

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Jerald Hammann,

C.A. No. 2021-0506-PAF

Plaintiff,

v.

Adamis Pharmaceuticals Corporation,
a Delaware Corporation, et. al.

Defendant.

**PLAINTIFF'S BRIEF IN SUPPORT OF
HIS MOTION FOR A TEMPORARY RESTRAINING ORDER**

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Plaintiff Jerald Hammann ("Hammann") comes before the court seeking declaratory and injunctive relief to, among other things, enjoin Defendants Adamis Pharmaceuticals Corporation ("Adamis" or the "Company"), Dennis J. Carlo ("Carlo"), Richard C. Williams ("Williams"), Howard C. Birndorf ("Birndorf"), Roshawn A. Blunt ("Blunt"), and David J. Marguglio ("Marguglio") (collectively, "Defendants") from the printing and dissemination of their misleading Proxy Statement (likely to begin on or around **June 14, 2021**) and the convening of the annual shareholder meeting on **July 16, 2021**, until the disputes between the parties are resolved.

PRELIMINARY STATEMENT

Knowing through the sworn Purpose Declaration in Hammann's 8 Del. C. § 220 records request that he intended to initiate a proxy contest against the Company, Defendants, with the aid of the Company's attorney proxy contest consultants, devised a scheme to advance the date of the 2021 annual shareholder meeting, to bury the early disclosure of this advancement in its annual corporate filing, and to subsequently claim Hammann's Solicitation Notice was untimely when he submitted in accordance with the prior-established deadline.

These same parties further devised a scheme to allege deficiencies in the content of Hammann's Solicitation Notice relating to director nominees based on

standards the Company only applies to shareholder nominees and not its own nominees.

The Annual Shareholder Meeting is currently scheduled for July 16, 2021, and the Company's Proxy Statement is likely to be printed on or around June 14, 2021. If the Company's Proxy Statement is printed and distributed and the Annual Shareholder Meeting is permitted to proceed, it will be difficult, perhaps even impossible, for Hammann to obtain SEC approval to print and distribute his own Proxy Statement with adequate disclosures sufficient to advise shareholders that voting pursuant to Hammann's Proxy Card could potentially result in the shareholders' votes not being counted at the Annual Shareholder Meeting. This difficulty exists without regard to whether the Defendants' scheme is legally valid or not. Defendants' mere assertion of the alleged defects creates the difficulty with SEC review and approval, and ultimately, with crafting adequate shareholder disclosures.

This outcome would have the inequitable effect of: (a) obstructing or denying the legitimate efforts of Hammann in the exercise of his rights to undertake a proxy contest against management; (b) obstructing or denying the exercise of shareholder rights to determine the directors of the Company and the governing policies under which the Company operates; (c) resulting in the dissemination of misleading and defamatory information to shareholders about

Hammann and his efforts to undertake a proxy contest against management; and (d) concealing defamatory information from shareholders about Adamis and its Board members.

In addition, the Proxy Statement includes intentionally false and misleading disclosures and omissions of material information that any reasonable stockholder would need to know before deciding whether to vote for the Company's director nominees, whether to withhold their vote, or engage in any other action relating to their vote (e.g., abstain or not vote). Most glaring is Defendants' failure to disclose the numerous machinations it undertook to advance the date of the annual shareholder meeting and to conceal as much as possible this advancement in part so they could argue that Hammann's submitted Solicitation Notice was untimely. Adamis also fails to disclose its motivations in engaging in this inequitable conduct. These failures to disclose lead Adamis' existing disclosures to impart the impression to shareholders that Hammann is inept, a potentially disqualifying characteristic for a director candidate in general, and especially so for the person responsible for leading the proxy contest efforts. These failures to disclose lead Adamis' existing disclosure to impart the impression that it was solely a failure on Hammann's part to timely submit a compliant Solicitation Notice, rather than the intentional machinations of the Defendants, that will prevent them from exercising a more meaningful voting choice.

Defendants' conduct violates Rules 14a-5(f) and 14a-9(a) of the Securities Exchange Act of 1934, its own corporate bylaws, and 8 Del. C. § 220, and constitutes an egregious breach of their fiduciary duties of disclosure and loyalty.

Because Hammann has colorable claims that Defendants violated the law and breached their fiduciary duties of disclosure and loyalty in advancing the date of the 2021 annual shareholder meeting, burying the early disclosure of this advancement in its annual corporate filing, subsequently claiming Hammann's Solicitation Notice was untimely, and then informing shareholders of their claim in a manner which makes Hammann to appear inept and Defendants to appear blameless, and numerous additional colorable claims, and because permitting Defendants to print and disseminate their misleading Proxy Statement and conduct their annual shareholder meeting will cause Hammann irreparable harm outweighing any potential harm to Defendants, Plaintiff respectfully requests that the Court grant this Motion and enjoin the printing and dissemination of the misleading Proxy Statement and the convening of the annual shareholder meeting on July 16, 2021, until the disputes between the parties are resolved.

STATEMENT OF RELEVANT FACTS

I. The Parties to this Action.

Hammann, a shareholder of Adamis, has been a business consultant for most of his 29-year career, primarily serving the healthcare industry. His provision of

investor advocacy services has been more recent. HammannDecl. ¶2. In 2020, he initiated a proxy contest relating to CytRx Corporation which resulted in the signing of a Cooperation Agreement that yielded significant benefits to shareholders.¹ On the day Hammann signed his Cooperation Agreement with Cytrx Corporation, shares were trading at \$0.62. Share prices subsequently rose as high as \$5.00 per share and are currently at \$3.10 at close on the date of this writing. Shareholders could have achieved a gain of as much as 704% relative to the date of the Cooperation Agreement if they sold at the high-point of the share price appreciation, and still have 400% in share price appreciation in less than a one-year time span if they continue to hold their shares.

The Adamis proxy contest will be Hammann's second such contest.

HammannDecl. ¶3.

Adamis first rose to Hammann's attention as a result of a NASDAQ delisting notice it received in 2019. Adamis received this notice because the Company's share priced had dropped below \$1 for 30 consecutive days. HammannDecl. ¶4. The non-corporate defendants in this action are managers and directors of Adamis.

Adamis has been run by the same Chief Executive Officer ("CEO") since 2010. This longevity has been detrimental to shareholders. Using the Company's executive compensation determination dates as measurement dates, here are the

¹ See <https://noticepapers.com/cytrx>.

company's historic stock prices: \$11.37 on 3/6/13 (reverse-split-adjusted); \$6.32 on 4/1/14; \$5.99 on 1/23/15; \$4.10 on 1/25/16; \$3.15 on 2/7/17; \$2.83 on 2/21/18; and, \$3.09 on 1/30/19. The Company's closing stock price on June 5, 2021 was \$1.00. By way of comparison, the NASDAQ Composite closed at 3,160 on March 1, 2013 and at 13,814 on June 5, 2021. Therefore, an investor in Adamis during this time period has not only suffered a 91% loss, but also failed to realize a 337% gain.

There are a host of reasons for this poor stock performance, including: (a) a lack of a coherent business strategy; (b) poor operational execution; and, (c) excessive executive compensation. A brief factual summary supporting each of these reasons is contained at HammannDecl. Ex. A. at 1-4 (May 12, 2021, Letter Regarding Records Request).

II. Hammann Informs Adamis of his Intent to Conduct a Proxy Contest.

In February 2021, Hammann contacted Adamis about enacting changes within the company which he believes could provide material benefits to shareholders. While Adamis expressed an initial receptiveness to discussing these changes with Hammann, ultimately the Company rejected Hammann's suggestions. See June 9, 2021 Declaration of Jerald Hammann ("HammannDecl.") ¶5.

From March-May of 2021, Hammann undertook efforts to prepare for a proxy contest against the Company. He: (a) purchased shares in the company as a beneficial owner; (b) made a failed attempt to purchase shares directly from the

Company's stock registry agent; (c) completed the arduous process of having some of his beneficially-purchased shares transferred from beneficial status to "shareholder of record" status; (d) made an 8 Del. C. § 220 records request relating to stockholder materials and other corporate information; (e) interacted with the Company's attorneys numerous times regarding its objections to his request, including agreeing to a highly one-sided and unfair confidentiality agreement; (f) communicated with proxy contest advisors and executors; (g) interviewed and selected director nominees; (h) worked with his three selected nominees to provide the extensive information requested by the Company of a director nominee; (i) prepared this same extensive information as to himself as a director nominee; (j) formulated three shareholder proposals; and, (k) submitted these shareholder proposals and director nominees to the Company (the "Solicitation Notice"). Id. ¶6. A copy of the Solicitation Notice (2nd Amended)(without attachments) is attached at HammannDecl. Ex. B.

The date of Hammann's Records Request is March 12, 2021. In his Purpose Declaration, Hammann stated that:

I declare under penalty of perjury that the above corporate books and records are being requested for a proper purpose reasonably related to my interest as a stockholder. These corporate books and records are being requested to: (a) communicate with shareholders; (b) solicit the votes of shareholders for an alternate director or alternate directors from those currently retained by the Company; (c) propose alternate proposals from those which the Company may support; (d) propose that stockholders vote in opposition to the Company's

prospective proposals; (e) investigate the Company's decision-making processes around executive and board member compensation; (f) investigate the Company's decision-making processes around bench and clinical operations specifically, and operating expenses generally; and/or (g) investigate the possibility of mismanagement, waste, and wrongdoing, including the breach of fiduciary duty to its shareholders of the Company's management, its Board, and/or its Compensation Committee.

A copy of the Records Request is attached HammannDecl. Ex. C.

III. Defendants Advance the Shareholder Meeting Date to Counter Hammann's Anticipated Solicitation Notice.

Adamis and its Board of Directors responded to the Purpose Declaration in Hammann's Records Request by advancing the date of the annual meeting. Here are the announced dates of the annual shareholder meeting over the last 11 years: September 12, 2011; October 10, 2012; October 15, 2013; November 6, 2014; May 14, 2015; May 25, 2016; June 7, 2017; July 6, 2018; July 24, 2019; August 20, 2020; and July 16, 2021. See SEC-filed Proxy Statements (Form 14A) and 2021 Preliminary Proxy Statement (Form PREC14A).

On November 6, 2014, the Board of Directors of the Company approved a change in the Company's fiscal year-end from March 31 to December 31. See SEC 8-K disclosure. The May 14, 2015, annual shareholder meeting therefore related to the nine-month period ending on December 31, 2014. With this exception, the present 35-day change in the date of the annual meeting is the first time over this time period that Adamis has ever changed the date of the meeting by more than 30

days from its anniversary date. It is also the first time over this time period that Adamis has ever advanced the date of the meeting from its anniversary date.

In the Proxy Statement for the 2014 annual shareholder meeting, shareholders were advised to submit nominations or proposals "no later than August 8, 2015, but no earlier than July 9, 2015" for the 2015 annual shareholder meeting. See 2014 Proxy Statement (Form 14A) filed with the SEC. Despite the fact that this meeting took place on May 14, 2015, Hammann can find no public announcement and no other form of notice in SEC filings that shareholders were ever informed of a change in the deadlines for filing shareholder nominations and proposals for the 2015 annual shareholder meeting.

IV. Defendants Bury the Disclosure of the Advanced Meeting Date in its SEC 10-K Filing.

On April 15, 2021, at page 67 of its Form 10-K filed with the SEC, within Section 9B, titled "OTHER INFORMATION," Adamis disclosed:

"The Board of Directors of the Company has determined that the Company's 2021 annual meeting of stockholders will be held July 16, 2021 (the "2021 Annual Meeting")."

Section 9B of an SEC Form 10-K is intended to be used for "any information that was required to be reported on a Form 8-K during the fourth quarter of the year covered by the 10-K, but was not yet reported."² While SEC General Guidance does permit companies to disclose certain information at Section

² See <https://www.sec.gov/fast-answers/answersreada10khtm.html>.

9B which was not "required to be reported on a Form 8-K during the fourth quarter of the year covered by the 10-K," this is only a permissible accommodation to filers. Indeed, the SEC agrees that "Item 9B of Form 10-K appear[s] to be limited to events that were required to be disclosed during the period covered by those reports."³

Adamis made no other public disclosure of the 2021 annual meeting date until it included the date in its Preliminary Proxy Statement filed on June 1, 2021.

On April 15, 2021, Adamis made a public announcement over a newswire, but did not disclose the 2021 annual meeting date within this announcement.⁴

Since August 6, 2013, Adamis has made at least 57 additional public announcements over a newswire, including at least 18 since January 1, 2021. *Id.*

Adamis, through its proxy contest attorneys, also sent at least three direct communications to Hammann between April 15, 2021 and April 25, 2021, two on April 16th and one on April 21st. Adamis did not inform Hammann of the changed 2021 annual meeting date in any of these communications. See attorney communications at HammannDecl. Ex. D.

³ See <https://www.sec.gov/divisions/corpfin/guidance/8-kinterp.htm> Question 101.01.

⁴ See <https://www.globenewswire.com/search/keyword/Adamis%252520Pharmaceuticals%252520Corporation>.

V. The Alleged Solicitation Notice Timeliness Deficiency.

Timeliness is a factor determined by the Company's Bylaws, specifically its Section 5(b):

"To be timely, a stockholder's notice shall be delivered . . . not later than the close of business on the 90th day . . . prior to the first anniversary of the preceding year's annual meeting; provided, **however**, that in the event that the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered . . . not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above." (**emphasis added**).⁵

As evident, there are two timeliness calculations, the ordinary one and a second alternate one if a certain set of events occurs.

As disclosed above, the 2020 Annual Shareholder Meeting was held on August 20, 2020, making its anniversary date August 20, 2021, and the 90th day prior to the first anniversary date May 22, 2021. Adamis acknowledged receiving Hammann's shareholder nominations and shareholder proposals on May 6, 2021, May 7, 2021, and May 20, 2021. The May 7, 2021, amended Solicitation Notice was to amend the May 6, 2021, notice to add materials for the fourth director

⁵

https://www.sec.gov/Archives/edgar/data/887247/000114420409001593/v136226_ex3-5.htm.

nominee. The May 20, 2021, amended Solicitation Notice was to resolve certain deficiencies in the notice alleged by Adamis. Hammann's Solicitation Notice was therefore timely pursuant to the ordinary timeliness calculation.

Adamis, however, contends that the alternate timeliness calculation applies. Since the annual shareholder meeting date was "advanced more than 30 days prior to . . . the anniversary of the preceding year's annual meeting," (i.e., by 35 days), it contends that its "public announcement of the date of such [advanced] meeting" took place on April 15, 2021, when it filed its Form 10-K with the SEC and disclosed this information at page 67 under a nondescript heading normally reserved for events occurring at a completely different time period from the event being announced.

Under Adamis' argument for the alternate timeliness calculation, the "90th day prior to such [advanced] annual meeting" was April 17, 2021. The "10th day following the day on which public announcement of the date of such meeting is first made" was April 25, 2021. The "later of" these two dates is April 25, 2021.

VI. The Alleged Solicitation Notice Content Deficiencies.

Section 5(b) of the Company's Bylaws also discloses

"Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act") and Rule 14a-4(d) thereunder (including

such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected)." Id.

Defendants made several objections to the content of Hammann's Solicitation Notice, claiming that "all information relating to such person that is required to be disclosed" was not disclosed. Hammann amended his submissions to overcome each of Defendants' initial objections. Hammann Decl. ¶7. Subsequent to amendment, Defendants also alleged two additional content deficiencies relating to each director nomination. Placed in the context of the four submitted Director Questionnaires, Defendants contend the underlined sections are required disclosures whose absence makes the nominations invalid:

5(i) Are you, or were you within the last year, a party to any contract, arrangement or understanding with any person with respect to any securities of the Company? If yes, provide the disclosures required by Item 5(b)(1)(viii) of Schedule 14A.

7(b) Neither I nor any Immediate Family Member (as defined in Exhibit A) has accepted any compensation from the Company or any parent or subsidiary of the Company in excess of \$120,000 during any period of twelve consecutive months within the last three (3) years, or is a participant to any currently proposed transaction, other than (i) compensation for board or committee service, (ii) compensation paid to an Immediate Family Member who is a non-executive employee of the Company or a parent or subsidiary of the Company, (iii) compensation received for former service as an interim chairman or CEO, provided the interim employment did not last longer than one (1) year, and (iv) benefits under a tax-qualified retirement plan or non-discretionary compensation.

Each of the four submitted Director Questionnaires contains the following representation:

31. Overall Disclosure. Other than as disclosed above or immediately below, there is no additional information I am required to disclose pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended (the "1934 Act") and Rule 14a-4(d) thereunder.

See representative May 20, 2021, Hammann Director Questionnaire (redlined to reflect the insertion of Adamis' alleged deficiencies) at HammannDecl. Ex. E.

As part of his March 18, 2021, Section 220 Records Request, Hammann requested that Adamis provide him with its version of the Director Questionnaire:

Board Nominee and Proposal Materials

24. An editable conforming blank form of a Stockholder Director Candidate Nominating Notice.

25. An editable conforming blank form of a Stockholder Proposal Notice.

See HammannDecl. Ex. C at p. 4 (Records Request).

On May 3, 2021, Adamis finally responded:

We have confirmed that the Company does not possess the forms sought by Requests Nos. 24 and 25. Can you please let us know the reason you believed the Company would have such forms?

See HammannDecl. Ex. F.

When Adamis nominated two new directors to its Board in 2019, it did not request that these directors comply with the requirements established in its Bylaws. Instead, the Bylaws are only used by Adamis to object to director nominees submitted by shareholders.

VII. Defendants Disclose to Shareholders the Alleged Timeliness and Content Deficiencies.

Defendants asserted, both directly to Hammann and in their preliminary Proxy Statement filed with the SEC on June 1, 2021, that Hammann's Solicitation Notice was untimely:

"The Company has informed Mr. Hammann that pursuant to our Amended and Restated Bylaws (the "Bylaws"), his notice was untimely and failed to comply with the Bylaws and that, as a result, he will not be entitled to make lawful nominations for election to the Board or lawfully submit proposals for consideration by stockholders at the Meeting. . . . As the Company informed Mr. Hammann, due to his failure to deliver to the Company a qualifying and timely notice of nominations and proposals, any attempt by him to pursue such a solicitation would be inconsistent with the Bylaws, as well as potentially unlawful under relevant state law."

June 1, 2021, Adamis Preliminary Proxy Statement (Form PREC14A) filed with the SEC.

This disclosure fails to describe the machinations of the Board of Directors of Adamis to manufacture this claim, leads shareholders to make the inference that Hammann is inept, and conceals the poor character of the members of the Board.

When informed of the Board of Directors machinations, Shareholders have found Adamis' conduct and misleading statements material to their consideration of the proxy contest. Below are four message board responses posted on Stocktwits.com from (presumably) four different shareholders to Hammann's disclosure of Defendants' misleading statements regarding Hammann's untimeliness:

6/2/21 7:35 AM "Interesting read. IMO, Dennis and board are trying to game us. Take the time to read this"

6/2/21 7:55 AM "Must Read!!!Dennis did this on purpose and everyone knows he moved the date 30 days but didn't announce it because he has to do everything to not have a proxy contest because he and the board would get destroyed in the vote. Slime Ball Move Dennis."

6/2/21 12:11 PM "Hammann's SEC filing. The fact that the current ADMP management would bury this procedural deadline on page 64 of an SEC filing, then raise a frivolous procedural objection to Hammann's attempt to fire current management says EVERYTHING anyone needs to know about this. Anyone who does NOT support Hammann's effort is either a paid shill for current management or a blooming idiot. Current management wants to simply continue their RIDICULOUS gravy train paychecks (\$\$\$\$\$\$\$\$) for failure after failure. It is totally obvious!"

6/2/21 12:56 PM "Mr. Hammann said in SEC filing today – "There will be plenty of additional facts presented over the next six weeks, providing ample opportunity for shareholders to reach their own conclusions about whether the Board of Directors of Adamis violated its fiduciary duties to shareholders." I bet Mr. Hammann has done his homework well and I would love to see Carlo and the crime family exposed beyond belief. Let truth prevail and honest person (sic) win. Carlo and his fraternity has been milking the cow far too long."

See Stocktwits messages HammannDecl. Ex. G.

VIII. The Outstanding Records Requests.

In addition to advancing the shareholder meeting date to counter Hammann's anticipated Solicitation Notice, Adamis has also refused to provide most of Hammann's Section 220 Records Requests. While Records Requests #1-#3 and #24-#25 have been responded to and #4 was withdrawn, Adamis contends it will not provide any records pursuant to the remaining requests:

Given the substantial time the Company has already dedicated to providing detailed responses to each of your letters, we expect all further questions regarding any matters that have already been addressed in this letter, and in our numerous letters previously delivered to your attention, to have been resolved. After your confirmed receipt of this letter, we anticipate no further reiteration of any settled questions to be appropriate or beneficial for either the Company's or your own time and resources.

See May 31, 2021, Letter at HammannDecl. Ex. H.

The outstanding Section 220 Records Requests are necessary and essential to conducting and winning the proxy contest. Hammann has spent nearly the entirety of his professional career as a consultant requesting, collecting, analyzing, preparing, and presenting information to business leaders for them to make critical business decisions. He is applying this expertise as an investor advocate.

HammannDecl. ¶8. Below are message board responses from one shareholder to Hammann's presentation of information during his 2020 proxy contest:

7/27/20 07:51 PM "I mean [Director's Name]...God.... please make it stop. So hard to read all this. So we'll (sic) put together. [CEO] is [obscenity] I hope!!! Let's all help Hammann."

7/27/20 07:52 PM: "look at this!!! When it's actually put in writing and looking directly at it it's enough to puke....they have been stealing our money every damn day....so gross. If Hammann hadn't put up a fight we may have never had a chance to recover ANYTHING."

See HammannDecl. Ex. I.

Hammann's objective in obtaining information pursuant to his Section 220 Records Request is to integrate it with other publicly available information for the purpose of analyzing the past, present, and prospective future state of the

Company, and for preparing and communicating selected portions of this analysis to make as many shareholders as possible call to the heavens for divine intervention to make the Directors' past and present conduct stop and to make as many shareholders as possible feel like vomiting when reflecting upon this conduct. Hammann also needs to communicate a path away from anguish and towards aspiration for the shareholders. Hammann's objective in obtaining information pursuant to his Section 220 Records Requests is to solicit the active support of each and every shareholder, not just to vote, but also to persuade others to vote for his candidates and proposals, to have the voice of one become the voice of many. HammannDecl. ¶9.

Achieving these objectives is especially difficult among retail shareholders, which comprise the vast majority of Adamis' shareholders, because retail shareholders as a class vote substantially less frequently than other types of shareholders.

Hammann further argues that "necessary and essential" is the incorrect standard upon which to evaluate his Section 220 Records Request, and that some lesser standard is necessary to prevent the corporate machinery and Delaware Law from perpetuating the tenure in office of managers and directors; and, to prevent the obstruction of the legitimate efforts of dissident stockholders in the exercise of their rights to undertake a proxy contest against management. As evidenced by the present facts, because of the highly-subjective nature of the "necessary and

essential" standard within the context of a proxy contest leading to the future event of shareholder voting, it inherently results in dissident stockholders either foregoing production of the requested records – potentially resulting in the loss of the proxy contest – or forcing the issue in court under abbreviated timelines, the standard itself often unduly shields inequitable purposes.

IX. Defendants' Counsels' History of Creating Unfair Management Advantages.

Adamis has been employing its attorney proxy contest consultants since at least March 17, 2021. These same attorney proxy contest consultants assisted Hammann's opponent in the 2020 proxy contest. HammannDecl. ¶10.

Hammann believes that these attorney proxy contest consultants advised the Board of their client to change the voting Record Date for the meeting from June 5, 2020, to August 21, 2020, to add approximately 2.7 million votes to the proxy contest in support of management. HammannDecl. ¶11.⁶

Hammann believes that Adamis' attorney proxy consults advised it to not produce documents pursuant to Hammann's Section 220 Records Requests, to advance the date of the shareholder meeting to trigger the alternate timeliness

⁶ See <https://www.sec.gov/Archives/edgar/data/0000799698/000149315220015639/form10-q.htm> ("In August 2020, the Company's Chief Executive Officer, certain Board members and an outside consultant exercised 4.4 million of their 2019 stock options on a cashless exercise basis, and were issued a total of approximately 2.7 million common shares of the Company.").

calculation, to bury the disclosure regarding this advancement, and to make timing and content objections to Hammann's Solicitation Notice. HammannDecl. ¶12.

X. Hammann's Discussions With the SEC.

On June 2, 2021, the SEC initiated a one-hour call with Hammann regarding the proxy contest in light of his SEC Form DFAN14A filing made earlier that day. Hammann was informed that continuing the proxy contest posed potential challenges based on how 17 CFR § 240.14a-4(e) might be interpreted. SEC rules apparently do not address the specific contours of the disagreement between Adamis and Hammann head-on and there is also apparently substantial divergence in thought among members of the Commission on interpreting and applying the subdivision. HammannDecl. ¶13.

Lacking an adopted interpretation to the subdivision, Hammann described to SEC personnel a specific potential proxy contest scenario and requested that the two personnel who would be commenting on his submissions confer and evaluate how they were going to apply the subdivision to Hammann's Proxy Statement. After their deliberation, the SEC called Hammann back the next day. Adopting an institutional perspective without regard to the specifics of the Adamis/Hammann proxy contest dispute, the SEC staff determined their preference that Hammann demonstrate that he was "seriously prepared to use all legal avenues to have a proxy contest" for them to approve for dissemination to shareholders his Proxy Statement. The communicated basis for this institutional perspective was their

concern that it might open the door for other shareholders who might be tempted to misuse the Edgar filing system for purposes for which the SEC would otherwise like to discourage its use. HammannDecl. ¶14.

To prevent the printing and dissemination of the misleading Proxy Statement and the premature convening of the annual shareholder meeting from causing him irreparable harm, Plaintiff filed (1) a Verified Complaint for Injunctive and Declaratory Relief to enjoin the Defendants' misconduct, (2) a motion for a TRO and this supporting brief, and (3) a motion to expedite.

ARGUMENT

I. The Legal Standard for Issuing a TRO.

A TRO "is a special remedy of short duration designed primarily to prevent imminent irreparable injury pending a preliminary injunction or final resolution of a matter." *Sherwood v. Ngon*, 2011 WL 6355209, at *6 (Del. Ch.). "To obtain such an order, a party must demonstrate three things: (i) the existence of a colorable claim, (ii) the [existence of] irreparable harm . . . if relief is not granted, and (iii) a balancing of hardships favoring the moving party." *Id.* (quotations omitted).

"When deciding whether to issue a TRO, the Court's focus usually is less upon the merits of the plaintiff's legal claim than on the relative harm to the various parties if the remedy is or is not granted." *Id.* "Indeed, if imminent irreparable harm exists, the remedy ought ordinarily to issue unless" "the claim is frivolous," "granting the remedy would cause greater harm than denying it," or "the plaintiff has contributed in some way to the emergency nature of the need for relief." *Id.* (quotations omitted).

Here, a TRO is proper because Hammann asserts colorable claims against Defendants, Hammann will be irreparably harmed if the Defendants' Proxy Statement is permitted to be printed and disseminated and if the annual shareholder meeting is to be prematurely held, and the irreparable harm Hammann will suffer outweighs any harm to Defendants if these activities are temporarily enjoined.

II. Hammann Asserts Colorable Claims that Defendants have Violated the Law and Their Fiduciary Duties.

A “colorable claim” is one “that is not frivolous” and “has some possibility of succeeding on the merits.” *True North Commc’ns Inc. v. Publicis S.A.*, 1997 WL 33173290, at *1 (Del. Ch.). A colorable claim exists so long as a court can “simply acknowledg[e] that it is a close question and . . . that there are strong arguments that can be advanced on both sides of the issue.” *Id.* (plaintiff asserted colorable claim where parties reasonably disputed “the proper interpretation” of language in an agreement).

Hammann has colorable claims. In *Schnell v. Chris-Craft Industries, Inc.*, 285 A.2d 437 (Del. 1971), the Delaware Supreme Court rejected conduct identical to that engaged in by Adamis:

"[M]anagement has attempted to utilize the corporate machinery and the Delaware Law for the purpose of perpetuating itself in office; and, to that end, for the purpose of obstructing the legitimate efforts of dissident stockholders in the exercise of their rights to undertake a proxy contest against management. These are inequitable purposes, contrary to established principles of corporate democracy. The advancement by directors of the by-law date of a stockholders' meeting, for such purposes, may not be permitted to stand."

Here, Hammann's claims that Defendants violated Rules 14a-5(f) and 14a-9(a) of the Securities Exchange Act of 1934, its own corporate bylaws, and 8 Del. C. § 220, and committed egregious breaches of their fiduciary duties of disclosure and loyalty are colorable.

A. Plaintiff Alleges a Colorable Claim for the Violation of Securities Exchange Act Rule 14a-5(f).

Rule 14a-5(f) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides, in part:

If the date of the next annual meeting is subsequently advanced or delayed by more than 30 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform shareholders of such change, and the new dates referred to in paragraphs (e)(1) and (e)(2) of this section, by including a notice, under Item 5, in its earliest possible quarterly report on Form 10-Q . . . or, if impracticable, any means reasonably calculated to inform shareholders.

On April 12 and 13, 2021, Adamis issued two press releases. On April 15, 2021, Adamis: (a) issued one press release;⁷ (b) filed two Form 8-Ks; and, (c) filed one Form 10-K.⁸ The only place Adamis disclosed the advancement of the shareholder meeting was at page 67 of its Form 10-K under a nondescript heading normally reserved for events occurring at a completely different time period from the event being announced. By way of example, had Adamis filed an SEC Form 8-K disclosing the information required under Item 5.08,⁹ this information would have visually appeared on the SEC website search page. See Id (current report item

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<https://www.globenewswire.com/search/keyword/Adamis%252520Pharmaceuticals%252520Corporation>.

⁸ <https://www.sec.gov/edgar/browse/?CIK=887247&owner=exclude>.

⁹ “[I]f the date of this year’s annual meeting has been changed by more than 30 calendar days from the date of the previous year’s meeting, then the registrant is required to disclose the date by which a nominating shareholder or nominating shareholder group must submit the notice.”

number descriptions for Items 2.02, 4.02, and 9.01). With the guidance of its attorney proxy contest consultants, Defendants intentionally chose the means available to them reasonably calculated to be least likely to actually and timely inform shareholders. Therefore, Hammann's claim that Defendants violated Rule 14a-5(f) is colorable.

B. Plaintiff Alleges a Colorable Claim for the Violation of Securities Exchange Act Rule 14a-9(a).

Rule 14a-9(a) of the Exchange Act provides:

No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

By not informing shareholders that the Board authorized an advancement of the date of the next annual meeting which triggered an alternate timeliness calculation, Adamis and its Board misled shareholders into believing that Hammann's conduct in delivering his Proxy Statement demonstrated ineptitude, when instead the triggering of the alternate timeliness calculation was an intentional machination by the Board to obstruct the legitimate efforts of Hammann to exercise his rights to undertake a proxy contest against management.

These misleading statements impugned Hammann's personal reputation without having any basis in fact. Moreover, these misleading statements concealed from shareholders information beneficial to accurately assessing the character, integrity, and personal reputation of Adamis and of Carlo, Williams, Birndorf, Blunt, and Marguglio. Finally, these statements omit the motivations of Adamis and the Board in advancing the date of the next annual meeting and in applying restrictive Bylaw provisions to Hammann's nominees but not to the Board's nominees.

Each of these misleading statements and omissions is material because the presented information fails to fully and accurately disclose all facts necessary to enable shareholders to exercise an informed vote. When certain shareholders became aware of these misleading statements and omissions because of Hammann's own disclosures, this information caused them to desire to vote against Carlo (at least) or against all of the individual defendants. HammannDecl. Ex. H. Therefore, Hammann's claim that Defendants violated Rule 14a-9(a) is colorable.

C. Plaintiff Alleges a Colorable Claim for the Violation of 8 Del. C. § 220.

Adamis responded to Records Requests #1-#3 and #24-#25. Hammann withdrew Records Requests #4. However, as to all of Hammann's remaining records requests, Adamis did not produce any records or, in the alternate, indicate that no records exist. Hammann's Purpose Declaration asserts seven separate valid purposes, each that is reasonably related to his status as a stockholder of Adamis

for the inspection of the items identified in the Records Request. Hammann complied with the requirements of 8 Del.C. §220 and is therefore entitled to an immediate inspection of all the books and records identified in the Records Request. Therefore, Hammann's claim that Defendants violated 8 Del. C. § 220 is colorable.

D. Plaintiff Alleges a Colorable Claim for the Breach of the Duty of Disclosure.

Hammann's Verified Complaint contains two separate counts alleging Defendants' breach of the duty of disclosure. The first count is directed to Defendants failure to inform shareholders that the Board authorized an advancement of the date of the next annual meeting which triggered an alternate timeliness calculation. Through this concealment of material facts, Defendants misled shareholders into believing that Hammann's conduct in delivering his Solicitation Notice demonstrated ineptitude, when instead the triggering of the alternate timeliness calculation was an intentional machination by Defendants to obstruct the legitimate efforts of Hammann to exercise his rights to undertake a proxy contest against management. The misleading statements impugned Hammann's personal reputation without having any basis in fact and concealed from shareholders information beneficial to accurately assess the character, integrity, and personal reputation of Carlo, Williams, Birndorf, Blunt, and Marguglio. The duty of disclosure requires that a Board "disclose its motivations

candidly." *Sherwood*. When this information concealed by Defendants was revealed by Hammann, four separate shareholders aptly demonstrated the material nature of the Defendants' concealment. See HammannDecl. Ex. H. Therefore, Hammann's first claim that Defendants breached their duty of disclosure is colorable.

The second count is directed to Defendants failure to meaningfully disclose the advancement in the shareholder meeting date in a manner calculated to actually and timely inform shareholders. Section 5(b) of the Company's Bylaws states that "in the event that the date of the annual meeting is advanced more than 30 days prior to . . . the anniversary of the preceding year's annual meeting," the Board is obligated to make a "public announcement of the date of such meeting." Defendants never made a public announcement. Instead, they buried a disclosure on page 67 of the Form 10-K under a nondescript heading normally reserved for events occurring at a completely different time period from the event being disclosed. This conduct resulted in the SEC informing Hammann that he needed to get these matters relating to Defendants' conduct resolved in order to disseminate his own Proxy Statement to shareholders. HammannDecl. ¶14. While Hammann contends that the phrase "public announcement" is not ambiguous, "ambiguities in advance notice bylaws are construed "in favor of the stockholders' electoral rights."" *Sherwood*. Therefore, Hammann's second claim that Defendants breached their duty of disclosure is also colorable.

E. Plaintiff Alleges a Colorable Claim for the Breach of the Duty of Loyalty.

Carlo, Williams, Birndorf, Blunt, and Marguglio interfered in the effectiveness of the stockholder vote for the 2021 annual shareholder meeting by: (a) advancing the date of the meeting; (b) inadequately disclosing the advancement information to shareholders; (c) adopting more stringent nominee disclosure requirements for shareholder director nominees than they apply to themselves; (d) withholding properly-requested 8 Del. C. § 220 Records Request information; and, (e) concealing from shareholders their motivations in engaging in this conduct. Rather than being loyal to the Company's shareholders, the Defendants are instead self-dealing in an attempt to remain entrenched in the Company. The breach relating to inequitably advancing the date of the shareholder meeting, but itself, was sufficient for the plaintiff in *Schnell* to prevail. Therefore, Hammann's claim that Defendants breached their duty of loyalty is colorable.

III. Defendants' Conduct Will Irreparably Harm Hammann.

Both Hammann and Adamis' shareholders will suffer irreparable harm if the annual shareholder meeting is held prior to the resolution of Hammann's claims.

"The threat of an uninformed stockholder vote constitutes irreparable harm. [I]t is appropriate for the court to address material disclosure problems through the issuance of a preliminary injunction that persists until the problems are corrected." *Sherwood*. The annual shareholder meeting will result in an uninformed

shareholder vote if Adamis' shareholders are not given time to consider corrective disclosures and Plaintiffs' competing slate of nominees and proposals. Moreover, the SEC will be observing these proceedings and will be making decisions on the disclosures it will require of Hammann in his Proxy Statement and whether it will approve for dissemination to shareholders his Proxy Statement. Finally, Hammann has spent the better part of four months engaged in efforts relating to this proxy contest. His efforts will be largely wasted if Adamis' misconduct is allowed to go unchecked.

Therefore, irreparable harm exists both to Adamis' shareholders and to Hammann.

IV. The Balance of Hardships Favors Hammann.

The balancing of equities favor granting the TRO.

First, but for the intentional advancement of the annual shareholder meeting, historic practice suggests that the meeting would have been held within 30 days after August 20, 2021, probably on or around September 10, 2021. Therefore, there is no equity favoring denying the TRO.

Second, Adamis will have incurred no additional printing or dissemination costs relating to its Proxy Statement because its language has not yet been commented upon by the SEC. Therefore, there is no equity favoring denying the TRO.

Third, the Company is in noncompliance with Nasdaq regulations for failing to timely file its SEC Form 10-Q for the first quarter. See June 1, 2021 Form 8-K Item 3.01 (Notice of Delisting). It is also in the middle of an "independent internal investigation" relating to "a grand jury subpoena from the U.S. Attorney's Office for the Southern District of New York issued in connection with a criminal investigation." See May 24, 2021 Form NT 10-Q/A. While it may well be that the Board of Adamis now seeks to obtain an unanticipated secondary benefit to advancing the annual shareholder meeting by having it occur before filing the first quarter 10-Q results and before more details regarding the criminal investigation are disclosed, it would certainly benefit shareholders to have the First Quarter financial information disclosed and to receive any additional preliminary disclosures relating to the criminal investigation before voting at the 2021 annual meeting. Therefore, these equities also weigh in favor of the shareholders and Hammann.

Fourth, Hammann has spent the better part of four months engaged in efforts relating to this proxy contest. This effort will be largely wasted if Adamis' misconduct is allowed to go unchecked. Moreover, with Adamis' recent restatement of prior period earnings, with its delay in filing the first quarter 10-Q and with its ongoing criminal investigation, the timing is uniquely opportune for shareholder receptivity to Hammann's advocacy efforts. Therefore, these equities also weigh in favor of the shareholders and Hammann.

V. CONCLUSION

Plaintiff's motion for a TRO to prevent Defendants from printing and disseminating a misleading Proxy Statement and from convening the annual Shareholder Meeting on July 16, 2021, should be granted.

Dated: June 10, 2021

Signed: /s/ Jerald Hammann
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