IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LAURA L. WOOD, as trustee of the Trust of Laura Wood U/A 4/8/04 FBO Laura Wood,	)	
Plaintiff,	)	
v.	)	C.A. No. 2020-0404-PAF
CENTENE CORPORATION,	)	
Defendant.	)	

ROC NATION LLC'S, QUINN EMANUEL URQUHART & SULLIVAN LLP'S, AND PLAINTIFF'S MOTION TO QUASH AND FOR PROTECTIVE ORDER

Plaintiff Laura L. Wood, in her capacity as trustee of the Trust of Laura Wood U/A 4/8/04 FBO Laura Wood, ("Ms. Wood"), Roc Nation LLC ("Roc Nation"), and Quinn Emanuel Urquhart & Sullivan LLP ("Quinn Emanuel," and together with Plaintiff and Roc Nation, "Movants"), by and through their undersigned attorneys, hereby move pursuant to Court of Chancery Rules 26 and 45, as applicable, to quash and for a protective order against two subpoenas *duces tecum* purportedly served by Centene Corporation ("Centene" or the "Company") to non-parties Roc Nation and Quinn Emanuel. In support of this motion, Movants state as follows:

INTRODUCTION

1. This narrow action concerns a stockholder's invocation of the statutory tools to gain access to Centene's books and records, which will provide

insight into Centene's board of directors' possible breaches of their fiduciary duties owed to Centene's stockholders by failing to oversee its subsidiaries, Centurion.[1]

2. For years, Centurion has contracted with prisons across the country to provide medical care. But recent news articles and lawsuits have made clear that Centurion is failing to provide adequate health care to the prisons it serves, resulting in a full-fledged crisis. Ms. Wood, as the trustee of a beneficial owner of Centene stock, is alarmed at the inadequate medical care provided at the prisons that Centene's subsidiaries operate and the reputational harm, lawsuits, and government investigations that could cause Centene's stockholders significant damage, beyond the obvious harm the incarcerated persons subject to Centene's and its subsidiaries' indifference experience daily.

3. To be sure, the root causes of the catastrophic situation facing the prisons Centurion contracts to serve extend beyond Centene and offer an indictment of the criminal justice system as a whole. Without a doubt, Centene and Centurion's decisions to enter the prison healthcare provider field, to agree to contractual provisions that de-prioritize quality of care, and to settle lawsuits alleging constitutionally-inadequate care place Centene in a crucial role in that system.

[1] All terms not otherwise defined in this motion carry with them the definitions in the Complaint.

4. This motion concerns two non-party Subpoenas (defined below), issued to Plaintiff's counsel's law firm, Quinn Emanuel, and to Roc Nation, an entertainment and artist management company headed by rapper and entrepreneur Shawn Corey Carter, known as Jay-Z. Through these Subpoenas seeking information unnecessary for and unrelated to the narrow scope of this action, Centene seeks to employ the age-old tactic of intimidation to shield its records from public eye, to avoid any modest improvement to either its corporate governance or the criminal justice system.

5. Centene's tactic should be rejected not only because it lacks any legal basis related to this Section 220 action, but also because Centene apparently seeks to use the discovery process as a means to thwart non-parties' efforts to improve the criminal justice system taken outside the context of Plaintiff's Section 220 Demand. Particularly in light of protests in recent weeks raising the alarm about the inequitable treatment of people of color and calling for accountability, this Court should reject Centene's attempt through these Subpoenas to abuse the narrow discovery mechanism in a Section 220 action.

6. Neither Subpoena seeks information relevant to whether Ms. Wood has complied with the requirements of Section 200, including whether she has a proper purpose, and thus Centene should be barred from obtaining discovery through them. Any other outcome would allow a corporation—which profits off of

the brutality of the prison system, providing substandard and ineffective medical care—to send their agents to harass anyone who challenged them. That is not right; that is not permissible; and the Subpoenas must be quashed.

FACTUAL BACKGROUND

7. Ms. Wood served the Demand pursuant to Section 220 on Centene on May 18, 2020. *See* Dkt. 1 (the "Complaint" or "Compl."), Ex. A ("Demand"), Ex. B. On May 22, 2020, Centene categorically rejected the Demand, asserting conclusory statements that the Demand was insufficient and not for a proper purpose in an effort to shield its wrongdoing. *See* Compl., Ex. C. Centene now relies on those conclusory statements, based on nothing more than an unsubstantiated hunch, and repeated in its Answer to the Complaint, to serve these two Subpoenas.

8. On June 17, 2020, Centene served its written discovery, including twenty-one document requests to Ms. Wood (Ex. A, the "Document Requests"), fourteen interrogatories (Ex. B, the "Interrogatories), and two subpoenas to two non-parties—Roc Nation (Ex. C) and Quinn Emanuel (Ex. D) (the "Subpoenas"). The Document Requests and Interrogatories—which are overly broad and largely improper in and of themselves—seek information and documents about Ms. Wood's ownership of Centene stock, the Demand and Complaint, Ms. Wood's proper purpose, and news articles and lawsuits cited in the Demand and Complaint, but also

documents and communications between Ms. Wood or her counsel and the media, Roc Nation, or public relations firms.

9. Repeating the irrelevant categories of information requested in party discovery, the Subpoenas to Quinn Emanuel and Roc Nation seek discovery that is wholly irrelevant to this summary Section 220 proceeding. For example, the Quinn Emanuel Subpoena seeks communications between Quinn Emanuel on the one hand, and Centene's stockholders other than Ms. Wood, public relations firms, and any media or news sites on the other hand. Even more egregious, the Quinn Emanuel Subpoena also seeks plainly privileged communications between Quinn Emanuel and its client, Ms. Wood, and any attorneys at the law firm Bernstein Liebhard LLP.

10. The Subpoena to non-party Roc Nation similarly seeks all documents and communications about this proceeding between Roc Nation and Ms. Wood, Centene's other stockholders, or news outlets, and regarding any "public relations strategy" or "activities."

11. Centene apparently believes that the information requested from Quinn Emanuel and Roc Nation is proper discovery based on its unfounded defense that Ms. Wood's purpose is not proper under Section 220. But the requested discovery has no bearing on that narrow issue. And, as of the date of this motion, no party discovery has taken place.

12. Accordingly, Ms. Wood, Roc Nation, and Quinn Emanuel seek an order quashing or for a protective order against the Subpoenas and precluding Centene from taking the requested discovery therein.

ARGUMENT

13. Centene's Subpoenas to Quinn Emanuel and Roc Nation are improper, irrelevant, and seek to confuse these narrow proceedings.

14. While "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action," Ch. Ct. R. 26(b)(1), this Court has the discretion, for "good cause shown," to order "[t]hat the discovery not be had," Ch. Ct. R. 26(c). The Court may exercise its discretion to prevent discovery that is not "likely to lead to any evidence relevant to the narrow issue of whether [Section 220] Plaintiffs have a proper purpose." *Catalano v. T.W.A.*, 1977 WL 2576, at *3 (Del. Ch. Nov. 3, 1977).

15. Moreover, a party is not entitled to third-party discovery, particularly in a Section 220 action, absent a showing that it has a sufficient need for such discovery. The party seeking discovery bears "the burden of establishing a 'sufficient need' for the requested information in order to justify the intrusion into the affairs of a non-party." *Pet. of B & F Towing & Salvage Co., Inc.*, 551 A.2d 45, 51 (Del. 1988). That justification must explain "why the discovery satisfies the

requirements of relevance and conditional admissibility." *In re Appraisal of Dole Food Co., Inc.*, 114 A.3d 541, 551 (Del. Ch. 2014).

16. Centene has not—and cannot—demonstrate it is entitled to the discovery it seeks here, which is irrelevant and privileged information disproportionate to the needs of the case. Good cause exists to grant a protective order prohibiting Centene from pursuing the irrelevant discovery sought in the Subpoenas.[2]

A. The Subpoenas Improperly Seek Irrelevant, Privileged, And Disproportionate Discovery From Roc Nation And Quinn Emanuel

17. The discovery sought from Roc Nation and Quinn Emanuel is duplicative and/or has no bearing on the sole issue in this narrow proceeding: whether Ms. Wood has a proper purpose in seeking access to Centene's books and records to uncover its misconduct. Thus, the Subpoenas should be quashed.

18. Delaware law is clear that discovery is limited in a summary Section 220 proceeding to information regarding the plaintiff's compliance with Section 220. Books-and-records actions under Section 220 involve "limited discovery because of the limited relief available." *U.S. Die Casting & Dev. Co. v. Sec. First Corp.*, 1995 WL 301414, at *3 (Del. Ch. Apr. 28, 1995). Specifically, discovery is restricted to whether the plaintiff's purpose for pursuing the books-and-records

[2] Centene's Subpoenas stand in the face of this Court's well-established rules. *See* Ct. Ch. R. 45(c)(3)(A); Ct. Ch. R. 45(c)(1); Ct. Ch. R. 1.

request is proper. *See Hoschett v. TSI Int'l*, 1996 WL 422344, at *1 (Del. Ch. July 17, 1996) ("Because the issue at trial is [plaintiff's] purpose in seeking the books and records, . . . discovery here should be limited to matters reasonably calculated to lead to the discovery of evidence concerning his purpose.").[3]

19. Here, nothing in the two non-party Subpoenas seeks relevant, non-privileged, and non-duplicative information regarding Ms. Wood's proper purpose.

20. *First*, whether Quinn Emanuel and/or Roc Nation has had any communications with the media, other Centene stockholders, or public relations firms is not relevant to Ms. Wood's stated proper purpose in seeking to uncover Centene's wrongdoing and protecting her interest in the Company.

21. In its response to Ms. Wood's initial demand, Centene did not refute that conducting such an investigation is a proper purpose, but instead argued that the information sought in this proceeding is for use in an ongoing federal action in Mississippi. Ex. E at 2-3. In fact, this reason is the sole one Centene has given as to why Ms. Wood's purpose is not proper. But nothing in Ms. Wood's Demand or Complaint suggests that the records sought here are "for use in a federal action."

22. Neither Quinn Emanuel nor Ms. Wood is involved in the Mississippi litigation seeking damages and a declaratory judgment regarding constitutional

[3] The issues in a Section 220 proceeding are limited, and the plaintiff bears the burden of proof on each. *See, e.g.*, *Gotham P'rs, L.P. v. Hallwood Realty P'rs, L.P.*, 714 A.2d 96, 103 (Del. Ch. 1998). Third-party discovery is not necessary for any of these elements.

violations in one of the prisons to which Centurion provides healthcare. *See* Ex. F (docket in *Lang* Action); Ex. G (docket in *Amos* Action). And Ms. Wood and her counsel will readily enter into a protective order barring disclosure of any information uncovered in this action to the lawyers in the Mississippi litigation. Such assurances should more than dispel Centene's suspicion that Ms. Wood's true purpose is to use the materials in another federal litigation. *See* Ex. E at 3. Party discovery will resolve these issues definitively, leaving no reason to seek such irrelevant information from Roc Nation or Quinn Emanuel.

23. To the contrary, Ms. Wood has repeatedly stated her proper purpose: "to seek [] answers and investigate potential wrongdoing, including Centene's failure to provide oversight to its subsidiaries and, if necessary, take further action to prevent additional damage to the Company." Compl. ¶ 7; Demand at 2, 7. In her Complaint, Ms. Wood recounted publicly-available lawsuits and articles that call into question Centene's subsidiaries' actions, demonstrating a failure to provide medical care and indifference to human life. Investigating whether a company's board of directors has breached its fiduciary duties—including overseeing subsidiaries—is undeniably a proper purpose under Section 220. *See Melzer v. CNET Networks, Inc.*, 934 A.2d 912, 917 (Del. Ch. 2007) (investigating failure of board to exercise oversight was proper purpose); *Cutlip v. CBA Int'l, Inc. I*, 1995 WL 694422, at *2 (Del. Ch. Oct. 27, 1995) (denying motion to dismiss Section 220

action and noting proper purpose of "evaluat[ing] the management of the Company (and its subsidiaries and affiliates)").

24. Thus, the non-party communications sought here have no bearing on whether Ms. Wood personally believes that an investigation into Centene's wrongdoing is necessary. Indeed, the best source for whether *Ms. Wood* has a proper purpose is Ms. Wood herself.

25. *Second*, any argument Centene seeks to make that Ms. Wood did not conceive of a Section 220 demand of her own accord does nothing to undermine her proper purpose. Delaware courts have made clear that defenses to Section 220 demands "must first overcome the extensive decisional law to the effect that secondary motivations for seeking inspection, even if improper, will not be examined by the court once a proper purpose has been established." *Sutherland v. Dardanelle Timber Co.*, 2006 WL 1451531, at *8 (Del. Ch. May 16, 2006); *see Kosinski v. GGP Inc.*, 214 A.3d 944, 947, 951-52 (Del. Ch. 2019) (plaintiff that responded to law firm's online solicitation concerning potential lawsuit did not mean that "his stated purposes for inspection [were] not his own"); *Inter-Local Pension Fund GCC/IBT v. Calgon Carbon Corp.*, 2019 WL 479082, at *10 (Del. Ch. Jan. 25, 2019) (rejecting argument of improper purpose even though plaintiff "did not originally conceive of the purposes" because "[t]o hold otherwise would largely leave Section 220 open only to sophisticated stockholders with the financial or legal

training necessary to independently spot relevant corporate governance and similar issues").

26. *Third*, the vast majority of documents and communications sought are plainly privileged. *See* Ch. Ct. R. 26(b)(1) (limiting discoverable information to that which is "not privileged" and relevant). This Court does not hesitate to quash a subpoena where, as here, it seeks privileged information. *See Daugherty v. Highland Capital Mgmt., L.P.*, C.A. No. 2017-0488-SG (Del. Ch. Sep. 18, 2018) at 4 (TRANSCRIPT) (quashing subpoena directed to third-party law firm as "overbroad" and stating "I'm not going to require a third party to answer overbroad discovery requests that surely implicate attorney-client privilege"); *Carlyle Inv. Mgmt., LLC v. Moonmouth Co. S.A.*, 2015 WL 778846, at *9 (Del. Ch. Feb. 24, 2015) (granting motion for protective order over documents and communications with third-party litigation funder because they were subject to work product privilege).

27. Whether Roc Nation or Quinn Emanuel holds any views about Centene's misconduct has no bearing on whether Ms. Wood herself has a proper purpose and complied with Section 220. Accordingly, the Court should issue a protective order prohibiting unnecessary and burdensome discovery from Quinn Emanuel and Roc Nation. *See Beck v. Greim*, 2018 WL 4938783, at *3 n.16 (Del. Ch. Oct. 11, 2018) (quashing subpoenas when plaintiff could not show that "the

subpoenaed witnesses' testimony would be relevant to the specific issues to be considered at trial"); *see also TravelCenters of Am. LLC v. Brog*, 2008 WL 5101619, at *3 (Del. Ch. Nov. 21, 2008) ("Discovery is not a weapon or a punishment; it is a tool for exposing facts and illuminating issues.").[4]

B. <u>There Is No Sufficient Need For Discovery From Third Parties</u>

16. Setting aside the fact that the Subpoenas seek irrelevant discovery outside the scope of this Section 220 action, they are duplicative of the Document Requests and Interrogatories. Centene is not entitled to third-party discovery where, as here, the information has been requested and may be obtained from a party to the case. *See In re Countrywide Corp. S'holders Litig.*, 2008 WL 4173839, at *3, n.17 (Del. Ch. Sept. 10, 2008) (quashing non-party discovery where discovery from party was "sufficient to meet the needs" of the requesting party); *see also Gemalto, Inc. v. Merchant Customer Exchs., LLC*, 2015 WL 5168261, at *2 (Del. Super. Ct. Sept. 3, 2015) (non-party "should not be placed in a position of providing discovery that is duplicative, cumulative or could more conveniently and reasonably be located in the possession" of a party). *Compare* Ex. A (Requests 4, 6, 8-10, 15-16), *with* Ex. C (Requests 1-4), *and* Ex. D (Requests 1-5). Thus, if the Court deems that these

[4] The discovery that Centene seeks also is overbroad and disproportionate to the needs of this case. Requiring non-parties to provide the information sought presents a heavy lift, particularly in light of the volume of privileged information the Subpoenas seek. Roc Nation and Quinn Emanuel should not be made to carry out Centene's fishing expedition.

requests are relevant (they are not), they must be quashed for the additional reason that they are duplicative of the (similarly irrelevant) Requests to Ms. Wood.

17. But even if the Court determines that discovery from Quinn Emanuel and Roc Nation should not be foreclosed, the Subpoenas are premature. The parties should first meet and confer regarding potential non-party discovery of *relevant* information that Ms. Wood is unable to provide herself. *See In re Pennzoil Co. S'holders Litig.*, 1997 WL 770663, at *2 (Del. Ch. Oct. 27, 1997) ("[T]he discovery process in the Court of Chancery should be carefully supervised to avoid wasteful duplication and to avoid the risk that discovery will become a strategic weapon, rather than a legitimate method to flesh out issues for the impending trial.").

18. If Ms. Wood is unable to provide information sufficient to establish her proper purpose through her own discovery responses and deposition, then—and only if the Court deems it appropriate—the parties may revisit this non-party discovery. .

CONCLUSION

Ms. Wood, Roc Nation, and Quinn Emanuel respectfully request that the Court grant this motion and enter an order in the form submitted herewith precluding the requested discovery sought by Centene.

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