IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CENTRAL LABORERS PENSION FUND,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 6287-CC
	)	
NEWS CORPORATION,	)	
	)	
Defendant.	)	

DEFENDANT NEWS CORPORATION'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

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INTRODUCTION

Plaintiff here rests its complaint on a demand that fails to comply with 8 *Del. C.* § 220. Thus, this action must be dismissed; that is beyond dispute. But this action should also be dismissed with prejudice because Plaintiff has committed a fault that cannot be cured by amending its demand. It has initiated a novel procedure by which it (a) filed a verified complaint in this Court alleging that demand should be excused in a derivative action and *one hour later* (b) filed another verified complaint in this Court alleging that it requires books and records to determine whether demand would be excused if it were to bring the derivative action it filed an hour earlier. That procedure violates Delaware policy in several ways: it would allow Plaintiff to avoid the effects of the choice it made by filing two inconsistent actions, it would burden the defendant company by forcing it to defend both the plenary action and the simultaneous books and records action, and it would violate this Court's long-held position that discovery should not commence in a derivative action until the complaint has survived a motion to dismiss. The overbroad scope of Plaintiff's demand further demonstrates that Plaintiff is improperly seeking discovery in its derivative action before it is entitled to do so. This action should be dismissed, and with prejudice.

STATEMENT OF FACTS

A. The Parties.

Defendant News Corporation ("News Corp." or the "Company") is a Delaware corporation with its principal executive offices in New York, New York. News Corp. is a diversified global media company with operations in cable network programming, filmed entertainment, television, direct broadcast satellite television, and publishing. Its properties include the Fox networks, *The Wall Street Journal*, and the *New York Post*. *See* Verified Shareholder Derivative Complaint, C.A. No. 6285-VCN ("Derivative Compl.") ¶ 11.

Plaintiff Central Laborers Pension Fund ("Central Laborers" or "Plaintiff") is an Illinois-based Taft-Hartley pension fund that purports to be a stockholder of News Corp. *See* Complaint Pursuant to 8 *Del. C.* § 220 to Compel Inspection of Books and Records (the "Complaint" or "Compl.") ¶ 3. Central Laborers is also a plaintiff in a derivative suit against News Corp.'s directors filed roughly one hour before the Complaint in this action.

B. News Corp. Announces Potential Shine Acquisition.

On February 21, 2011, News Corp. issued a press release announcing that the Company and Shine Group Ltd. ("Shine") had reached an "agreement in principle" for News Corp. to acquire all of the outstanding shares of Shine in a transaction potentially valued at £415 million (the "Shine Transaction"). *See* Compl. ¶ 6. Shine is an international television production company that produces market-leading television programs in several countries. Shine productions in the United States include the following hit shows: "The Office," "Ugly Betty," "MasterChef," and "The Biggest Loser." *See* Derivative Compl. ¶ 51. Shine was formed in 2001 by its current Chairman and CEO Elisabeth Murdoch, who is the daughter of News Corp. Chairman and CEO Rupert Murdoch ("Murdoch").

C. The Demand Letter.

On March 7, 2011, Central Laborers sent a letter (the "Demand Letter") to News Corp.'s General Counsel seeking to inspect, pursuant to 8 *Del. C.* § 220 ("Section 220"), documents related to the Shine Transaction. *See* Compl. ¶ 19.

The Demand Letter, which was attached to the Complaint in this action as Exhibit A, contains a number of errors and factual inaccuracies. For example, on the first page of the Demand Letter, Plaintiff demands "to inspect and copy the . . . books and records of *Viacom* and its subsidiaries." *Id.*, Ex. A at 1 (emphasis added).

The Demand Letter's supporting attachments also contain errors. The Demand Letter attaches the affidavit of Dan Koeppel, the Executive Director of Central Laborers (the "Koeppel Affidavit"), which asserts that Central Laborers *beneficially* owns 14,110 shares of News Corp. *See* Compl., Ex. A. Immediately following the Koeppel Affidavit, however, the Demand Letter attaches a Power of Attorney—also signed by Mr. Koeppel—asserting that Central Laborers is the *record* owner of the same 14,110 News Corp. shares. *Id.*[1]

Further, the Demand Letter contains no documentary evidence of Central Laborers' beneficial ownership of News Corp. The Koeppel Affidavit purports to annex that evidence. *See id.* (stating that "Central Laborers beneficially owned and held 14110 shares of News Corporation common stock, as shown by the annexed document which is a true and correct copy of the original record"). But no such evidence is actually annexed or attached to either the Koeppel Affidavit, the Demand Letter, or the Complaint in this action.

The Demand Letter asserts that Central Laborers' purpose for making the demand is to investigate potential breaches of fiduciary duty or other wrongdoing in connection with the Shine Transaction. *See* Compl., Ex. A at 4. The Demand Letter also claims that Central Laborers' purpose is to investigate the "independence and disinterest of the [News Corp.] Board, and to determine whether a presuit demand is necessary or would be excused prior to commencing any derivative action on behalf of the Company." *Id.* Based upon these purported purposes, the Demand Letter includes twenty separate document requests. These requests (most of which begin with the phrase "[a]ll documents") seek a broad range of documents, including, for example, "[a]ll documents concerning any due diligence performed in connection with News Corp's potential acquisition of Shine"; "[a]ll documents reflecting the reasons for News Corp's

[1] According to News Corp.'s records, in fact Central Laborers is not a record holder of any shares of the Company.

proposed acquisition of Shine"; and "[a]ll documents reflecting any communications between or among Elizabeth [*sic*] Murdoch, Rupert Murdoch, News Corp, any directors or officers of News Corp, or anyone acting on behalf of any of the foregoing, regarding the possibility or potential of Elizabeth [*sic*] Murdoch joining the [News Corp.] Board, without limitation by any time period." *See id.* at 2-3 (request nos. 8, 11, and 15).

D. Central Laborers Files Two Conflicting Complaints.

On March 16, 2011, Central Laborers, along with Amalgamated Bank, as trustee for certain investment funds, filed in this Court a Verified Shareholder Derivative Complaint making claims against the News Corp. Board and naming the Company as a nominal defendant (the "Derivative Action"). Approximately one hour later, Central Laborers filed the Complaint in this action, pursuant to Section 220, seeking to compel News Corp. to permit inspection of books and records in response to the Demand Letter.

1. The Derivative Action.

The complaint in the Derivative Action asserts claims for breach of fiduciary duty in connection with the Shine Transaction against Murdoch and all the other members of the News Corp. Board. *See* Derivative Compl. ¶¶ 103-14. In the Derivative Action, the plaintiffs allege that the Shine Transaction is the product of an unfair process and is at an unfair price. *See id.* ¶¶ 59-64, 67-76. In particular, plaintiffs allege that Murdoch orchestrated the Shine Transaction to benefit his daughter and to advance his personal goal of bringing his daughter back into the Company.[2] *See id.* ¶ 1. Plaintiffs further allege that the News Corp. Board has overvalued Shine and will pay too much in the acquisition. *See, e.g.*, *id.* ¶ 59.

[2] Elisabeth Murdoch previously worked at News Corp.'s FX Networks and BSkyB (a satellite broadcaster in which News Corp. has an interest). *See* Derivative Compl. ¶ 50. Elisabeth Murdoch left News Corp. in 2000 and founded Shine the following year. *See id.* ¶¶ 50-51.

In an eleven-page section entitled "Demand On The News Corp Board Is Excused As Futile," the plaintiffs challenged the independence of News Corp.'s directors and asserted that all of the directors have shown an unwillingness or inability to challenge Rupert Murdoch's control over News Corp. *Id.* ¶¶ 83-102. Among the circumstances alleged as support for the News Corp. Board's purported lack of independence, the derivative complaint notes that the Board failed to respond to Central Laborers' Demand Letter (sent seven business days before the complaint was filed). *See id.* ¶ 101. The complaint in the Derivative Action is verified on behalf of Central Laborers by Dan Koeppel.

Nine days after Plaintiff's complaint was filed in the Derivative Action, another plaintiff—represented by Plaintiff's counsel—filed a similar action against the same defendants. The two actions were consolidated on April 6, 2011. The News Corp. directors moved to dismiss the operative complaint in the consolidated derivative action on April 7, 2011.

2. <u>This Section 220 Action.</u>

This Section 220 Action, initiated approximately an hour after the Derivative Action, seeks to compel an inspection of News Corp.'s books and records pursuant to the Demand Letter. As in the Demand Letter, the Complaint alleges, in essence, two purposes for the requested inspection: (1) "to investigate possible breaches of fiduciary duty" in connection with the Proposed Transaction; and (2) "to determine whether a presuit demand is necessary or would be excused *prior to commencing* any derivative action on behalf of the Company." Compl. ¶¶ 1, 21 (emphasis added). The Complaint fails to mention the earlier filing of the Derivative Action, even though the actions were filed by the same counsel and both complaints contain nearly identical allegations.

The Complaint in this action is also verified on behalf of Central Laborers by Mr. Koeppel.

ARGUMENT

"Section 220 of the Delaware General Corporation Law permits a stockholder, who shows a specific proper purpose and who complies with the procedural requirements of the statute, to inspect specific books and records of a corporation." *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 566-67 (Del. 1997). A proper purpose is a purpose "reasonably related to such person's interest as a stockholder." 8 *Del. C.* § 220(b). The scope of an inspection pursuant to Section 220 should be "limited . . . [to] those books and records that are necessary and *essential* to the satisfaction of the stated purpose." *Highland Select Equity Fund, LP v. Motient Corp.*, 906 A.2d 156, 164 (Del. Ch. 2006), *aff'd*, 922 A.2d 415 (Del. 2007).

In this case, Central Laborers has failed to comply with the "procedural requirements" explicitly set out in Section 220 by, among other things, failing to provide evidence of its alleged beneficial ownership. This alone requires dismissal.

Moreover, Central Laborers lacks a proper purpose for its demand. When this action was filed, Central Laborers had already asserted, by filing the Derivative Action, that it had a sufficient factual basis to allege claims for breach of fiduciary duty and to assert demand futility. Having made those assertions, Central Laborers cannot now seek books and records to support its currently pending derivative claims.

Finally, Central Laborers' Demand Letter is impermissibly broad in scope and seeks documents far beyond those allowed under Section 220.

I. THIS ACTION SHOULD BE DISMISSED BECAUSE THE DEMAND LETTER FAILS TO COMPLY WITH THE STATUTORY REQUIREMENTS OF SECTION 220.

"[C]ompliance with [Section 220] is not difficult, and it is not too much to ask of a stockholder or his lawyers to read the statute and comply with its plain provisions when making a demand." *Seinfeld v. Verizon Commc'ns Inc.*, 873 A.2d 316, 317 (Del. Ch. 2005). Under

Section 220, a beneficial stockholder making a demand must provide to the company "documentary evidence of beneficial ownership" and a verification that such evidence is a true and correct copy of what it purports to be. 8 *Del. C.* § 220(b); *see also Smith v. Horizon Lines, Inc.*, 2009 WL 2913887, at *2 (Del. Ch. Aug. 31, 2009) (same). As this Court has recognized, this is "not a formalistic or unimportant provision of the statute." *Seinfeld*, 873 A.2d at 317. Rather, the requirement that a beneficial owner attach documentary evidence of such ownership and attest to its accuracy is an "important element of the statutory scheme" that extended inspection rights to beneficial owners. *Id.* at 318; *see also Horizon Lines*, 2009 WL 2913887, at *2 ("The 'form and manner' requirements of § 220 are clear. They serve a wholesome purpose, and our law has always taken a straightforward and literal interpretation of them. . . . I find the requirements of § 220 have not been met, and the complaint should be dismissed.").

Central Laborers' Demand Letter fails to comply with this basic statutory requirement. Although the Koeppel Affidavit states that evidence of beneficial ownership is annexed thereto, neither the Koeppel Affidavit nor the Demand Letter contains such documentary evidence. *See* Compl., Ex. A. The Demand Letter therefore violates Section 220. *See, e.g.*, *Horizon Lines*, 2009 WL 2913887, at *2 ("The demand letter sent by plaintiff to Horizon fails to comply with this statutory mandate because it was not accompanied by documentary evidence of beneficial ownership."). Plaintiff's failure to comply with Section 220 accordingly requires the dismissal of its Complaint; Plaintiff simply lacks any valid demand on which to base its claim.[3] *See*

[3] Further, Central Laborers' power of attorney is also fatally flawed. *See Mattes v. Checkers Drive-In Rests., Inc.*, 2000 WL 1800126 (Del. Ch. Nov. 15, 2000) (dismissing a Section 220 action for failure to include a power of attorney). Section 220 requires that, if the demand is made by the stockholder's counsel or agent, the demand must be accompanied by a power of attorney. 8 *Del. C.* § 220(b). Central Laborers' power of attorney incorrectly states that it is the "record owner of 14110 shares of common stock of News Corporation." Compl., Ex. A. It is not a record owner of News Corp. stock.

Seinfeld, 873 A.2d at 318 (dismissing complaint for failure to attach sufficient evidence of beneficial ownership and swear to its accuracy); *see also Horizon Lines*, 2009 WL 2913887, at *2-3 (dismissing complaint for failure to attach evidence of beneficial ownership).

II. BECAUSE PLAINTIFF FILED A SIMULTANEOUS DERIVATIVE ACTION, IT CANNOT STATE A PROPER PURPOSE FOR THE REQUESTED INSPECTION.

In its race to file the Derivative Action, Central Laborers ignored the Delaware courts' oft-repeated admonitions to pursue a Section 220 action before filing a derivative complaint.[4] Instead, by filing its Derivative Action nearly simultaneously with this action, Central Laborers violated Delaware Section 220 policy and admitted that it lacks a proper purpose for the requested inspection. Additionally, as this Court has repeatedly recognized, filing Section 220 actions during the pendency of a plenary derivative action places an undue burden on the corporation. Finally, Central Laborers' goal in proceeding this way must be to circumvent the well-recognized policies against providing discovery to derivative plaintiffs facing potentially case-dispositive motions to dismiss pursuant to Chancery Court Rule 23.1. This Court has never permitted Section 220 to be used in this fashion, and it should reject the invitation to do so now.

As noted above, Central Laborers' Demand Letter, in essence, sets forth two alleged purposes: (1) "to investigate possible breaches of fiduciary duty" in connection with the Proposed Transaction; and (2) "to determine whether a presuit demand is necessary or would be excused *prior to commencing* any derivative action on behalf of the Company." Compl. ¶¶ 1, 21

[4] *See, e.g.*, *Grimes v. Donald*, 673 A.2d 1207, 1216 (Del. 1996) ("If the stockholder cannot plead [demand futility] *after* using the 'tools at hand' to obtain the necessary information before filing a derivative action, then the stockholder must make a pre-suit demand on the board." (emphasis added) (footnotes omitted)), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000); *In re Walt Disney Co. Deriv. Litig.*, 825 A.2d 275, 279 n.5 (Del. Ch. 2003) ("This case is yet another example where a books and records request in the first instance might have prevented expensive and time-consuming procedural machinations that too often occur in derivative litigation. The Supreme Court and this Court have repeatedly urged derivative plaintiffs to seek books and records before filing a complaint.").

(emphasis added). By filing the Derivative Action, Central Laborers has admitted that neither of these purposes are proper grounds for a books and records inspection.

This is most plain with respect to the latter purpose. Because it has already filed—and verified—a derivative complaint alleging that presuit demand is futile, Central Laborers cannot also claim that it requires documents from the Company to investigate whether a presuit demand is necessary before commencing derivative litigation. Indeed, Central Laborers' complaint in the Derivative Action includes an eleven-page section expressly asserting that demand on the News Corp. Board related to any challenge to the Shine Transaction would be futile. *See* Derivative Compl. ¶¶ 80-102. These allegations constitute a certification to the Court that Plaintiff has a sufficient factual basis on which to plead demand futility. *See* Ct. Ch. R. 11(b)(3) (providing that, by filing a pleading, a party "is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the allegations and other factual contentions have evidentiary support"); *see also Taubenfeld v. Marriott Int'l, Inc.*, 2003 WL 22682323, at *3 (Del. Ch. Oct. 28, 2003) ("[The complaint] was a certification under Rule 11 that the plaintiffs had enough information to support their allegations."). It is entirely inconsistent with that certification for Central Laborers to plead in this action (filed only an hour after the Derivative Action) that it needs the Company's books and records to investigate whether demand would be futile. "It is inherent in a court of equity . . . that a litigant must live with its choices." *Taubenfeld JT v. Marriott*, C.A. No. 20122-NC, ltr. at 2-3 (Del. Ch. July 29, 2003) (attached hereto as Exhibit A). Central Laborers cannot pursue two simultaneous actions before this Court based on conflicting factual allegations. Rather, Central Laborers put its stake in the ground with respect to demand futility when it filed the Derivative Complaint. That filing is a judicial admission that Central Laborers no longer

needs any factual evidence to support its assertion of demand futility. *See id.* at 3 ("When plaintiff filed the complaint, it was certifying that it had enough information to support its allegations. If that was not true, the time to seek the company's books and records is *before* filing the [derivative] action, *not* after.").

Central Laborers' filing of the Derivative Action demonstrates that its alleged purpose of investigating possible wrongdoing in connection with the Shine Transaction is also improper. As with the issue of demand futility, Central Laborers' filing of the Derivative Action serves as a certification that it has a sufficient factual basis to support its claims for breach of fiduciary duty. *See* Ct. Ch. R. 11(b)(3). Nonetheless, in this action, Central Laborers contends that it requires an inspection of corporate records to investigate *possible* breaches of fiduciary duty. This Court has previously recognized that such simultaneous allegations are inherently inconsistent. *See Baca v. Insight Enters., Inc.*, 2010 WL 2219715, at *4 (Del. Ch. June 3, 2010) ("[T]he stockholder who serves a post-plenary-action Section 220 demand contradicts his own certification that he already possessed sufficient information to file a complaint."); *see also Taubenfeld*, 2003 WL 22682323, at *3. Consequently, in *Baca*, the Court reasoned that a plaintiff seeking books and records after the filing of a plenary derivative action cannot show a proper purpose. *See Baca*, 2010 WL 2219715, at *4; *see also Parfi Hldg., AB v. Mirror Image Internet, Inc.*, C.A. No. 18457, at 6 (Del. Ch. Mar. 23, 2001) (TRANSCRIPT) ("By filing this plenary action, the plaintiff in the [Section] 220 case has already necessarily conceded that [it] had enough information to file allegations of mismanagement in a complaint with good faith and for its counsel to have satisfied the necessary pleading standards.") (attached hereto as Exhibit B).

In the face of this well-established precedent, Central Laborers will likely assert that the Delaware Supreme Court's recent *VeriFone* opinion permits simultaneous derivative and Section

220 actions. *King v. VeriFone Holdings, Inc.*, 12 A.3d 1140 (Del. 2011). *VeriFone* says nothing of the kind—to the contrary, the Supreme Court in *VeriFone* bolsters the Company's position and condemns the type of conduct Plaintiff engages in here.

In *VeriFone*, the Supreme Court held only that a derivative plaintiff whose complaint was dismissed for failure to plead demand futility but is allowed leave to amend, is not by the fact of bringing a derivative complaint alone, "legally precluded from prosecuting a later-filed Section 220 proceeding." *Id.* at 1141; *see also id.* at 1150-51. Thus, under *VeriFone*, a plaintiff that fails to use the "tools at hand" by filing a Section 220 action before filing an original derivative action can then—after having its complaint dismissed with leave to amend—use those same tools under Section 220 before filing an amended derivative action. In those circumstances, the plaintiff never simultaneously has on file two inherently contradictory complaints. Rather, only after the plenary court determines to dismiss the derivative action without prejudice does the plaintiff have the opportunity to do what it should have done at the outset by pursuing its rights under Section 220.[5] *See id.* at 1150-51.

The Supreme Court did not approve (implicitly or otherwise) a plaintiff simultaneously pursuing both a derivative suit and a Section 220 action. Rather, the Supreme Court expressly recognized that the dismissal of a Section 220 action was appropriate where "the stockholder-plaintiff's plenary derivative complaint was still pending and the plenary court had not granted the plaintiff leave to amend." *Id.* at 1148. The Supreme Court further admonished plaintiffs that, while filing a Section 220 action after a plenary derivative action had been dismissed without prejudice was permissible, such a tactic was "ill-advised" and likely "imprudent and

[5] In discussing potential remedies for the premature filing of a derivative complaint, the Supreme Court noted that the plenary court could dismiss the derivative action with prejudice and without leave to amend, and that such dismissal would presumably preclude any subsequent books and records action. *See VeriFone*, 12 A.3d at 1151.

cost-ineffective." *Id.* at 1150; *see also id.* ("[This] holding should not be read as an endorsement by this Court of proceeding in that way."). As such, the Supreme Court's *VeriFone* opinion cannot be interpreted as endorsing Central Laborers' tactic of filing simultaneous derivative and Section 220 actions.

Indeed, by simultaneously pursuing both actions, Central Laborers seeks to require News Corp. to bear the burdens of derivative litigation at the same time it must address extensive demands for books and records. This places an undue burden upon the Company. *See Parfi*, C.A. No. 18457, at 7 ("It's wholly unrealistic and burdensome for plaintiffs to believe that you can invoke compulsory litigation machinery . . . and then turn around and use 220 [to obtain books and records]. It is a whipsaw on the company and it's unduly burdensome, and it's a whipsaw on the processes of dispute resolution."); *see also Beiser v. PMC-Sierra, Inc.*, 2009 WL 483321, at *3 n.18 (Del. Ch. Feb. 26, 2009) (same); *VeriFone*, 12 A.3d at 1150 ("We agree with the Vice Chancellor that it is wasteful of the court's and the litigants' resources to have a regime that could require a corporation to litigate repeatedly the issue of demand futility.").

Finally, by pursuing filing simultaneous derivative and Section 220 actions, Central Laborers seeks to undermine the important policies underlying Rule 23.1. As the Delaware Supreme Court has explained, "[b]y its very nature the derivative suit impinges on the managerial freedom of directors." *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000). For this and other reasons, the Delaware courts have refused derivative plaintiffs discovery when faced with a motion to dismiss.[6] *See, e.g., Brehm v. Eisner*, 746 A.2d 244, 266 (Del. 2000) (noting that "the Court will

[6] Even outside the Rule 23.1 context, the law in Delaware is that, "[a]bsent special circumstances, discovery will normally be stayed pending the determination of a motion to dismiss the complaint." *Weschler v. Quad-C, Inc.*, 2000 WL 33173170, at *1 (Del. Ch. Sept. 12,

not permit discovery under Chancery Rules 26-37 to marshal the facts necessary to establish that pre-suit demand is excused"). As explained by leading commentators, "the plaintiff typically will be denied the opportunity to engage in discovery both as to the merits of the underlying claim in general and even for the more limited purpose of uncovering facts relevant to his or her assertion that demand is excused. Only if the court determines on the strength of the complaint alone that plaintiff may proceed will discovery typically be permitted." Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 9.02[b][3], at 9-69 (2010 Supp.) ("[T]he Court of Chancery has routinely granted motions to stay discovery pending resolution of the defendants' motion to dismiss the complaint for failure to make a demand under Chancery Court Rule 23.1" (citing cases)). The Delaware courts have repeatedly rejected arguments that this rule is unduly harsh and have instead urged derivative plaintiffs to pursue their rights under Section 220 *before* commencing derivative litigation. *See, e.g.*, *Rales v. Blasband*, 634 A.2d 927, 935 n.10 (Del. 1993) (explaining that, "[a]lthough derivative plaintiffs may believe it is difficult to meet the particularization requirement of *Aronson* because they are not entitled to discovery to assist their compliance with Rule 23.1, they have many avenues available to obtain information bearing on the subject of their claims," including Section 220 (citation omitted)). Nothing in the *VeriFone* decision suggests that it was intended to upset these well-established principles of Delaware law.

III. THIS ACTION SHOULD BE DISMISSED BECAUSE THE SCOPE OF THE DOCUMENTS REQUESTED IS OVERBROAD.

As the Delaware Supreme Court has explained, the scope of requests allowed under Section 220 must be "circumscribed with rifled precision." *Sec. First Corp.*, 687 A.2d at 570.

2000). The moving party need only "show that it has practical reasons for staying discovery, but those reasons need not rise to a level of unusual or difficult circumstances." *Skubik v. New Castle County*, 1998 WL 118199, at *2 (Del. Ch. Mar. 5, 1998).

Section 220 serves a much narrower purpose than general civil discovery, and it is not an invitation to stockholders to make unfettered demands on a corporation or to circumvent normal discovery proceedings. *Highland Select Equity Fund*, 906 A.2d at 157; *see also id.* at 165 (stating that Section 220 is "not a way to circumvent discovery proceedings, and is certainly not meant to be a forum for the kinds of wide-ranging document requests permissible under Rule 34"). As such, a Section 220 plaintiff is only entitled to those documents that are necessary, essential, and sufficient to a proper purpose. *Everett v. Hollywood Park, Inc.*, 1996 WL 32171, at *7 (Del. Ch. Jan. 19, 1996); *see also Highland Select Equity Fund, L.P. v. Motient Corp.*, C.A. No. 2092-N, at 56 (Del. Ch. June 1, 2006) (TRANSCRIPT) (stating that it is "[v]ery unlikely that—unless some other court tells me I have to—that I'm going to make Delaware corporations start searching their e-mail systems in response to 220 requests") (excerpt attached hereto as Exhibit C).

Central Laborers' twenty inspection requests fail to comply with these standards and, instead, replicate Rule 26 discovery. Indeed, most of the requests begin with the phrase "[a]ll documents" and seek documents created over 10-year time period.[7] *Cf. Geher v. Proquest Co.*, C.A. No. 2421-VCS, at 7-8 (Del. Ch. July 19, 2007) (TRANSCRIPT) ("It looks like Rule 26

[7] By way of example, Plaintiff's requests include the following:

- "All documents reflecting communications between or among (a) Elisabeth Murdoch [or Shine or any agent of the foregoing] and (b) [News Corp. or any director, officer, employee, or agent thereof], relating to the proposed acquisition of Shine by News Corp as announced in the February 21, 2011 Press Release";
- "All documents relating to or reflecting negotiations of the terms of News Corp's proposed acquisition of Shine"; and
- "Documents sufficient to identify every business transaction, *without regard to the time period*, between or among Shine and News Corp . . . , and the amounts paid to Shine by News Corp . . . in connection with each such transaction."

See Compl., Ex. A. at 2-3 (emphasis added) (request nos. 2, 5, and 14).

discovery. . . . This is just a . . . Rule 26 type of request for all documents relating to this wrongdoing. . . . I have at least 13 categories of documents that begin with the words 'all documents' throughout. That's a far-ranging request.") (attached hereto as Exhibit D). The incredibly broad nature of the requests further bolsters the conclusion that Central Laborers is simply using this simultaneously filed books and records action as a means to obtain discovery that is not otherwise available in the Derivative Action. That is not a proper purpose under Section 220; accordingly, this action should be dismissed.

CONCLUSION

For the foregoing reasons, News Corp. respectfully requests that the Court dismiss Central Laborers' Section 220 complaint with prejudice.

/s/ Catherine G. Dearlove
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