



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE ORACLE CORPORATION
DERIVATIVE LITIGATION

CONSOLIDATED
C.A. No. 2017-0337-SG
PUBLIC VERSION -
Filed: June 5, 2019

**DEFENDANTS LAWRENCE J. ELLISON AND SAFRA A. CATZ'S
RESPONSE TO THE SPECIAL LITIGATION COMMITTEE'S
MOTION TO EXTEND STAY AND LEAD PLAINTIFF'S
RESPONSE TO SPECIAL LITIGATION COMMITTEE'S MOTION
TO EXTEND STAY FOR THE LIMITED PURPOSE OF
ADDRESSING CERTAIN FACTUAL ASSERTIONS**

Defendants Larry Ellison and Safra Catz (collectively, "Defendants") hereby respond to the Special Litigation Committee's Motion to Extend Stay (the "Motion" or "Mot.") and Lead Plaintiff's Response to Special Litigation Committee's Motion to Extend Stay" (the "Response") for the limited purpose of addressing and correcting certain factual assertions made by Lead Plaintiff in the Response. Defendants otherwise take no position with respect to the Motion but rather defer to the SLC.

INTRODUCTION

Defendants have been cooperating with the SLC's investigation of the purported derivative claims for almost a year. On May 6, 2019, the SLC moved to extend the discovery stay, stating that the SLC has "determined that it was in Oracle's interest to investigate whether a settlement of the claims is feasible," and that an extension was warranted so that the parties could "pursue a potential settlement of the derivative claims." (Mot. ¶¶ 4, 6.) Notwithstanding Lead Plaintiff's assertion to the

contrary, the SLC's Motion did not state that the SLC has reached any final determinations regarding the claims. Although Defendants maintain that the claims asserted are wholly without merit, Defendants have agreed to participate in the mediation as the SLC has requested.

This Court granted the SLC's Motion on May 13, 2019. On May 16, 2019, Lead Plaintiff nonetheless filed a "Response," the obvious purpose of which is to taint the record and prejudice the Court's views regarding the merits. As Lead Plaintiff correctly notes, the SLC conducted a deposition of T. Rowe Price on May 7, 2019. That is essentially the only correct statement that Lead Plaintiff makes about the deposition. Defendants are therefore compelled to respond and correct the record.

CORRECTION OF FACTUAL RECORD

As the Court may recall, T. Rowe Price was the largest unaffiliated holder of NetSuite stock before the merger, and thus had the most to gain or lose from the transaction. [REDACTED]

[REDACTED] (Deposition of G. Dunham ("Depo. Tr.") at 36:9-21.) T. Rowe Price acts as a fiduciary for its millions of investors, and there is no allegation that it had any interest in the transaction aside from obtaining the highest possible value.

Because the SEC determined that the transaction was subject to SEC Rule 13e-3, T. Rowe Price also received extensive disclosures before deciding whether to tender its shares. These included *all* of the financial advisor presentations submitted

to the NetSuite special committee, *all* of the financial advisor presentations submitted to the Oracle special committee, *and* a three-page discussion of Oracle management's incremental model showing the impact to Oracle's revenue and cash flows from acquiring NetSuite. (*See* NetSuite Form 13e-3; Oracle Schedule TO (9/27/2017).) T. Rowe Price therefore had far *more* information than is typical for a stockholder to receive in a merger – indeed, it had more information than either special committee had at the time of their decisions. T. Rowe Price was also fully empowered, as the transaction was subject to the approval of a majority of the stockholders who were not affiliated with Mr. Ellison. Indeed, Mr. Ellison went above and beyond: he agreed to vote his shares in favor of any topping bid that came along, if that was the will of the unaffiliated stockholders. (*See* NetSuite Schedule 14D-9, at 4-5; *see also id.* Ex. (e)(4), (e)(5).) As the largest unaffiliated holder (with 35.15% of the unaffiliated vote), T. Rowe Price had significant influence on the outcome. The independent, fully-informed, third party views of T. Rowe Price therefore provide powerful, highly probative independent market evidence of whether the price Oracle paid for NetSuite was fair.

As the Court will recall, during the tender offer T. Rowe Price publicly stated that Oracle's \$109/share offer was too *low*, and that T. Rowe Price would not tender its shares unless Oracle raised its offer to \$133 per share. (Opinion, p. 27.) Many other stockholders agreed and Oracle was forced to extend the tender offer *twice* because it did not receive sufficient shares. (Opinion, p. 27.) The market in fact

expected the tender offer to fail, as NetSuite's stock was trading more than \$18 *below* the tender offer price the day before the offer expired. (Motion to Dismiss, p. 14-15.) It was only on the last day of the final extension period that Oracle finally received the requisite number of shares, succeeding by the narrowest margin. These facts hardly suggest that Oracle was providing a "sweetheart deal" to NetSuite, as Lead Plaintiff alleges. If that were the case, NetSuite's stockholders would have rushed to accept it.

Lead Plaintiff's only response to this objective market evidence is speculation that T. Rowe Price was engaging in "bumpitrage" — essentially bluffing that they would not tender in an effort to extract a better deal, while secretly believing that the price was already more than adequate. In its opposition to Defendants' motion to dismiss, Lead Plaintiff stated that after Oracle "called T. Rowe Price's bluff," T. Rowe Price "conceded its position" and "**tendered its stake.**" (Lead Plaintiff's Opposition to Defendants' Motion to Dismiss at 2 (emphasis added).) For purposes of the motion to dismiss, this Court accepted Lead Plaintiff's theory, stating that "T. Rowe Price eventually relented, and on November 5, the transaction closed at \$109 per share." (Opinion, p. 27, citing Compl. ¶ 114.)

The facts have now unequivocally disproven Lead Plaintiff's assertion. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Depo. Tr. at 256:12-15.) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (Depo Tr. at 43:11-14;
82:2-4; 129:6-13.)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Depo. Tr. Ex. 4
(TRP_00120-122); *see also* Depo. Tr. 53:5-56:13.)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Depo. Tr. at 261:4-264:7.)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Depo. Tr. at 264:8-19.)
[REDACTED]

[REDACTED]
[REDACTED]

(Depo. Tr. at 285:10-23.)

Lead Plaintiff's complaints about Oracle's and Moelis's analyses of NetSuite's value are also refuted by T. Rowe Price's independent, contemporaneous analyses of NetSuite, [REDACTED]

[REDACTED] For example:

- Lead Plaintiff complains that Moelis performed its DCF analysis based on synergized, incremental projections instead of projecting NetSuite as a standalone entity. (Compl. ¶ 112) [REDACTED]
[REDACTED]
- Lead Plaintiff complains that Oracle's EBIT margin projections were "unrealistic" and "unprecedented." (Compl. ¶ 96.) But Lead Plaintiff ignores that these projections showed the *incremental* impact of NetSuite as part of the much larger Oracle business, which created significant synergies. [REDACTED]

[REDACTED] (Depo Tr. at 126:20-129:13)

- Lead Plaintiff complains that NetSuite's implied revenue multiples at \$109/share are higher than the mean and median revenue multiples in Moelis's comparable company and precedent transactions analyses. (Compl. ¶¶ 108-09.) [REDACTED]
[REDACTED]

- [REDACTED]

Mr. Dunham's testimony also eviscerated Lead Plaintiff's fundamental theory: that the deal was engineered to rescue a failing investment for Mr. Ellison because without it, "Oracle would crush NetSuite in the marketplace." (Compl. ¶ 51.) [REDACTED]

[REDACTED]

[REDACTED]

(Depo. Tr. at 215:22-216:13.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Depo. Tr. at 277:12-279:8, 28:9-14.) [REDACTED]

[REDACTED]

[REDACTED] (Depo. Tr. at 34:22-35:6.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Depo. Tr. at 290:15-294:10.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Depo. Tr. at 258:21-259:4.) [REDACTED]

[REDACTED] (Depo. Tr. at 259:5-11.)

[REDACTED] (Depo. Tr. at 293:20-297:10.) [REDACTED]

[REDACTED] (Depo. Tr. at 274:9-19.)

[REDACTED] (Depo. Tr. at 275:8-276:20.)

[REDACTED] (Depo. Tr. at 314:20-315:15.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Depo. Tr. at 298:4-299:19.) [REDACTED]

(Depo. Tr. at 310:6-23.) [REDACTED]

[REDACTED] (Depo. Tr. at 310:25-311:16.) [REDACTED]

(Depo. Tr. at 311:11-19.) [REDACTED]

[REDACTED] (Depo. Tr. at 282:21-283:7.)

Given Mr. Dunham's devastating testimony, it is not surprising that Lead Plaintiff spent only briefly questioning him, and focused almost exclusively on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Depo. Tr. at 253:24-254:15, 254:16-255:3.) [REDACTED]

[REDACTED] (Depo. Tr. at

176:19-177:6, 178:3-9.) [REDACTED]

[REDACTED] (Depo. Tr. at 191:4-12.) In
other words, the record establishes – at most – [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] That is not even
admissible, let alone persuasive. More profoundly for these purposes, however, [REDACTED]

[REDACTED] (Depo.
Tr. 289:18-20.) (emphasis added).

Lead Plaintiff's focus on this alleged conversation – approximately *four months* before any substantive negotiations took place – is merely an effort to distract attention from the gaping holes that have been blown in its case. T. Rowe Price's independent, fully-informed, third-party analyses, done in the ordinary course of

business as a fiduciary to its investors, destroy the entire foundation for Lead Plaintiff's complaint. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Depo. Tr. at 321:10-323:9.) That is how Oracle was able to acquire a company that T. Rowe Price [REDACTED]

[REDACTED]

[REDACTED]

CONCLUSION

The points above address only some of the factual assertions by Lead Plaintiff that are not correct. Defendants respectfully invite the Court to review the transcript and the exhibits in their entirety.

YOUNG CONAWAY STARGATT
& TAYLOR, LLP

Of Counsel

Peter A. Wald
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 391-0600

Blair Connelly
Rachel J. Rodriguez
Latham & Watkins LLP
855 Third Avenue
New York, NY 10022

/s/ Elena C. Norman

Elena C. Norman (Bar No. 4780)
Richard J. Thomas (Bar No. 5073)
Benjamin M. Potts (Bar No. 6007)
1000 North King Street
Wilmington, DE 19801
(302) 571-6600

*Attorneys for Defendants Lawrence J.
Ellison and Safra A. Catz*

Words: 2,685

(212) 906-1200

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CERTIFICATE OF SERVICE

I, Richard J. Thomas, Esquire, do hereby certify that on June 5, 2019, I caused a copy of the foregoing document to be served on the following counsel in the manner indicated below.

By File & ServeXpress

Joel Friedlander, Esq.
Jeffrey M. Gorris, Esq.
Christopher P. Quinn, Esq.
Friedlander & Gorris, P.A.
1201 N. Market Street, Suite 2200
Wilmington, DE 19801

Thomas A. Beck, Esq.
Blake Rohrbacher, Esq.
Susan M. Hannigan, Esq.
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Kevin R. Shannon, Esq.
Berton W. Ashman, Jr., Esq.
Potter Anderson Corroon LLP
1313 N. Market Street
Hercules Plaza, 6th Floor
Wilmington, Delaware 19801

/s/ Richard J. Thomas
Richard J. Thomas (Bar No. 5073)