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September 25, 2024

[REDACTED]

[REDACTED]

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

Ms. [REDACTED]:

We write on behalf of Assertio Holdings, Inc. (“Assertio”), in response to your September 19 letter on behalf of Buxton Helmsley Active Value Fund, L.P. (“Buxton Helmsley”) regarding Buxton Helmsley’s August 16 demand to inspect books and records of Assertio pursuant to DGCL § 220 (the “Demand”).

As we previously explained in our August 23 letter to [REDACTED] [REDACTED] Assertio is committed to cooperating with its stockholders in responding to records requests that comply with Delaware law. To that end, our August 23 letter sought additional information to assist in Assertio’s analysis of whether the Demand meets Section 220’s requirements. While we appreciate your responding to our August 23 letter, your letter conspicuously does not respond to or provide information concerning most of the important issues we raised, furthering our concern that Buxton Helmsley’s Demand is not proper, and that its purpose is in fact adverse to the best interests of Assertio and its stockholders.

Your letter’s disregard of our requests appears to be based on two misimpressions: (i) that the Demand has already established Buxton’s Helmsley’s “credible basis regarding its suspicions of wrongdoing,” and (ii) that showing such credible basis alone “is the end of the inquiry.”

First, our August 23 letter explained in detail the reasons why we believe the Demand failed to set forth a credible basis to infer wrongdoing. (Aug. 23 Ltr. at 3-4). In response, you point only what you describe as “public evidence regarding the Company’s sudden announcement of a \$157 million write down for its recently acquired Rolvedon product.” We are not sure what “public evidence” you are referring to. Assertio explained the factual and accounting basis for the company’s determination both in its Q3 2023 Form 10-Q and on its associated earnings call, none of which described or implied any wrongdoing.

We are aware of no case law supporting that the mere occurrence of an asset impairment supplies a stockholder with a credible basis to investigate wrongdoing. Indeed, as your letter acknowledges, to meet its burden a stockholder must “by a preponderance of the evidence” make a “credible showing, through documents, logic, testimony or otherwise, that there are legitimate issues of wrongdoing.” (Sept. 19 Ltr. at 2, quoting *Seinfeld v. Verizon Commc’ns, Inc.*, 909 A.2d 117, 123 (Del. 2006)). Neither the Demand nor your September 19 letter provide such evidence. Our August 23 letter explicitly invited [REDACTED] to provide us with the opportunity to review any

documentary evidence supporting any supposed credible basis. The fact that your letter sent nearly four weeks later supplied no such evidence suggests that no such evidence exists. Nevertheless, we again invite you to please provide any support—“documents, logic, testimony or otherwise”—you would like us to consider in assessing the Demand.

Second, if Buxton Helmsley is able to provide the necessary support for its supposed credible basis, Delaware law does *not* support your assertion that this would “end the inquiry” on whether Buxton Helmsley is entitled to inspect any of the records identified in the Demand. A stockholder who identifies some proper purpose is not entitled to records if “its *primary* purpose is indeed improper.” *Pershing Square, L.P. v. Ceridian Corp.*, 923 A.2d 810, 817 (Del. Ch. 2007) (emphasis added); see *AmerisourceBergen Corp. v. Lebanon Cnty. Employees’ Ret. Fund* 243 A.3d 417, 431 (Del. 2020) (“the shareholder’s primary purpose must be proper”) (citations omitted)). Thus where a stockholder appears to have both proper and improper purposes for inspection, the critical inquiry is whether a proper purpose “predominate[s] over [its] ulterior purpose.” *Georgia Notes 18, LLC v. Net Element, Inc.*, 2021 WL 5368651, at *4 n. 41 (Del. Ch. Nov. 18, 2021) (quoting *Helmsman Mgmt. Servs., Inc. v. A & S Consultants, Inc.*, 525 A.2d 160, 166–67 (Del. Ch. 1987)).

Our August 23 letter identified several apparent improper purposes for the Demand, and asked for further information related to each. Notably, your September 19 letter fails to acknowledge—let alone respond to—most of these issues, only enhancing Assertio’s concerns that Buxton Helmsley’s true primary purpose is improper. For example:

- We pointed to evidence that the Demand was part of a larger concerted effort to extract a settlement from Assertio for Buxton Helmsley’s or Mr. Parker’s personal benefit, at the expense of the company and other stockholders, and told ██████████ that this evidence “strongly suggests that the Demand lacks a proper purpose.” (Aug. 23 Ltr. at 2). Your September 19 letter ignores these issues.
- We pointed to Mr. Parker’s statement that Buxton Helmsley will not incur expenses related to its threatened litigation, and the implication this campaign may be funded by others who have interests adverse to the company. And we explicitly requested that in response ██████████ “disclose the identities of all parties who are funding Buxton Helmsley’s or Mr. Parker’s actions or otherwise coordinating with them.” *Id.* at 3. But your September 19 letter also ignores this issue, and does not provide the requested information.
- We pointed to Mr. Parker’s apparent coordination with disgruntled former employee Ms. Moore, and his suggestion that he would attempt to persuade Ms. Moore to drop her baseless litigation if the company accedes to his personal demands and provides financial benefit to Ms. Moore, at the expense of Assertio’s stockholders. *Id.* Your September 19 letter also ignores this issue.
- We pointed to Mr. Parker’s acknowledgement that he obtained and continues to possess improperly obtained non-public company property, and his implicit threat to broadcast that information. *Id.* We further explicitly asked ██████████ to immediately return all confidential Spectrum documents that it was holding for Buxton Helmsley, which it is clear Buxton Helmsley intends to improperly use for its own gain. Your September 19 letter also ignores this issue.
- We noted Buxton Helmsley’s history of engaging in activist campaigns against companies in which it holds short positions, and pointed to actions Buxton Helmsley has taken that

indicate it may either have a short position in Assertio common stock or otherwise is motivated to act in a manner beneficial to short sellers. We thus specifically requested that Mr. Parker confirm “whether he, Buxton Helmsley, and/or any of their affiliates, investors, or funders have ever held a short position in Assertio securities.” *Id.* at 2. Your letter conspicuously only answers this question on behalf of Buxton Helmsley Active Value Fund, L.P., refusing to state whether Mr. Parker himself, or any of Buxton Helmsley’s or Mr. Parker’s affiliates, investors, or funders—including The Buxton Helmsley Group, Inc., a separate entity on whose behalf Mr. Parker has also corresponded with Assertio—has or at any time had any short interest. We understand that Mr. Parker can only swear to what he knows. But that does not stop him from providing a sworn statement regarding whether he, or any of the other Buxton-related entities in which he has any role, or to his knowledge any other affiliate, investor, or funder, has or at any time had any short interest in Assertio securities. We do not argue that a prior short interest alone is necessarily disqualifying. But this information is unquestionably relevant to whether Buxton Helmsley’s primary purpose is a proper one, particularly given the other issues raised above.

We are also troubled that the limited information you did provide suggests that Buxton Helmsley has been untruthful with Assertio and its public stockholders. As we noted in our August 23 letter, Buxton Helmsley previously stated that it was the beneficial owner of approximately 1% of Assertio’s common stock. But according to the information you provided, as of the date that Mr. Parker made this representation to Assertio (and broadcast it to all Assertio investors in a press release) Buxton Helmsley in fact owned *less than half* that many shares. If there are additional equity holdings as of July 23, 2024 that we should be aware (or any evidence at all of equity holdings at the time of any of the alleged wrongdoing), please provide that information. Otherwise, Mr. Parker’s apparent willingness to be untruthful with Assertio and its stockholders about this campaign only furthers our need to insist that Buxton Helmsley meet its burdens before Assertio can provide any information requested in the Demand.

* * *

Again, Assertio is committed to cooperating with its stockholders in responding to reasonable records requests that comply with Delaware law. This letter does not constitute a rejection of the Demand. We are still considering whether the Demand presents a proper purpose for inspection of company books and records and, if so, whether the requested documents are necessary and essential to any such proper purpose. That said, as discussed above, we have concerns about whether the Demand is supported by a proper purpose. Please provide us with the information requested in our August 23 letter and above as soon as practicable to assist the company in assessing whether the Demand complies with Section 220. In addition, if there is any other information you wish for the company to consider in assessing the Demand—including any information related to the concerns raised above—please promptly provide it to us.

Finally, we note that your September 19 letter states that it is in response to our “August 23, 2024 letter.” We also sent a separate letter to [REDACTED] on August 27, responding to Mr. Parker’s August 20 letter. I have enclosed those letters here in the event you have not yet seen them. Please let us know if you are now representing Buxton Helmsley and its affiliates in connection with the issues raised in those August 20 and August 27 letters as well, including whether you are now in

possession of the confidential Spectrum documents Mr. Parker stated had previously been held by

[REDACTED].

Sincerely,

[REDACTED]

Encls.

cc: Sam Schlessinger, Esq.