurisdiction. The Court of Chancery's imposition of this strict restriction is contrary to Delaware law on multiple fronts.

First, this Court has recognized "the importance of not reading into § 220 a sweeping restriction on stockholder rights not found in its text," in concluding that while courts have the authority to impose jurisdictional use restrictions on inspection demands, such restrictions should only be imposed "cautiously," when "amply supported" by case-specific circumstances.[3] Here, there are no *bona fide* case-specific circumstances to support the Forum Restriction's "sweeping restriction," let alone to "amply" support it. The Court of Chancery did not acknowledge this high standard, nor did it correctly apply it.

In particular, the Court of Chancery ignored that Amazon had not adopted an exclusive forum provision until May 3, 2024, well after Plaintiff's October 24, 2023 Demand, and further ignored the import of the extensive antitrust action filed in the Western District of Washington by the Federal Trade Commission ("FTC"), eighteen state attorneys general and the Attorney General for the Commonwealth of Puerto Rico (the "FTC Complaint"). Instead, the Court of Chancery relied on an

[3] *KT4 P'rs LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 762 (Del. 2019) ("*Palantir*"). Unless otherwise noted, citations are omitted, and emphasis is added.

inspection demand made six years ago by a different stockholder, that did not involve three of the key actions that formed a major part of Plaintiff's credible basis—including the FTC Complaint that is "[c]entral to the Demand."[4] The Court of Chancery held that this prior demand, along with this Action itself, and two later-served inspection demands that are duplicative of this Action supported this sweeping restriction.

In part, the Court of Chancery concluded these demands demonstrated Amazon had a legitimate interest in receiving consistent rulings from Delaware courts on issues of Delaware law. Yet, the Court of Chancery denied Plaintiff's request for discovery prior to trial as to why Amazon had not adopted an exclusive forum provision. Such discovery would have provided significant insight as to the value that Amazon itself placed on receiving consistent rulings from Delaware in the absence of a forum provision. Worse, the Court of Chancery made no mention in

[4] *Roberta Ann K.W. Wong Leung Revocable Tr. U/A Dated 03/09/2018 v. Amazon.Com, Inc.*, 345 A.3d 965, 978, 981 (Del. 2025) ("Supreme Court Opinion") (recognizing that "taken together, the FTC action, the State of California action, the State of Washington consent decree, and the Italian Competition Authority fine are sufficient to establish a credible basis[.]"); *Okla. Firefighters' Pension & Ret. Sys. v. Amazon.com, Inc.*, 2022 WL 1760618, at *8–9 (Del. Ch. June 1, 2022) ("The DOJ and FTC investigations are evidenced solely by news articles, which report on the existence of the investigations but lack any credible suggestion that Amazon has engaged in wrongdoing.").

its analysis of the fact that Amazon is presently responding to, and has already produced voluminous discovery in response to the FTC Complaint and other litigation already occurring outside of Delaware, which could in any event result in Plaintiff needing to intervene outside of Delaware.[5]

The Court of Chancery also abused its discretion in permitting Amazon to introduce the fact—created after trial and even after the Magistrate's Final Report—that it had adopted an exclusive forum provision in its bylaws. After forcing Plaintiff to litigate through trial and appeal, making no mention of even the possibility of such a provision, Amazon cannot rely on its own post-trial actions to remedy an unfavorable litigation position.

Finally, the Court of Chancery abused its discretion in ignoring Plaintiff's own stated reasons for not wanting to agree to the Forum Restriction.

Even if the case-specific circumstances supported an entry of some type of forum restriction, the Court of Chancery should have fashioned a less restrictive

[5] *Cal. State Teachers' Ret. Sys. v. Alvarez*, 179 A.3d 824, 832 (Del. 2018) ("*Wal-Mart II*") (Dismissing Delaware action on collateral estoppel grounds, in part, because "the Delaware plaintiffs refrained from intervening or otherwise expressing their concerns to the Arkansas court.").

version, with "safety valves" for intervention and carve-outs for potential claims for which the Court of Chancery would not have jurisdiction.

The Forum Restriction prevents Plaintiff from protecting its right to bring a derivative action by intervening in cases that threaten it with preclusive effect. There has been an unfortunate scourge of "fast-filers" in the derivative space in recent years. These are enterprising law firms that file quickly after the announcement of corporate trauma without the benefit of Section 220 demands. As the Court of Chancery recognized, these fast filings inevitably lead to dismissals which could have preclusive effect on the more thorough stockholders that conduct Section 220 actions.[6] This Court saw this play out firsthand in the infamous *Wal-Mart* case, where Delaware plaintiffs were precluded from bringing a derivative action despite winning both a Section 220 trial and an appeal to the Delaware Supreme Court, because the defendants pushed forward and secured a dismissal of similar derivative

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[6] *E.g., In re Wal-Mart Stores, Inc. Del. Deriv. Litig.*, 167 A.3d 513, 515 (Del. Ch. 2017) (describing "the 'fast-filer' phenomenon, where counsel handling cases on a contingent basis have a significant financial incentive to race to the courthouse in an effort to beat out their competition and seize control of a case, often at the expense of undertaking adequate due diligence.").

claims in federal court.[7] In that instance, this Court noted that the plaintiffs should have taken steps to protect themselves, including intervening in the pending federal action.[8]

In order to prevent being "Wal-Marted," careful stockholders have insisted on the right to use Section 220 documents to intervene in pending related cases filed outside of Delaware. The Court of Chancery has agreed with this approach, explaining that such intervening stockholders must be able to put their "best foot forward."[9] The Court of Chancery's Opinion threatens this balance by dulling the "tools at hand" this Court has encouraged stockholders to use to protect valuable derivative claims.

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[7] *Cal. State Teachers' Ret. Sys. v. Alvarez*, 175 A.3d 86, 2017 WL 6421389, at *4 (Del. Jan. 18, 2017) (TABLE) ("*Wal-Mart I*") & *Wal-Mart II*; *see also Pyott v. La. Mun. Police Empls.' Ret. Sys.*, 74 A.3d 612, 617–18 (Del. 2013) (dismissing Delaware derivative action on collateral estoppel grounds after a California court dismissed the same claim on demand futility grounds).

[8] *Id.*

[9] *Silberberg v. Acacia Commc'ns, Inc.*, C.A. No. 2018-0262-TMR (Del. Ch. May 29, 2018) (TRANSCRIPT) at 50:12–24 ("*Acacia* Tr.") ("The company's proposed restriction could prevent the best possible derivative allegations on demand futility from being presented to the Massachusetts court, which most likely, based on the timing so far, will be the first to consider demand futility. I agree with plaintiff that this approach runs the risk of undermining the 220 process and the Court's repeated guidance on using the tools at hand and puts them at risk under *Wal-Mart*."). In reaching this conclusion, the Vice Chancellor understood that the Defendant was "a Delaware corporation with a Delaware forum selection bylaw." *Id.* at 48:1–11.

The Court of Chancery's holding that Plaintiff should seek a Rule 60 request for relief is no panacea. To start, it is inefficient to preclude stockholders from seeking prospective relief in exchange for the chance that a decision made on an incomplete record could later be challenged. Second, enterprising defendants in such a situation would push for the quick and preclusive victory in federal court before more diligent plaintiff's counsel secure the necessary relief, as in *Wal-Mart*. Finally, the precedent it sets for future Section 220 confidentiality agreements makes this forced inefficiency particularly unworkable. In most instances, the stockholder and company reach an agreement without the need to go to the Court, so there is no judgment from which to seek relief. As a result, stockholders would have to file a brand new action, further empowering defendants' ability to delay and secure a preclusive win in a different jurisdiction.

Accordingly, the Court should remand with instructions to remove the Forum Restriction, or at minimum, modify it so that Plaintiff can utilize the books and records obtained to intervene in a related action, or in circumstances where the Delaware Court of Chancery lacks jurisdiction, without seeking relief from the Court of Chancery's judgment.

SUMMARY OF ARGUMENT

1. The Court of Chancery abused its discretion in holding that Plaintiff's Demand would be subject to a Forum Restriction limiting the use of books and records to litigation brought in the Delaware Court of Chancery. The imposition of such a "sweeping restriction on stockholder's rights" is not a "norm," nor was it "amply" justified in this instance by case-specific factors. At a minimum, the Opinion was an abuse of discretion because the Forum Restriction does not permit Plaintiff to (i) intervene in a derivative action outside of Delaware with the books and records obtained through its Demand, or (ii) to pursue action elsewhere if the Delaware Court of Chancery lacks jurisdiction for any potential claims—without first seeking permission from the Court of Chancery to modify the protective order.

STATEMENT OF FACTS

A. Plaintiff's Demand Focused Heavily on Litigation Occurring Outside Delaware

Plaintiff sent its inspection demand to Amazon on October 24, 2023.[10] Plaintiff articulated that its proper purpose "'is to investigate potential corporate mismanagement, wrongdoing, and waste by fiduciaries of [Amazon], including the Board of Directors … and executive officers of Amazon.'"[11] Plaintiff "'is concerned that Amazon's fiduciaries have authorized or allowed [Amazon to] take unlawful advantage of [its] dominant [marketplace] position to engage in anticompetitive practices, leading to U.S. and international regulatory scrutiny, lawsuits, and fines.'"[12] Plaintiff is also "'concerned that Amazon utilized a set of interlocking anticompetitive and unfair strategies to illegally maintain its monopoly power that benefits the products it makes and sells internally versus third-party sellers that utilize [Amazon]'s marketplace.'"[13]

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[10] A567–91.

[11] Supreme Court Opinion, 345 A.3d at 969 (citing A567–91 at A567).

[12] *Id.*

[13] *Id.*

Plaintiff provided a "chronology of 'Amazon's history of monopolistic behavior'" in its Demand.[14] This chronology included the FTC Complaint "against Amazon alleging twenty violations of state and federal antitrust laws …. [i]n September 2023 … in the Western District of Washington."[15] This Court recognized the FTC Complaint is "[c]entral to the Demand" and that "[m]uch of the Demand emphasized the alleged monopoly powers described in the FTC [C]omplaint."[16] The chronology of Amazon's monopolistic behavior in the Demand also included (i) a lawsuit filed against Amazon in January 2022 by the State of Washington "regarding the treatment of third-party sellers on its marketplace" that led to the imposition of a "consent decree, whereby Amazon agreed to stop its 'Sold by Amazon' program and further agreed to give the Washington Attorney General's Office annual updates on its compliance with antitrust laws[,]"[17] and (ii) an action filed by the State of California in September 2022 "alleging that [Amazon] violated California antitrust

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[14] *Id.* at 970 (citing A567–91).

[15] *Id*. at 971 (citing A567–91; A789–960).

[16] Supreme Court Opinion, 345 A.3d at 971.

[17] *Id.* (citing A567–91; A651–53; A654–81).

and unfair competition laws by contracting with its third-party sellers and wholesale suppliers to prevent competition[,]" which defeated a demurrer from Amazon.[18]

The Demand sought documents relating to these actions outside of Delaware, seeking, "books and records related to, among other things … investigations into Amazon's compliance with such laws and lawsuits filed against [Amazon] regarding antitrust laws or anticompetitive conduct, including, but not limited to, the FTC [c]omplaint, California's lawsuit, and Washington's lawsuit."[19]

The Demand also noted Amazon's payment of a €1.13 billion fine to the Italian Competition Authority due to '"certain of [Amazon's] marketplace and logistics practices in Italy infring[ing] EU competition rules.'"[20]

This Court recognized that "taken together, the FTC action, the State of California action, the State of Washington consent decree, and the Italian Competition Authority fine are sufficient to establish a credible basis from which a court can infer that Amazon has engaged in possible wrongdoing through its purported anticompetitive activities."[21]

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[18] *Id.* (citing A567–91) (remaining citations omitted); A682–765; A766–82.

[19] *Id.* at 972 (citing A567–91) (alterations in original).

[20] *Id.* at 973 (citing A783–88).

[21] *Id.* at 981.

B. Amazon Refused to Produce Documents in Response to Plaintiff's Inspection Demand without an Exclusive Forum Provision Limiting Plaintiff's Use of Books and Records to Delaware

Amazon's November 14, 2023 response to Plaintiff's Demand was a three-page form letter stating that while it was "willing to discuss potentially producing to your client a targeted set of materials ... [a]ny such production would be conditioned on the prior execution of a suitable confidentiality agreement[.]"[22] Amazon informed Plaintiff on November 17, 2023, that it, "believe[d] that a forum provision limiting the litigation use of documents provided for inspection to Delaware … is appropriate here."[23] Plaintiff disagreed, given Amazon's lack of any case-specific reasons, and this Court's jurisprudence. Plaintiff filed this action on December 14, 2023 to enforce its inspection rights without a forum restriction.[24]

C. As of the Date of the § 220 Trial, Amazon Did Not Have an Exclusive Forum Provision in Its Bylaws, There Were No Related Actions in Delaware, and There Was No Prior Related Derivative Action

The parties prepared for a trial and conducted discovery before briefing the issues. This discovery included discovery relating to the Forum Provision. Amazon

[22] A961–63 at A963.

[23] A964–69 at A964.

[24] Supreme Court Opinion, 345 A.3d at 972.

asked Plaintiff's trustee at her deposition, "are there any reasons why you oppose an exclusive Delaware forum provision that are not included in your complaint?"[25] Plaintiff's trustee responded: "Yes. I do -- do not want it to be exclusive in case I do have to go to a different mode of trial, like a jury trial, and need to call on people that are not within the jurisdiction of Delaware."[26] Amazon asked Plaintiff in an interrogatory if, "there is relief You could obtain in a potential derivative lawsuit relating to the subject matters raised in the Demand in a non-Delaware court that you could not obtain in a Delaware court, and if so, Describe that relief."[27] Plaintiff responded:

> Plaintiff objects to this interrogatory on the grounds that it is vague and ambiguous and asks Plaintiff to respond to a hypothetical without sufficient information limiting the nature of the hypothetical. Subject to this and the general objections above, Plaintiff responds as follows: in the abstract Plaintiff may seek to bring derivative based claims relating to state or federal antitrust violations, which may entitle it to a jury trial; Plaintiff may also determine that action needs to be taken with respect to individuals who are not within the jurisdictional reach of Delaware courts and that such actions need to be pursued in other jurisdictions; Plaintiff may also need to intervene in related derivative action occurring outside of Delaware.[28]

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[25] A1070–73 at 52:8–20.

[26] *Id.*

[27] A985–97 at A995, Interrogatory No. 5.

[28] A998–1047 at A1041, Response to Interrogatory No. 5.

Plaintiff asked Amazon, in interrogatories, to explain why it had not adopted a Delaware forum-selection clause in its bylaws, and to identify all instances in which Amazon's board of directors had considered adopting such a provision.[29] Amazon refused to answer, objecting to both interrogatories on the grounds that such information was "not relevant" and subject to privilege.[30] When Plaintiff moved to compel responses to these (and other) interrogatories, the Court of Chancery held that:

> [d]elving into a company's reasons for not adopting a forum selection bylaw when it seeks a jurisdictional use restriction risks improperly 'expand[ing] a books-and-records action into a plenary proceeding,' is (at best) marginally relevant to the narrow issues presented, and is not proportional to the needs of a summary proceeding.[31]

Amazon made no mention in its discovery responses of any pending exclusive forum provision in its bylaws.

The parties proceeded to a one-day trial held on a paper record before then-Magistrate Bonnie W. David on April 26, 2024.[32] Though not decided in then-

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[29] A970–84 at A982, Interrogatories No. 13 and 14.

[30] A1048–69 at A1064, Responses to Interrogatories No. 13 and 14.

[31] A17–19 at A19, Order Denying Plaintiff's Motion to Compel Further Responses and Documents from Amazon.com, Inc. (citing *Lebanon Cnty. Empls.' Ret. Fund. v. Amerisourcebergen Corp.*, 2020 WL 132752, at *26 (Del. Ch. Jan. 13, 2020), *aff'd*, 243 A.3d 417 (Del. 2020)).

[32] A204–29 ("Final Report") at A205.

Magistrate David's Final Report, the parties extensively briefed the issue of whether Plaintiff's inspection should be conditioned on an exclusive forum provision.[33] Amazon acknowledged in its answering pre-trial brief that "this factor does not weigh in favor of a Delaware-forum use restriction because Amazon has not adopted such a bylaw."[34] The parties also argued this issue at trial.[35] By the time of trial, there were no related actions pending in Delaware, no prior derivative litigation that would be related to the Demand, and Amazon did not have in place an exclusive forum provision. It was not until May 3, 2024, two days after then-Magistrate David issued her Final Report, that Amazon adopted the exclusive forum provision in its bylaws.[36]

D. On Remand, the Court of Chancery Imposes a Forum Restriction as a Condition of Inspection

Following Plaintiff's appeal of the Court of Chancery's Opinion[37] on the Exceptions that followed the then-Magistrate's Final Report, this Court concluded

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[33] *See* A60–124 at A117–23; A20–59 at A51–58; A161–203 at A192–201; A131–60 at A151–59.

[34] A131–60 at A158.

[35] *See* A230–362 at 47:24–63:3; 106:16–124:9; 128:8–129:11.

[36] A534–62 at A549 (citing A1074–12).

[37] *Roberta Ann K.W. Wong Leung Revocable Tr. U/A Dated 03/09/2018 v. Amazon.com, Inc.*, 2024 WL 4564754 (Del. Ch. 2024).

that Plaintiff had a proper purpose and established a credible basis.[38] The Court remanded "for further proceedings to determine the scope and conditions of production consistent with this decision."[39] The parties filed supplemental briefs on October 15, 2025, addressing both scope and the conditions of inspection.[40] On November 5, 2025, the Court of Chancery issued a Letter Opinion addressing, "the scope of, and conditions on, the stockholder's inspection."[41]

As discussed further below, the Court of Chancery concluded that, "Plaintiff's books and records inspection will be conditioned on a Forum Restriction in the parties' confidentiality agreement."[42] Following the Court of Chancery's direction, the parties conferred on an order memorializing the ruling and submitted it to the Court of Chancery. On February 12, 2026, the Court of Chancery entered the Order Memorializing Letter Opinion that is the subject of this appeal.[43] Plaintiff filed its notice of appeal on March 5, 2026.[44]

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[38] Supreme Court Opinion, 345 A.3d at 977–78, 982.

[39] *Id.* at 982.

[40] A454–533; A534–62.

[41] Exhibit A.

[42] *Id.* at 18.

[43] Exhibit B.

[44] A563–66.

ARGUMENT

I. THE COURT OF CHANCERY ABUSED ITS DISCRETION BY CONDITIONING INSPECTION ON A FORUM RESTRICTION WITHOUT ANY SAFETY VALVES

A. Question Presented

Whether the Court of Chancery abused its discretion in holding that Plaintiff's inspection demand would be conditioned on a, "jurisdictional restriction limiting use of the inspection materials in litigation to a Delaware forum," that did not include any "safety valve" exceptions for intervention or where the Court of Chancery lacks jurisdiction.[45] Argument Preserved at A60 at A117–23; A161 at A192–201; A230 at A276–92; A534 at A557–61.

B. Scope of Review

The standard of review is abuse of discretion.[46]

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[45] Opinion at 3.

[46] *Palantir*, 203 A.3d at 748 (recognizing "[i]n a § 220 action, we review for abuse of discretion the Court of Chancery's determination of . . . any limitations or conditions on that relief").

C. Merits of Argument

1. The Court of Chancery Did Not Acknowledge or Apply the High Standard for Imposing a Forum Restriction

The Court of Chancery erred in focusing only on its ability to, "prescribe conditions on an inspection[,] includ[ing] the authority to impose a Forum Restriction[,]" rather than applying the standard by which it should have determined whether or not to impose such a restriction.[47] The Court of Chancery acknowledged that "[d]eciding whether such a provision is appropriate is 'inherently case-by-case and fact specific."'[48] The Court of Chancery did not, however, acknowledge that such provisions must be imposed only sparingly given the text and history of § 220 jurisprudence so as not to unduly restrain stockholders from exercising their rights.[49] The Court of Chancery concluded without appropriate analysis that, "[a]n evaluation of the *Treppel* factors leads me to conclude that a Forum Restriction is appropriate under the specific facts of this case."[50]

Although a Forum Restriction may be imposed on inspection, this Court has twice articulated that the standard for applying such a restriction is high, and that

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[47] Opinion at 16.

[48] *Id.*

[49] *Id.*

[50] *Id.* at 16–17.

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such a provision is not the “norm” in *United Technologies Corp. v. Treppel*[51] and *Palantir*.[52] In *Palantir*, the Supreme Court explained that such a norm was not supported by either the text of § 220 or the Court’s jurisprudence.[53] The Supreme Court recognized that “§ 220 provides no textual basis for the imposition of jurisdictional use restrictions as the ‘norm.’”[54] The Supreme Court also recognized that there was no such support in its jurisprudence, recognizing that there was only one, “case in which this Court has addressed the circumstances under which a jurisdictional use restriction may be imposed.”[55] Moreover, it noted that the circumstances of that one case, *Treppel*, “illustrate[d] the problematic nature of the Court of Chancery’s assent” to such a restriction.[56]

The Supreme Court’s treatment of inspection conditions in *Treppel* was, by its own description, meant to be an outlier. The Supreme Court permitted the Court of Chancery to impose a jurisdictional use restriction in *Treppel* only because the

[51] 109 A.3d 553 (Del. 2014) (“*Treppel*”).

[52] 203 A.3d at 762.

[53] *Palantir*, 203 A.3d at 762.

[54] *Id.*

[55] *Id.*

[56] *Id.* (discussing *Treppel*).

request was "***amply supported*** by its bylaws and the circumstances of the petitioner's demand,"[57] *Treppel* involved a corporation with a forum selection clause and prior "derivative litigation in Delaware over the same alleged wrongdoing."[58] Even with this ample support, the Supreme Court permitted the imposition of a forum restriction only "***cautiously***" on the basis of these case specific factors.[59]

This Court recognized that caution was necessary given, "the importance of not reading into § 220 a ***sweeping restriction on stockholder rights not found in its text***[.]"[60] A forum restriction represents a, "sweeping restriction on stockholder rights . . . for an obvious reason: § 220 itself does not contain any statutory language restricting stockholders from using the books and records they inspect in lawsuits brought outside of Delaware."[61] This Court elaborated on that concept in *Palantir* by recognizing that, "[n]othing in § 220's text or our case law has ever suggested that the only possible place a stockholder can sue using those books and records is

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[57] *Palantir*, 203 A.3d at 762.

[58] *Id.*

[59] *Id.* (emphasis added).

[60] *Id.* (emphasis added).

[61] *Id.* at 743, 762.

the Delaware Court of Chancery."[62] Indeed, *Palantir* recognized that, "as a matter of legal and factual reality, stockholders of Delaware corporations can bring actions against the fiduciaries of those corporations in the courts of other jurisdictions if those courts can obtain personal jurisdiction over the defendants."[63]

This Court has closely guarded the effectiveness of § 220 and been skeptical of attempts to restrain stockholders' rights by placing limitations on inspection. For example, this Court has held that, "there is no presumption of confidentiality in Section 220 productions," demonstrating that even other, less restrictive, conditions on inspection must still be carefully considered.[64]

Similarly, other § 220 jurisprudence recognizes the need for flexibility in connection with inspection demands. These cases have held that a stockholder need not, '"commit in advance to the ends to which it will put the books and records[,]'" refusing to impose conditions that would lock a stockholder in certain ends ahead of

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[62] *Id.* at 758–59.

[63] *Id.*

[64] *Tiger v. Boast Apparel, Inc.*, 214 A.3d 933, 938–39 & n.18 (Del. 2019) (rejecting "'presumption' [that] appear[ed] to have arisen out of almost nowhere" of a confidentiality provision, recognizing that "this case rings with the echo of" *Palantir*).

time.[65] These decisions demonstrate that any restriction on a stockholders' rights must be carefully weighed.

Accordingly, the Court of Chancery's conclusion began from a flawed premise in acknowledging that it could impose a forum restriction, but failing to recognize the severity of the imposed Forum Restriction, the fact that restrictions on stockholders' inspection rights generally have never been a "norm," and the lack of textual or jurisprudential support to impose a forum restriction specifically, especially where no forum provision has been adopted by the company and no plenary proceedings exist on the same subject matter in Delaware. The Court of Chancery's conclusion was an abuse of discretion in that it failed to "cautiously" impose such a "sweeping restriction on stockholder rights" and further failed to explain how such a strong medicine was "amply" supported by case-specific factors.

[65] *See, e.g., Amerisourcebergen*, 2020 WL 132752, at *13; *Leadwell Glob., Ltd. v. Leadwell Glob. Prop. LLC*, C.A. No. 2022-0440-JTL (Del. Ch. Sept. 19, 2022) (Letter to Counsel re Final Order and Confidentiality Order) (refusing to impose a use restriction and recognizing stockholder "not required to 'commit in advance to the ends to which it will put the books and records'" (citing *Amerisourcebergen*, 2020 WL 132752, at *13)).

2. The Imposition of a Sweeping Restriction on Stockholder Rights Was Not "Amply" Justified by Case Specific Factors

Measured against this foundational backdrop, the Court of Chancery abused its discretion in concluding that, "a Forum Restriction is appropriate under the specific facts of this case."[66] This was not an instance where the circumstances "amply" justified imposing a "sweeping restriction on stockholder rights not found [the] text" of § 220.[67]

The Court of Chancery held it was giving weight to the following factors articulated in *Treppel* and concluded they justified conditioning inspection on a Forum Restriction provision:[68]

> (i) the fact that [plaintiff] seeks to file claims arising out of the same corporate conduct that was already the subject of derivative litigation in the Court of Chancery and [the Supreme] Court; (ii) [the corporation's] legitimate interest in having consistent rulings on related issues of Delaware law, and having those rulings made by the courts of this state; (iii) [the corporation's] adoption of a forum selection bylaw that represents a non-case-specific determination by its board of directors that internal affairs litigation involving the company should proceed in a single forum; and (iv) the investment the corporation has already made (which comes at a cost to its stockholders) in defending

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[66] Opinion at 17.

[67] *Palantir*, 203 A.3d at 762.

[68] Opinion at 17–18.

> not only the prior derivative litigation in the Court of Chancery, but also this § 220 action.[69]

Outside of these factors, the Court of Chancery also disregarded the interests Plaintiff articulated not to have its inspection rights restrained, (i) determining that the right to a jury trial (ii) the ability to bring potential claims that may not be heard in the Court of Chancery; (iii) the right to bring potential claims against individuals who may be beyond the jurisdictional reach of the Court of Chancery; and (iv) the right to intervene to protect potentially valuable claims of the corporation against judication on an incomplete record, were all not, "legitimate reason[s] why [plaintiff] needs to file suit in a forum other than Delaware . . . [.]"[70]

The Court of Chancery first concluded that, "Amazon has received at last [sic] four demands seeking to investigate breaches of fiduciary duty based on purported anticompetitive conduct."[71] The Court of Chancery did not specify what four demands it was referring to in its Opinion, but presumably, it was referring to

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[69] Opinion at 16 (citing *Treppel*, 109 A.3d at 558, 560) (alterations in original).

[70] *Id*. (citing *Treppel*, 109 A.3d at 560).

[71] Opinion at 17.

Plaintiff's Demand, the demand made by a stockholder six years ago in *Oklahoma Firefighters*,[72] and the two demands attached by Defendant to its post-trial brief.[73]

The Court of Chancery held that therefore, "[t]he receipt of multiple demands seeking to investigate the same Delaware law-based claims presents a concrete risk that future derivative litigation arising from those demands may, in the absence of a Forum Restriction, span multiple forums, run up defense costs, and yield inconsistent results."[74]

This analysis appears to be a misapplication of the first *Treppel* factor: "(i) the fact that [the plaintiff] seeks to file claims arising out of the same corporate conduct that was already the subject of derivative litigation in the Court of Chancery and [the Supreme] Court."[75] First, there is no pending related derivative litigation in Delaware that could create the risk of inconsistent judgments. Second, none of these demands are "derivative litigation" as that term was used in *Treppel*. Third, the Court of Chancery improperly weighed the risk of a pending potential claim against the extant, concrete related claim already proceeding through years of

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[72] 2022 WL 1760618, at *12

[73] A454–533 at A480, A500.

[74] *Id.*

[75] *Treppel*, 109 A.3d at 560.

significant discovery in the Western District of Washington through the FTC Complaint.

In *Treppel*, the Supreme Court drew a clear distinction between a § 220 demand and derivative litigation, recognizing that the Company had made an investment, "in defending not only the prior derivative litigation in the Court of Chancery, but also this § 220 action."[76] The "prior derivative litigation" referred to another stockholder filing a plenary derivative complaint in the Court of Chancery based on their own earlier inspection demand in August 2012, itself based on a June 2012 investigation by the U.S. Department of Justice.[77] That action was then dismissed, and the dismissal was affirmed by this Court in December 2013.[78] Lawrence Treppel made a litigation demand in August 2012, then followed up with an inspection demand in March 2013 to seek the basis of the company's rejection of his demand, both based on that same June 2012 U.S. Department of Justice investigation.[79]

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[76] *Id.*

[77] *Id.* at 555.

[78] *Id.*

[79] *Id.*

Thus, the Court of Chancery's analysis of this factor was erroneous, given that there is no "prior derivative litigation" here, as that term was used in *Treppel*. The existence of other inspection demands, which have not even proceeded to inspection actions, is a materially different situation than one where a shareholder seeks inspection of materials related to plenary claims that have already been fully adjudicated, appealed, and dismissed.

The Court of Chancery's analysis of this factor was further erroneous given the nature of the four demands. Aside from the Demand animating the present Action pursued by Plaintiff, another is the *Oklahoma Firefighters* demand, which was made by another stockholder six years ago in June 2020.[80] This was two years before the complaints filed by the Washington and California Attorneys' General, and three years before the FTC Complaint that is "[c]entral to the Demand."[81] No derivative action or other activity followed that demand that would otherwise connect it to this Demand. This is nothing like *Treppel*, where the inspection demand was made contemporaneously with another that dealt with the exact same subject matter.

[80] *Oklahoma Firefighters*, 2022 WL 1760618, at *3.

[81] Supreme Court Opinion, 345 A.3d at 971.

Moreover, the other two demands are immaterial for several reasons. They were not part of the record at the time of trial. Akin to how the Supreme Court recognized that, "we apply the law in effect at the time of the demand[,]" here the relevant assessment is at the time of trial, before both of these other demands.[82] These other demands both explicitly reference not only Plaintiff's Demand, but this Court's opinion upholding its proper purpose.[83] These demands are not even prior, let alone "prior derivative litigation."

None of these demands "amply" support the imposition of a, "sweeping restriction on stockholder rights."[84] Instead this Action is like *Palantir*, where the Forum Restriction was rejected because, among other things, "there was no prior litigation against [the company] in Delaware related to the purposes that the Court of Chancery found proper."[85]

Further, to the extent Plaintiffs' Demand relates to, "claims arising out of the same corporate conduct that was already the subject of … litigation," that litigation

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[82] Supreme Court Opinion, 345 A.3d at 968 & n.1.

[83] A454–533 at A481, n.1; A501.

[84] *Palantir*, 203 A.3d at 762.

[85] *Id.*

is pending outside of Delaware.[86] Namely, the FTC Action pending in Washington, and the California Attorney General's action pending in California.[87] Thus, this situation is also akin to *Palantir* in that, "the Jurisdictional Use Restriction in this case expands the number of forums" involved rather than diminishing the potential number of jurisdictions facing the Company, further supporting the rejection of a Forum Restriction.[88] The Court of Chancery's analysis ignored this other litigation.[89]

Similarly, the Court of Chancery's analysis of the second *Treppel* factor: "[the corporation's] legitimate interest in having consistent rulings on related issues of Delaware law, and having those rulings made by the courts of this state," was also an abuse of discretion.[90] The Court of Chancery had no separate analysis for this second factor, and relied on the same "four demands" reasoning described above; it did not cite any specific evidence supporting a legitimate interest of the Company.

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[86] A20–59 at A52.

[87] A60–124 at A62, A86–87.

[88] *Palantir*, 203 A.3d at 763.

[89] *See* Opinion at 16–18.

[90] Opinion at 16 (citing *Treppel*, 109 A.3d at 560).

The Court of Chancery's conclusion is particularly troubling given that it refused Plaintiff's discovery into why Amazon had not adopted a Delaware forum selection provision in its bylaws.[91] The Court of Chancery looked solely to Plaintiff's reasons for not agreeing to an exclusive forum provision as a condition of production. It entirely ignored that Amazon lacked a forum selection provision in its bylaws and refused to consider Amazon's internal reasoning for not adopting an exclusive forum provision. Such reasoning is inconsistent, ignores the contractual nature of a Delaware corporation's bylaws as governing the affairs between a corporation and its stockholders, and is fundamentally unfair.[92] Amazon's failure to adopt a forum selection provision until after trial in this Action and the subsequent installation of one *post hoc* through a confidentiality agreement is a grave restriction on stockholders' inspection rights. Moreover, the Company is controlled by directors and officers who have long been on notice that Plaintiff is investigating

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[91] A17–19.

[92] *See Boilermakers Loc. 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934, 939 (Del. Ch. 2013) ("As our Supreme Court has made clear, the bylaws of a Delaware corporation constitute part of a binding broader contract among the directors, officers, and stockholders formed within the statutory framework of the DGCL.") (citing *Airgas, Inc. v. Air Prods. & Chems., Inc.*, 8 A.3d 1182, 1188 (Del. 2010); *Lawson v. Household Fin. Corp.*, 152 A. 723, 726 (Del. 1930)).

whether they are at a substantial risk of liability for potential breach of fiduciary duty, corporate mismanagement, and other potential claims.

The Court of Chancery also abused its discretion in considering Amazon's post-trial adoption of a forum selection bylaw.[93] The Court of Chancery held that, "I am aware of no precedent compelling me to ignore the board's highly relevant determination that internal affairs litigation should proceed in a single Delaware forum."[94] Yet, in making this statement, the Court of Chancery cited to no authority considering a post-trial development in its analysis—let alone a post-trial development caused by the party offering it as support for its position.[95]

Moreover, the Court of Chancery ignored the authority offered by Plaintiff that demonstrated it is inappropriate to consider Amazon's own post-trial activities. Plaintiff cited the post-trial decision of Chancellor McCormick in *Tornetta v. Musk* to demonstrate why the Court should not consider the post-trial adoption of a forum

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[93] Opinion at 17.

[94] *Id.*

[95] *See id.* at 17–18.

provision in Amazon's bylaws.[96] The Court of Chancery did not even cite this decision, let alone respond to Plaintiff's argument.[97]

In *Musk*, defendants argued that they could revise the outcome of a trial based on a post-trial ratification of Musk's compensation by Tesla's shareholders.[98] Chancellor McCormick rejected this premise, concluding that, "defendants have no procedural ground for flipping the outcome of an adverse post-trial decision based on evidence they created after trial."[99] Here too, the forum provision in Amazon's bylaws is, "evidence [it] created after trial."[100]

Chancellor McCormick's opinion relied heavily on ensuring the efficiency and fairness of the judicial process and protecting the finality of judgments. She recognized that, "[t]he rules of procedure governing what evidence can be admitted post-trial speak to 'two important values: the integrity of the judicial process and the

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[96] A534–62 at A559 (citing *Tornetta v. Musk*, 326 A.3d 1203 (Del. Ch. Dec. 2, 2024) *rev'd on other grounds sub nom. In re Tesla, Inc. Deriv. Litig.*, 2025 WL 3689114 (Dec. 19, 2025) ("*Musk*"). This Court reversed rescissory damages on appeal, but did not disturb the Court of Chancery's observation that it could not reopen the trial record to consider new facts developed by the defendants solely for the purposes of reversing a judicial ruling. *Tesla*, 2025 WL 3689114, at *6.

[97] *See* Opinion at 16–18.

[98] *Musk*, 326 A.3d 1203.

[99] *Id.* at 1212–13.

[100] *Id.*

finality of judgments. The rules exist to serve the first; their administration must acknowledge the second.'"[101] The Chancellor also recognized the importance of, "Delaware's policy against piecemeal litigation, which is designed to conserve judicial resources and avoid prejudicial delay resulting from interlocutory appeals."[102] Finally, Chancellor McCormick also rejected this new evidence because, "[w]ere the court to condone the practice of allowing defeated parties to create new facts for the purpose of revising judgments, lawsuits would become interminable."[103]

The Court of Chancery's decision to assess the propriety of a Forum Restriction based on evidence Amazon created after trial violates these efficiency concerns. This evidence was created by Amazon at the thirteenth hour, long after Plaintiff's Demand, after meet and confers on a potential response to the Demand, the filing of Plaintiff's § 220 complaint, the completion of discovery, trial itself, and even after the Court of Chancery's post-trial decision.[104] The efficiency and fairness

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[101] *Id.* at 1221 (citing *Credit Lyonnais Bank Nederland, N.V. v. Pathe Commc'ns Corp.*, 1996 WL 757274, at *1 (Del. Ch. Dec. 20, 1996) (cleaned up)).

[102] *Musk*, 326 A.3d at 1222.

[103] *Id.* at 1224.

[104] *See* A204–29; A454–533 at A475 ("Amazon adopted an exclusive Delaware forum bylaw on May 3, 2024").

concerns highlighted by Chancellor McCormick apply with even more force to Section 220 proceedings. Delaware courts have repeatedly explained that Section 220 proceedings, "are intended to be 'summary,' and thus 'managed expeditiously.'"[105] Instead of abiding by these precepts, the Court of Chancery's consideration of Amazon's post-trial evidence has turned what is supposed to be a "summary proceeding," into an "interminable" one.[106]

Indeed, the Court of Chancery's opinion contemplated that this type of "interminable" proceeding is inconsistent with § 220 jurisprudence. The Court of Chancery concluded that its decision to consider Amazon's post-trial evidence did not impact the, "'integrity of the judicial process and the finality of judgments'" because, "the Court did not previously rule on conditions for inspection."[107] That logic fails here given that the conditions of inspection were at the heart of the parties' dispute from the outset, were fully briefed in pre-trial briefing, and were presented

[105] *AmerisourceBergen Corp. v. Lebanon Cnty. Empls.' Ret. Fund*, 243 A.3d 417, 437 (Del. 2020) (citing *Brehm v. Eisner*, 746 A.2d 244, 267 (Del. 2000)).

[106] *Id.* Plaintiff's inspection demand was first sent to Amazon on October 24, 2023—almost two and a half years ago. A567–91; A592–650 at A610 (¶ 45).

[107] Opinion at 17–18.

to the Court of Chancery at trial.[108] Given those proceedings, it is irrelevant that the Court of Chancery did not rule on appropriate conditions of inspection. Permitting this type of seriatim proceeding eviscerates the efficiency goal embedded in § 220 jurisprudence.

Next, the Court of Chancery abused its discretion in concluding that the Forum Restriction was justified by the fact that, "Amazon has now invested substantial resources by litigating two books and records actions in this Court arising from the same underlying conduct."[109] But again, this provides far too much emphasis on the *Oklahoma Firefighters* inspection demand. That demand was six years prior by another stockholder, that did not relate to or involve the "central" aspect of the Demand—the FTC action. It also pre-dated the State of California and State of Washington actions that this Court held were a part of Plaintiff's credible basis showing.[110] Such a tenuous and aged connection cannot be sufficient to justify a "sweeping restriction on stockholder rights" or it would turn forum restrictions into a "norm." The Court of Chancery's stated reasoning supporting the Forum

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[108] A20–59 at A26–34; A60–124 at A117–23; A131–60 at A152–59 ; A161–203 at A192–201; A230–362 at A266–92; A293; A336–353; A357–58.

[109] Opinion at 18.

[110] Supreme Court Opinion, 345 A.3d at 971–73.

Restriction—that other derivative litigation may potentially be filed in that court—is increasingly unlikely for a six-year-old inspection demand that was dismissed without receiving any books and records.

Finally, the Court of Chancery also abused its discretion in concluding that, "Plaintiff has failed to articulate any legitimate reason why it should be permitted to file suit outside Delaware."[111] The Court of Chancery asserted that Plaintiff, "simply argues that it should not be required to 'commit in advance to the ends to which it will put the books and records'" and "offers no other reason for seeking to file litigation in another forum."[112] Then, the Court of Chancery concluded that "[a] Forum Restriction does not require Plaintiff to commit to the 'ends' of its inspection—it does not restrict *what* Plaintiff can do with the books and records, only *where* Plaintiff may bring litigation if it chooses to do so."[113] These conclusions are wrong.

First, despite the Court of Chancery's conclusions, requiring a plaintiff to assert a reason for seeking litigation in another forum ***necessarily does*** require a plaintiff to identify in advance the ends toward which he will advance his books and

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[111] Opinion at 18.

[112] *Id.*

[113] *Id.* (emphasis in original).

records inspection, insofar as it requires the plaintiff *ex ante* to identify potential claims that cannot be heard by the Court of Chancery, against individuals who may not be within the jurisdictional limits of the Court of Chancery, or to identify further substantive rights that may be impacted by plaintiff's investigation before plaintiff has even had the opportunity to inspect the company's internal documents. The Court of Chancery's requirement that a plaintiff articulate a "legitimate reason" to file suit outside of Delaware thus contradicts this Court's longstanding holding that, "when the purpose of an inspection of books and records under Section 220 is to investigate corporate wrongdoing, the stockholder seeking inspection is not required to specify the ends to which it might use the books and records."[114] In *Leadwell* a similar "use restriction" was rejected precisely because it would require the plaintiff to "'commit in advance to the ends to which it will put the books and records.'"[115]

Second, the Court of Chancery's assertion that Plaintiff failed to, but must, offer a reason for seeking to file litigation in another forum is not supported by the record. As discussed, Plaintiff articulated several reasons that the Court disregarded,

[114] *AmerisourceBergen*, 243 A.3d at 430.

[115] *See, e.g.*, *Leadwell* at 2 (citing *Amerisourcebergen*, 2020 WL 132752, at *13 (refusing to impose a "use restriction" because it would require the plaintiff to '"commit in advance to the ends to which it will put the books and records'")).

without explanation, as illegitimate.[116] Plaintiff's legitimate reasons for not agreeing to such a provision included that it, (i) "contradicts recent Delaware Supreme Court jurisprudence and is particularly inappropriate here where Amazon has not adopted an exclusive forum bylaw or article and there is a derivative action on behalf of Amazon pending in federal court in Washington."[117] Additionally, Plaintiff explained that she, (ii) "may seek to bring derivative based claims relating to state or federal antitrust violations, which may entitle it to a jury trial; [(iii)] Plaintiff may also determine that action needs to be taken with respect to individuals who are not within the jurisdictional reach of Delaware courts and that such actions need to be pursued in other jurisdictions; [and (iv)] Plaintiff may also need to intervene in related derivative action[s] occurring outside of Delaware."[118] Accordingly, the Court of Chancery abused its discretion in concluding Plaintiff did not have reasons to reject the Forum Restriction. Plaintiff's legitimate reasons for wanting to litigate

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[116] *Supra* at 25.

[117] A60–124 at A120 (citing A592–650 at A595 (¶ 8)).

[118] A60–124 at A120–21. Plaintiff articulated the same reasons at her deposition: "I do – do not want it to be exclusive in case I do have to go to a different mode of trial, like a jury trial, and need to call on people that are not within the jurisdiction of Delaware." *Id.* at A121 (citing A1070–73 at 52:11–15).

in another forum further weighed against the imposition of the Forum Restriction provision.[119]

Third, the Court of Chancery's placing of the burden on Plaintiff gets the analysis backwards: the burden is on Amazon to justify the imposition of a restriction that is not the "norm," as this Court has recognized that stockholders are free to file derivative actions where they deem proper.[120]

Accordingly, the Court of Chancery abused its discretion in imposing a "sweeping restriction on stockholder rights," in conditioning Plaintiff's inspection on a Forum Restriction provision.

3. Defaulting to a Forum Restriction with No Exceptions for Intervention or Lack of Jurisdiction Is Contrary to § 220 Jurisprudence

Even if it were proper for the Court of Chancery to impose some restriction on Plaintiff's inspection, the Forum Restriction as implemented goes too far. The

[119] *Cappel v. Jencap Hldgs. LLC*, No. 2020-0598-PAF (Del. Ch. Nov. 2, 2020) (TRANSCRIPT) at 23:4-27:16 (taking into account the plaintiff's interest in wanting to file suit outside Delaware in refusing to impose forum provision); *Palantir*, 203 A.3d at 763 (same)).

[120] *See Palantir*, 203 A.3d at 758–59 (recognizing that "stockholders of Delaware corporations can bring actions against the fiduciaries of those corporations in the courts of other jurisdictions if those courts can obtain personal jurisdiction over the defendants").

Court of Chancery could have imposed a less onerous restriction on Plaintiff that would have preserved the ability to intervene in a derivative stockholder action filed elsewhere, and preserved Plaintiff's ability to file an action elsewhere if the Court of Chancery lacked personal or subject matter jurisdiction. The Forum Restriction makes Plaintiff go back to the Court of Chancery for permission in either of these scenarios.

First, the ability for Plaintiff to intervene in derivative actions using the books and records obtained here is a critical stockholder right. This Court has long advised stockholders to do what Plaintiff has done here—utilize the "tools at hand" first—*i.e.*, an inspection demand pursuant to § 220—to then plead the strongest claims possible, rather than engaging in a "race to the courthouse."[121] However, when other stockholders file derivative actions without those "tools at hand," the Delaware Supreme Court has instructed stockholders using § 220 to intervene to preserve the fruits of their efforts and prevent the application of collateral estoppel from a ruling on a motion to dismiss based on demand futility.[122] This instruction recognized the danger of collateral estoppel that occurs because, "differing groups of stockholders

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[121] *White v. Panic*, 793 A.2d 356, 364–65 (Del. Ch. 2000), *aff'd*, 783 A.2d 543 (Del. 2001).

[122] *Wal-Mart I*, 2017 WL 6421389, at *4.

who seek to control the corporation's cause of action share the same interest and therefore are in privity."[123] Indeed, this Court recognized that, "our state's interest in governing the internal affairs of Delaware corporations must yield to the 'stronger national interests that all state and federal courts have in respecting each other's judgments' … [a] delicate balance [which] would be impaired" without issue preclusion in certain instances.[124]

Imposing a Forum Restriction preventing stockholders from using the "tools at hand" to intervene if necessary is at odds with the Court's guidance to mitigate the risk of issue preclusion. Contrary to the Court of Chancery's suggestion, the "ability to seek to modify any Forum Restriction under Rule 60(b)" would not be adequate to address Plaintiff's concerns.[125] Forcing stockholders to go through yet another proceeding in connection with their books and records action to utilize the "tools at hand" effectively dulls those very same tools. What's worse, the burden

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[123] *Wal-Mart II*, 179 A.3d at 847.

[124] *Id.* at 855; *see also Pyott*, 74 A.3d at 616 ("[F]ederal common law imposes on the state of Delaware a full-faith-and-credit requirement to give the California Federal Judgment the same force and effect as it would be entitled to in the California federal or state courts under California's preclusion rules. Delaware law, likewise, requires our courts to afford the same respect to federal court judgments that the Full Faith and Credit Clause requires them to afford to judgments from other states.").

[125] Opinion at 18.

and timing of requiring Plaintiff to modify the protective order may result in Plaintiff not being able to effectively intervene in a timely fashion. Forcing stockholders to revise a § 220 action under Rule 60 is also at odds with the summary nature of § 220 proceedings, again contrary to this Court's jurisprudence.[126]

A process where Plaintiff is forced to seek relief before intervening leads to uncertainty and increased risk of issue preclusion and thus unfairly burdens Plaintiff. Requiring Plaintiff to seek modification of the order under Rule 60 to intervene in another action would leave Plaintiff waiting for the Court to rule. Individual wrongdoers against which Amazon could not defend itself would have every incentive during that period to accelerate the proceedings in other potential actions.

The Court of Chancery's *Silberberg v. Acacia* decision recognized exactly this type of threat posed by restrictive conditions on inspection and rejected it for these reasons. There, then-Vice Chancellor Montgomery-Reeves rejected a confidentiality order requested by the defendant on the basis that, "plaintiff could, if they move to intervene, be prevented from ensuring that the Massachusetts court

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[126] *Floreani v. FloSports, Inc.*, 350 A.3d 1228, 1239 & n.69 (Del. 2025) ("Proceedings under Section 220 are intended to be summary in nature.") (citing *Brehm*, 746 A.2d at 267 ("From a timing perspective, however, we note that such a proceeding is a summary one that should be managed expeditiously.")).

would take into account the litigation pending elsewhere and make a determination as to what provision, if any, should be made to protect the interests of other stockholders litigating in other fora."[127] The Vice Chancellor concluded that "[t]he company's proposed restriction could prevent the best possible derivative allegations on demand futility from being presented to the Massachusetts court, which most likely, based on the timing so far, will be the first to consider demand futility."[128] Accordingly, the Vice Chancellor "agree[d] with plaintiff that this approach runs the risk of undermining the 220 process and the Court's repeated guidance on using the tools at hand and puts them at risk under *Wal-Mart*."[129] In reaching this conclusion, the Vice Chancellor understood that the defendant was "a Delaware corporation with a Delaware forum selection bylaw," but "nonetheless agree[d] with plaintiff" given the issue preclusion risk presented by *Wal-Mart I*.[130]

Contrary to the Court of Chancery's purported risk of litigation in Delaware, Plaintiff's concerns are animated by the real risk of needing to move to intervene elsewhere. Amazon has already received other inspection demands that have copied

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[127] *Acacia* Tr. at 50:5–12.

[128] *Id.* at 50:12–17.

[129] *Id.* at 50:18–24.

[130] *Id.* at 48:1–11.

Plaintiff's work and explicitly referenced these proceedings.[131] Other stockholders, not willing to go to the same lengths as Plaintiff here, may simply seek to file actions outside of Delaware. In that instance, Plaintiff would be required to "seek court permission" first, through a Rule 60 motion to modify the protective order. Thus, it is reasonably probable that the Forum Restriction could unfairly burden Plaintiff. This is yet another reason why it should not have been imposed.

Second, the lack of any exception in the Forum Restriction for instances where the Delaware Court of Chancery lacks personal or subject matter jurisdiction further unnecessarily limits Plaintiff's stockholder rights and potentially forecloses, *ex ante*, avenues of recovery for Amazon. This lack of a safety valve is particularly egregious given that as with intervention to avoid being *Wal-Mart*'d, Plaintiff identified, pre-trial, the potential need to file in other jurisdictions as part of the reason why it would not agree to an exclusive forum provision.[132]

In *Palantir*, this Court recognized that the forum restriction at issue prevented the stockholder from filing outside of Delaware, even, where "personal jurisdiction over certain potential defendants might be lacking in Delaware."[133] It concluded that

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[131] A454–533 at 480–533.

[132] A998–1047 at A1041, Response to Interrogatory No. 5.

[133] *Palantir*, 203 A.3d at 764.

such a "safety valve" was a reasonable solution to the potential problem.[134] Further, it held that even if the potential that certain defendants would not be subject to personal jurisdiction in Delaware was remote, the stockholder's request for a safety valve was reasonably supported.[135] Therefore the Court held that the Court of Chancery had, "abused its discretion by imposing the Jurisdictional Use Restriction without allowing [the stockholder] to bring suit in the Delaware Superior Court in the first instance and without [the stockholder's] proposed Personal Jurisdiction Exception."[136] The Court of Chancery's refusal to provide a safety valve for situations where the Delaware Court of Chancery lacks subject matter or personal jurisdiction was an abuse of discretion here, just as it was in *Palantir*.

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[134] *Id.*

[135] *Id.*

[136] *Id.* at 764–65.

CONCLUSION

Plaintiff respectfully submits that the Opinion should be reversed and the Court should hold that Plaintiff's inspection is not conditioned on a Forum Restriction, or alternatively, that any such restriction be modified to permit Plaintiff to use the books and records obtained through its Demand to intervene in a derivative action outside of Delaware concerning the subject matter of its Demand without obtaining permission from the Court of Chancery first, and to provide for alternative fora in circumstances where the Delaware Court of Chancery lacks personal or subject matter jurisdiction.

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Dated: April 20, 2026

CERTIFICATE OF SERVICE

I, Samuel L. Closic, hereby certify on this 5th day of May, 2026, that I caused a copy of the foregoing *Public Version of Appellant Roberta Ann K.W. Wong Leung Revocable Trust U/A Dated 03/09/2018's Opening Brief* to be served by eFiling via File & ServeXpress upon the following counsel of record:

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