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Case No. 2021-0426-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ZACHARY ELTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No._____
	)	
EMERGENT BIOSOLUTIONS, INC.,	)	
	)	
Defendant.	)	

VERIFIED COMPLAINT PURSUANT TO 8 *DEL. C.* § 220 TO COMPEL INSPECTION OF BOOKS AND RECORDS

Plaintiff Zachary Elton ("Plaintiff"), by his undersigned attorneys, for this Verified Complaint against defendant Emergent BioSolutions, Inc. ("Emergent," the "Company," or "Defendant"), alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Plaintiff, a beneficial owner of Emergent common stock at all relevant times, brings this action pursuant to 8 *Del. C.* § 220 ("Section 220") to enforce Plaintiff's statutory right to inspect certain books and records of Defendant.

2. On April 28, 2021, Plaintiff served Emergent and the Executive Chairman of the Company's Board of Directors (the "Board"), Fuad El-Hibri ("El-Hibri"), with a demand pursuant to Section 220 (the "Demand" or "Demand Letter").

The Demand requested the Company provide, and permit Plaintiff to inspect, documents related to meetings of the Board, dating from no earlier than January 1, 2020, regarding regulatory, compliance, and manufacturing failures at the Company's Baltimore Facility (defined below), the dissemination of materially false and/or misleading statements and material omissions by Company representatives, and insider sales of Company stock, among other things. A copy of the Demand is attached hereto as Exhibit 1 and is incorporated herein by reference.

3. Plaintiff's purpose in making the Demand is reasonably related to his interests as an Emergent stockholder. As set forth more fully below, there is more than a credible basis to infer that members of the Board and other Emergent executives made or caused the Company to make false and/or misleading statements and material omissions to investors and stockholder regarding the Company's business, finances, and manufacturing capabilities, among other things. Further, there is a credible basis to infer the Company's fiduciaries sold Company stock while in possession of material, non-public Company information in violation of their fiduciary duties under *Brophy v. Cities Serv. Co*., 70 A.2d 4 (Del. Ch. 1949).

4. Public information about Emergent's regulatory, compliance, and manufacturing failures, its representatives' materially false and misleading statements, and improper insider sales of Company stock – including, for instance,

extensive public reporting on Emergent's COVID-19 vaccine "mix-up," U.S. Food and Drug Administration ("FDA") citations and other deficiencies at the Company's Baltimore Facility, and significant insiders sales of Company stock weeks before the truth was revealed – supplies a credible basis to suspect wrongdoing that warrants investigation, but that information is insufficient for Plaintiff's purpose of investigating that wrongdoing and for his separate but related purpose of investigating the independence of each of the Company's directors and officers.

5. On May 4, 2021, Emergent responded by letter, rejecting Plaintiff's lawful Demand. A copy of Defendant's response to the Demand is attached hereto as Exhibit 2, and is incorporated herein by reference.

6. Accordingly, Plaintiff seeks a summary Order from this Court requiring the Company to produce the demanded books and records for inspection.

PARTIES

7. Plaintiff has been a continuous beneficial owner of Emergent common stock since February 4, 2015.

8. Defendant is a Delaware corporation with its principal executive offices located at 400 Professional Drive, Suite 400, Gaithersburg, Maryland 20879.

SUBSTANTIVE ALLEGATIONS

9. In April and June 2020, Emergent signed deals with Johnson & Johnson ("J&J") and AstraZeneca, respectively, to produce the companies' COVID-19 vaccine candidates. These deals were worth a combined $875 million.

10. On June 11, 2020, the U.S. government awarded Emergent an approximately $628 million contract to reserve manufacturing space and to upgrade its facilities.

11. At the time, the Company's President and Chief Executive Officer ("CEO"), Robert G. Kramer Sr. ("Kramer"), stated that the Company was "uniquely ***prepared*** to answer the call for [the] COVID-19 pandemic" because of its "proven ***manufacturing capabilities*** in place." (Emphasis added). The Company and its representatives also assured investors of Emergent's ability and capacity to manufacture COVID-19 vaccines at its Baltimore Facility in mass. For instance, the Company's Senior Vice President, Syed T. Husain ("Husain"), touted that "Emergent stands ready alongside leading innovators to rapidly deploy our services to help meet the substantial demand for a vaccine – anchored on our foundational expertise in development and manufacturing and propelled by our commitment to our mission – to protect and enhance life."

12. Public announcement of these agreements and the Company's statements caused Emergent's stock to soar to over $134 per share on August 13,

2020. However, the Company and its representatives failed to disclose that (a) Emergent's Baltimore plant had a history of manufacturing issues, increasing the likelihood for massive contaminations; (b) these contamination risks and quality control issues led to FDA citations; and (c) the Company was forced to discard millions of doses of COVID-19 vaccines after workers at the Baltimore plant deviated from manufacturing standards.

13. For instance, the public was unaware that, in April 2020, the FDA conducted an inspection of the Company's Baltimore facility, and cited a host of problems that led the regulators to conclude the facility was not scaled to make the drug substance for millions of vaccines. The FDA inspection found that Emergent had "deficient" containment areas for holding rejected manufacturing components "to prevent contamination or mix-ups." The FDA further concluded that upgrades to technology and personnel were required before the Company could even begin making the drug substance. The FDA's lead investigator cited the Company for failing to train employees "in the particular operations they perform as part of their function and current good manufacturing practices."

14. The public only began to learn the truth on March 31, 2021, when media reports revealed that employees at the Baltimore Facility "mixed up" ingredients for the J&J and AstraZeneca vaccines, contaminating up to 15 million doses of the J&J

vaccine. It was further revealed that this was not an isolated incident, but part of a checkered history of manufacturing issues at the Company's plant. A *New York Times* article published that day reported that, in late February 2021, employees at the Baltimore Facility inconceivably "mixed up" ingredients of the two different COVID-19 vaccines, contaminating up to 15 million doses of J&J's vaccine, and forcing regulators to delay authorization of the plant's production lines.[1] ***The article noted that Emergent's massive vaccine lot contamination went undiscovered for days until J&J's quality control checks (not the Company's) uncovered it***.[2] It was further reported that by December 2020, Emergent was forced to discard millions of AstraZeneca vaccine doses after they were spoiled by bacterial contamination of equipment at the same Baltimore facility.

15. On April 1, 2021, the *Associated Press* reported on Emergent's "history of violations," noting that the FDA has repeatedly cited Emergent for problems such as poorly trained employees, cracked vials and problems managing mold and other contamination in its facilities.[3] The article highlighted that the FDA's inspection of

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[1] LaFraniere and Weiland, *Factory Mix-Up Ruins Up to 15 Million Vaccine Doses From Johnson & Johnson*, The New York Times (March 31, 2021).

[2] *Id*.

[3] Lardner, et al., *Company producing J&J vaccine had history of violations*, Associated Press (April 1, 2021).

Emergent's Baltimore plant had faulted the Company for a series of quality control shortcomings.[4] On this news, Emergent's stock price declined from $92.91 at close on March 31, 2021 down to $80.46 at the close of trading on April 1, 2021—a $12.45 drop equating to over a 13% decline in share price.

16. On April 3, 2021, the *New York Times* reported that the Biden administration took the extraordinary action of putting J&J in charge of Emergent's Baltimore plant and prohibiting it from producing the AstraZeneca vaccine.[5] The article called the "ingredient mix-up" and stripping of Emergent's control over its own plant "a significant setback and a public relations debacle." As this story continued to unravel, the Company's stock price continued to decline, closing at $78.62 on April 5, 2021.[6]

17. On April 6, 2021, the *New York Times* published another report, citing undisclosed internal documents and interviews with current and former federal officials, as well as Company employees.[7] The article found Emergent to be ill-

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[4] *Id*.

[5] *Covid-19: Johnson & Johnson Put in Charge of Plant That Ruined Millions of Vaccine Doses*, The New York Times (April 1, 2021).

[6] *Id*.

[7] Hamby et. al, *U.S. Bet on Covid Vaccine Manufacturer Even as Problems Mounted*, The New York Times (April 6, 2021).

equipped to take on the important manufacturing task of producing COVID-19 vaccines.[8] Indeed, audits and investigations, including ones conducted by J&J, AstraZeneca, two federal agencies, and Emergent's own quality evaluators, found that Emergent had not followed basic industry standards at its Baltimore facility, and identified repeated shortcomings in efforts to disinfect and prevent contamination.[9] One audit conducted for AstraZeneca highlighted the risks of viral cross-contamination, which experts believe was responsible for tainting the millions of J&J doses.[10]

18. The April 6, 2021 *New York Times* article also noted that the loss of the J&J doses was not the first time Emergent had to throw out coronavirus vaccine for fear of contamination, as between October 2020 and January 2021, Emergent discarded five lots of AstraZeneca vaccine, each the equivalent of two million to three million doses, because of contamination or suspected contamination. It was also revealed, that in November 2020, production of a batch of J&J vaccine was discarded after workers "hooked up" the wrong gas line and accidentally

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[8] *Id*.

[9] *Id*.

[10] *Id*.

"suffocated" the cells where the virus for the vaccine is grown.[11] The next month, workers making AstraZeneca's vaccine deviated from manufacturing standards on average more than three times a day, and about one-fifth of the deviations were classified as major.[12]

19. On April 19, 2021, the Company announced that it had "temporarily shut down operations at the [Baltimore] plant at the request of the Food and Drug Administration and acknowledged that the company must make improvements to 'restore confidence' in its work.'"[13] The Company also announced it was quarantining existing vaccine substance produced at the Baltimore facility until after the inspection is over and it has had a chance to fix any problems that turn up in the review.[14] The article reported that "[t]he company's stock has tumbled in recent weeks; [and] it closed at $69.37 on Friday, down from $90.98 a month earlier."[15] Analysts were shocked by these revelations. One analyst wrote,"

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[11] *Id*.

[12] *Id*.

[13] Sheryl Gay Stolberg, *Emergent BioSolutions halts operations at its Baltimore plant, where J.&J. doses were ruined, at the F.D.A.'s request*, The New York Times (April 19, 2021).

[14] *Id*.

[15] *Id*.

> Shares of Emergent BioSolutions [ ] were tumbling…on Monday [April 19]. The big drop came after the company revealed…it has agreed not to make any new material at its Bayview facility in Baltimore, Maryland, at the request of the [FDA]….
>
> Emergent BioSolutions continues to reel from manufacturing issues at its Bayview facility that caused 15 million doses of Johnson & Johnson's COVID-19 vaccine to be discarded….
>
> That highly publicized glitch led [J&J] to step in and temporarily manage the production of its vaccine at Emergent BioSolutions' Bayview facility. However, today's news means that J&J's efforts were short-lived.
>
> ***Every aspect of this story is bad news for Emergent BioSolutions.***

(Emphasis added).[16]

20. The same day, Rep. Carolyn B. Maloney, Chairwoman of the House Committee on Oversight and Reform, and Rep. James E. Clyburn, Chairman of the Select Subcommittee on the Coronavirus Crisis, sent a letter to the top executives of Emergent, launching an investigation into whether the company leveraged its relationship with a key Trump Administration official to profit from federal contracts despite a track record of raising prices and failing to meet contract requirements, and whether these actions impeded our nation's response to the

[16] Keith Speights, *Why Emergent BioSolutions Stock Is Tumbling Today*, The Motley Fool (April 19, 2021).

coronavirus crisis.[17] The letter requested that El-Hibri and the Company's CEO, Kramer, testify before the Select Subcommittee on May 19, 2021.

21. In the accompanying Oversight Committee press release, Reps. Maloney and Clyburn wrote,

> ***we are investigating reports that Emergent received multi-million-dollar contracts to manufacture coronavirus vaccines despite a long, documented history of inadequately trained staff and quality control issues***.…Emergent received $628 million in June 2020 to establish the primary U.S. facility for manufacturing vaccines developed by Johnson & Johnson and AstraZeneca. Dr. Robert Kadlec, who served as Assistant Secretary for Preparedness and Response under President Trump and previously worked as a consultant for Emergent, appears to have pushed for this award despite indications that Emergent did not have the ability to reliably fulfill the contract. (Emphasis added).

22. Finally, on April 21, 2021, it was widely reported that an FDA inspection of the Company's Baltimore plant "found significant sanitation and procedural problems…that ruined 15 million doses of the Johnson & Johnson COVID-19 vaccine."[18] Specifically,

> FDA inspectors identified nine conditions…that could lead to product quality issues including unsanitary conditions, inadequate facility size

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[17] Press Release, *Maloney and Clyburn Launch Investigation into Emergent BioSolutions' Profits and Performance Under Federal Vaccine Contracts*, House Committee on Oversight and Reform (Apr. 19, 2021).

[18] Miller and Cohn, *FDA report finds significant problems at Baltimore plant that contaminated Johnson & Johnson COVID vaccine*, The Baltimore Sun (Apr. 21, 2020).

for proper operations, inadequate written procedures, and substandard employee training.

The observations were listed in a redacted FDA inspection closeout report, or Form 483 [], released on April 21, 2021 following a multi-day inspection of the facility.

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Observations identify human, process, and facility errors.

FDA inspectors noted that Emergent did not thoroughly investigate several unexplained discrepancies including cross-contamination of a viral vaccine drug substance batch.

The building used for manufacturing the vaccine drug substance was not maintained in a clean and sanitary condition; peeling paint and brown or black residue was observed on floors and walls. In addition, FDA inspectors noted in the Form 483 that the building used to manufacture the viral vaccine drug substance was 'not of suitable size, design, and location to facilitate cleaning, maintenance, and proper operations.' Waste handling procedures were inadequate, and areas of the facility were overcrowded, [the] FDA said.

The facility also was cited for not following written production and process control procedures and a lack of documentation. Infractions included employees compacting, by hand, unsealed bags of medical waste from manufacturing in an area where raw materials were staged, removing protective garments onto the warehouse floor where raw materials were staged, and failing to follow proper gowning procedures when switching from different manufacturing areas.

Product components, containers, and closures were not handled properly, FDA reported. Unsealed bags of manufacturing waste were handled near raw materials.

Written procedures to assure the identity, strength, quality, and purity of the drug substance were inadequate, FDA noted, and employees

> were not trained in operations they performed. Inadequate equipment, utensils, and laboratory space were also observed.[19]

23. It was reported that the "new documents shed light into Emergent BioSolutions' continued lack of federal authorization to distribute the vaccine it's produced."[20] The same day, an Emergent spokesperson stated, "While we are never satisfied to see shortcomings in our manufacturing facilities or process…they are correctable and we will take swift action to remedy them."[21]

24. On April 19, 2021, an institutional purchaser of Emergent common stock filed a lawsuit against the Company, Kramer, Richard Lindahl, and Syed T. Husain (the "Securities Defendants") for engaging in a fraudulent scheme to artificially inflate the Company's stock price in violation of Section 10(b) and 20(a) the Securities Exchange Act of 1934. *Palm Tran, Inc. – Amalgamated Transit Union Local 1577 Pension Plan v. Emergent Biosolutions, Inc., et al.*, No. 21-cv-00955 (D. Md. Apr. 19, 2021) (the "Securities Action").

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[19] Pharmaceutical Technology Editors, *Emergent BioSolutions Hit with FDA Form 483, PharmTech* (Apr. 21, 2021).

[20] Miller and Cohn, *FDA report finds significant problems at Baltimore plant that contaminated Johnson & Johnson COVID vaccine*, The Baltimore Sun (Apr. 21, 2020).

[21] *Id*.

25. The Securities Action alleges that, from July 6, 2020 through March 31, 2021, the Securities Defendants made a series of materially false and misleading statements and failed to disclose:

> (i) Emergent's Baltimore plant had a history of manufacturing issues increasing the likelihood for massive contaminations; (ii) these longstanding contamination risks and quality control issues at Emergent's facility led to a string of FDA citations; (iii) the Company previously had to discard the equivalent of millions of doses of COVID-19 vaccines after workers at the Baltimore plant deviated from manufacturing standards; and (iv) as a result of the foregoing, Defendants' public statements about Emergent's ability and capacity to mass manufacture multiple COVID-19 vaccines at its Baltimore manufacturing site were materially false and/or misleading and/or lacked a reasonable basis.

(Securities Action, Complaint, Dkt. No. 1 at ¶ 29).

26. The Securities Action alleges the following statements were materially false and misleading and/or contained material omissions:

- On July 6, 2020, when Emergent issued a press release announcing that it had officially signed a massive five-year agreement to manufacture J&J's lead COVID-19 vaccine candidate. In the press release, Defendant Kramer highlighted the Company's "manufacturing strength to address he COVID-19 pandemic." Defendant Husain added that Emergent had "the expertise and capabilities to meet the long-term needs of [its] customers and provide ongoing commercial manufacturing to benefit patients." (*Id*. at ¶ 23).

- On July 27, 2020, Emergent issued a press release announcing its deal with AstraZeneca to provide services to support production of its COVID-19 vaccine candidate. In the press release, Defendant Husain stated, "Emergent stands ready alongside leading innovators to rapidly deploy our [] services to help meet the substantial demand for a vaccine – anchored on our foundational

expertise in development and manufacturing and propelled by our commitment to our mission – to protect and enhance life." (*Id*. at ¶ 24).

- On July 30, 2020, the Company issued a press release reporting financial results for its second quarter and six months ended June 30, 2020 and conducted an investor conference call. During the call, Defendant Kramer asserted that "Emergent is uniquely prepared to answer the call for [the] COVID-19 pandemic" with the Company's "proven manufacturing capabilities in place." (*Id*. at ¶ 25).

- On September 14, 2020, the Company presented at the Morgan Stanley Annual Global Healthcare Conference, where Defendant Lindahl boasted that J&J and AstraZeneca chose Emergent due to the Company's "high-quality manufacturing…primarily in the Bayview facility that we have, which was designed expressly for the purpose in partnership with the government of dealing with an emergency just like COVID." Lindahl added that Emergent's manufacturing sites can "handle a different set of applications and be set up to move very rapidly, and that's exactly what we're doing right now." (*Id*. at ¶ 26).

- On November 5, 2020, Emergent reported financial results for the third quarter and nine-month period ending September 30, 2020 and conducted an investor conference call. In response to an analyst inquiry regarding Emergent's ability to handle multiple COVID-19 vaccine clients, Defendant Husain assured during the call that the Company's facilities are "designed to handle multiple products… [the] facility in Baltimore, which is known as our Bayview facility, so right now, that is predicated on multiple products being in there." (*Id*. at ¶ 27).

- On February 18, 2021, the Company reported financial results for the fourth quarter and year ended December 31, 2020. During Emergent's conference call with investors, Defendant Kramer stated that Emergent was "playing a critical role in the fight against COVID- 19 with the development and manufacturing of clinical and commercial materials across our 3 CDMO service pillars for a variety of customers, most notably Johnson & Johnson, AstraZeneca…" In response to analyst inquiry, Defendant Kramer stated, "Specific to J&J, you know what they said in terms of their short-term goal is

to provide as many as 100 million doses to the U.S. government in the first half of 2021. And we're right on schedule to support that." (*Id*. at ¶ 28).

27. To make matters worse, during the period which Emergent's stock price was artificially inflated due to the Company and its representatives materially false and misleading statements and omissions, Company insiders and members of the Board, including its CEO Kramer, sold exorbitant amounts of Company stock for millions of dollars in profit. On April 25, *The Washington Post* reported that Emergent's stock price "has fallen sharply since the [March] disclosure…[,] [b]ut the decline has had less of an impact than it might have on the personal finances of ***Emergent's chief executive, Robert G. Kramer, who sold more than $10 million worth of his stock in the company in January and early February***, securities filings show. Based on the market price, the stocks that Kramer sold would now fetch about $5.5 million."[22] The *Post* further reported that these transactions were "Kramer's first substantive sales of Emergent stock since April 2016…"[23] (Emphasis added).

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[22] Jon Swaine, *CEO of vaccine maker Emergent sold $10 million in stock before company ruined Johnson & Johnson doses*, The Washington Post (Apr. 25, 2021).

[23] *Id*. ("Those 2016 sales by Kramer, along with sales by other Emergent executives around the same time, were the subject of a lawsuit brought by investors who alleged that executives offloaded stocks after making misleading claims about the scale of an upcoming order from the government for an anthrax vaccine. When the order turned out to be smaller than analysts anticipated, the share price fell. Emergent denied the allegations, but the parties later agreed to a settlement in which Emergent paid the investors $6.5 million.").

28. Reps. Maloney and Clyburn's April 19, 2021 letter and press release also announced their investigation into Emergent's actions to unduly influence anthrax vaccine assets currently stockpiled in the Strategic National Stockpile. This came almost two months after a March 6, 2021 New York Time article that reported that,

> Government purchases for the Strategic National Stockpile, the country's emergency medical reserve where such equipment is kept, have largely been driven by the demands and financial interests of a handful of biotech firms that have specialized in products that address terrorist threats rather than infectious disease. Chief among them is Emergent BioSolutions…
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> *The Times* penetrated this clandestine world by examining more than 40,000 pages of documents, some previously undisclosed, and interviewing more than 60 people with inside knowledge of the stockpile.
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> Former Emergent employees, government contractors, members of Congress, biodefense experts and current and former officials from agencies that oversee the stockpile described a deeply dysfunctional system that contributed to the shocking shortages last year.

> Former Emergent employees, government contractors, members of Congress, biodefense experts and current and former officials from agencies that oversee the stockpile described a deeply dysfunctional system that contributed to the shocking shortages last year.

> Purchases are supposed to be based on careful assessments by government officials of how best to save lives, but many have also been influenced by Emergent's bottom line, the documents and interviews reveal. One year, the government increased its order of Emergent's main anthrax vaccine by $100 million after the company insisted it

> needed the additional sales to stay in business, according to two former federal officials. At the time that order was announced, in 2016, the reserve already had enough to vaccinate more than 10 million people. The stockpile has long been the company's biggest and most reliable customer for its anthrax vaccines, which expire and need to be replaced every few years.[24]

Plaintiff's Books and Records Demand

29. Plaintiff's Demand Letter, dated April 28, 2021, is annexed hereto as Exhibit 1 and is incorporated herein by reference. Attached to the Demand Letter as Exhibit A was a true and correct copy of Plaintiff's current brokerage account statement reflecting Plaintiff's beneficial ownership of Emergent common stock at all relevant times. *Id.* Attached to the Demand Letter as Exhibit B was a true and correct copy of a Special Power of Attorney authorizing Rigrodsky Law, P.A. and the Grabar Law Office to act on behalf of Plaintiff in connection with the Demand. *Id*. Attached to the Demand Letter as Exhibit C was a true and correct copy of a Verification of Plaintiff. *Id*.[25]

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[24] Hamby and Stolberg, *How One Firm Put an 'Extraordinary Burden' on the U.S.'s Troubled Stockpile*, The New York Times (Mar. 6, 2021).

[25] Pursuant to Supreme Court Administrative Order No. 3 issued on March 22, 2020, "any requirements for sworn declarations, verifications, certificates, statements, oaths, or affidavits in filings with the Supreme Court, the Court of Chancery, the Superior Court, the Family Court, the Court of Common Pleas, or the Justice of the Peace Court are suspended while the judicial emergency remains in effect."

30. The Demand Letter was sent on April 28, 2021 via FedEx overnight delivery to the Company's principal place of business in Gaithersburg, Maryland. The Demand Letter was also served on the Company's Registered Agent in Delaware.

31. Plaintiff demanded that Emergent[26] provide him with the opportunity to inspect and copy the following books and records[27] within the Company's possession, custody, and control during the usual hours of business within five (5) business days of receipt of the Demand Letter:

> 1. Minutes of all meetings of the Board[28] from January 1, 2020 through the date of Emergent's response to the Demand, inclusive, during which the following were on the agenda or otherwise discussed at the meeting:
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> a. The Company's marketing materials, investor conference calls, earnings calls, press releases, promotional events, videos, or other materials or

[26] "Emergent" was defined to include "the Company's subsidiaries as defined at 8 *Del. C.* § 220(a)(2)."

[27] The term "books and records" was to be "construed as broadly as possible under Delaware precedent, including emails of directors or officers, whether or not stored on the Company's servers."

[28] The Demand Letter stated the phrase "all meetings of the Board of Directors of Emergent" (here, "all meetings of the Board") included, for the purposes of the letter, "all regular, special, and ad hoc meetings of the Board and all such meetings of regular, special, or ad hoc committees or subcommittees of the Board, whether held in person, telephonically, electronically, or otherwise."

events, regardless of when they were created, distributed, or occurred;

b. The Company's filings with the U.S Securities & Exchange Commission ("SEC");

c. The Company's negotiation, execution, and performance, whether actual or expected, of contracts with Johnson and Johnson, AstraZeneca, and the U.S. Government related to the production, manufacturing, facilitation, or distribution of COVID-19 vaccines ("Vaccines");

d. The Company's contracts with J&J, AstraZeneca, and the U.S. Government related to the production, manufacturing, facilitation, or distribution of Vaccines;

e. The Company's ability, capacity, and preparedness to manufacture Vaccines at the Company's Baltimore/Bayview manufacturing facility (the "Baltimore Facility"), and the Company's ability, capacity, and preparedness to meet and comply with all applicable laws and regulations in manufacturing Vaccines at the Baltimore Facility;

f. Policies, procedures, laws, and regulations applicable to the Baltimore Facility and the Company related to Vaccines;

g. The Company's internal controls and compliance procedures applicable to the Baltimore Facility and the contracts with J&J, AstraZeneca, and the U.S. Government related to Vaccines;

h. The infrastructure, technology, training, and personnel required for the Company and the Baltimore Facility to comply with applicable laws, regulations, and the contracts with J&J, AstraZeneca, and the U.S. Government related to Vaccines;

i. Manufacturing issues, quality control issues, and contamination risks at the Baltimore Facility;

j. Policies, procedures, controls, compliance mandates, and efforts and actions related to keeping the J&J and AstraZeneca Vaccines separate, as well as policies procedures, controls, and compliance mandates related to the detection of "mixed" vaccines and contamination;

k. The Company's decision to discard doses of Vaccines, whether voluntary or otherwise, reasons the Company discarded doses of Vaccines, and actions or efforts by the Company to remediate deficiencies related to decisions to discard Vaccines;

l. Public announcement of contracts with J&J, AstraZeneca, and the U.S. Government related to Vaccines, as announced on August 13, 2020;

m. Communications with and connections between the Company or any of its representatives or employees, and officials in the Trump Administration; and policies and procedures related to conflicts of interests;

n. Communications with the U.S. Food and Drug Administration ("FDA") regarding Vaccines or the Baltimore Facility;

o. FDA inspections, citations, demands, fines, and mandates, including, but note limited to, the FDA's April 2020 inspection of the Baltimore Facility and the Form 483 issued to the Company on April 20, 2021;

p. Audits and investigations of the Baltimore Facility conducted by the Company, U.S. government regulators, J&J, and AstraZeneca, and reports, memorandum, citations, or the like resulting from any such investigation or audit;

q. Media reports from March 31, April 1, April 3, April 6, April 16, April 19, and April 21, 2021 (described infra) regarding the Company's Baltimore Facility, and related or resulting drops in the Company's stock price;

r. Delay in the regulatory approval allowing the Company to manufacture Vaccines at the Baltimore Facility;

s. The Biden Administration's decision to put J&J in charge of the Baltimore Facility and decision to prohibit the Company from producing the AstraZeneca vaccine;

t. Shutdown of the Baltimore Facility, including the events leading up to the shutdown;

u. The securities class action case captioned Palm Tran, Inc. – *Amalgamated Transit Union Local 1577 Pension Plan v. Emergent Biosolutions, Inc., et al*., No. 21-cv-00955 (D. Md. Apr. 19, 2021) (the "Securities Action");

v. Policies and procedures applicable to the Board and its subcommittees;

w. Sales of Company stock by members of the Board or other Company insiders; and

x. The Company's communications with the U.S. Government regarding the anthrax vaccine, and the Company's actions or efforts to influence anthrax vaccine assets currently stockpiled in the Strategic National Stockpile.

2. All of the Board's agendas, packages, presentations, reports, exhibits, official correspondence and emails, recordings, summaries, memoranda, transcripts, notes, summaries of meetings, and resolutions for all of the above-described meetings of the Board.

3. Any other stockholder books and records demand letters received by the Company regarding the above-referenced items ("Related Demands").

4. All books, records, and documents produced by the Company in response to Related Demands.

(Exhibit 1, pgs. 2-4).

32. The Demand Letter set forth Plaintiff's desire to inspect the materials listed above for the following legitimate and proper purposes, all of which are reasonably related to Plaintiff's interests as a stockholder of Emergent:

A. Investigating wrongdoing, mismanagement, and breaches of fiduciary duties by the members of the Board, Company officers, and/or others, including but not limited to Emergent's regulatory and compliance failures, the dissemination of materially false and/or misleading statements or material omissions regarding the same, and insider sales of Company stock;

B. Assessing the ability of the Board to consider impartially a demand for action, including a request for permission to file a derivative lawsuit on the Company's behalf, related to such issues; and

C. Taking appropriate action if the members of the Board did not properly discharge their duties, including making a demand on the Board and/or preparing and filing a stockholder derivative lawsuit, if appropriate.

(*Id*. at 4).

33. The Demand Letter also stated:

An additional purpose to those stated above is to take appropriate action if the Board did not properly discharge its duties. This purpose relates

> to a stockholder's decision about how to act in the event the demanded inspection reveals impropriety or actionable conduct. Possible courses of conduct include making a demand on the Board to act or initiating litigation against the Board on the Company's behalf. Both possible courses of action are well within a stockholder's rights under Delaware law, and, thus, gathering information for this purpose is proper.

(*Id*. at 14).

34. Plaintiff designated Rigrodsky Law, P.A. and the Grabar Law Office as his agents to conduct the demanded inspection.

35. On May 4, 2021, Emergent responded by letter, rejecting Plaintiff's lawful Demand. Specifically, after being provided with Plaintiff's most recent account statement, which as of April 28, 2021 was Plaintiff's March 2021 monthly statement (Exhibit A to Exhibit 1), Defendant claimed the "materials fail to provide evidence of current ownership[.]" Defendant makes other specious arguments regarding Plaintiff's ownership documentation and alleged failure to meet the "credible basis" standard and concludes the letter by demanding "supplemental" evidence of ownership.

36. Defendant has therefore failed to adequately respond to Plaintiff's lawful and proper Demand.

37. Accordingly, Plaintiff brings this action to enforce his rights under Section 220(c) based on Defendant's failure to provide books and records in response to Plaintiff's Demand.

CAUSE OF ACTION

(Inspection of Books and Records of Emergent Pursuant to 8 *Del. C.* § 220(c))

38. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

39. Plaintiff has complied fully with all requirements under Section 220 concerning the form and manner of making a demand for inspection of Emergent's books and records.[29]

40. Through his Demand, Plaintiff has demonstrated a credible basis from which to infer that there are reasonable grounds to suspect mismanagement that warrant further investigation. Plaintiff's Demand is for a proper purpose and the documents identified in the Demand are essential for that purpose.

41. Emergent has wrongfully failed to comply with the Demand.

42. Pursuant to Section 220, Plaintiff is entitled to apply to this Court for an Order compelling inspection of Emergent's corporate books and records because the Company has wrongfully refused to permit the inspection after Plaintiff complied with said statute concerning the form and manner of making a demand for inspection of such documents and articulated a proper purpose for the inspection.

[29] Plaintiff's proof of ownership is attached hereto as Exhibit A to Plaintiff's Demand (Exhibit 1) and incorporated herein by reference.

43. Plaintiff therefore seeks relief from the Court pursuant to Section 220 to compel inspection of Emergent's books and records without further delay.

44. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. An order summarily requiring Emergent to permit immediately the inspection and copying of each and every requested book and record in un-redacted form as set forth in Plaintiff's April 28, 2021 Demand Letter;

B. An order directing Emergent to pay Plaintiff's reasonable attorneys' fees and expenses in connection with the Demand and related litigation; and

C. Such other and further relief as this Court deems just and proper.

Dated: May 14, 2021

RIGRODSKY LAW, P.A.

/s/ Seth D. Rigrodsky
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