



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE ORACLE CORPORATION
DERIVATIVE LITIGATION

CONSOLIDATED
C.A. No. 2017-0337-SG

**LEAD PLAINTIFF’S MOTION TO STRIKE “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”**

Lead Plaintiff Firemen’s Retirement System of St. Louis hereby moves to strike the filing of Defendants Lawrence J. Ellison and Safra A. Catz entitled “Defendants Lawrence J. Ellison and Safra A. Catz’s Response to the Special Litigation Committee’s Motion to Extend Stay and Lead Plaintiff’s To Special Litigation Committee’s Motion To Extend Stay for the Limited Purpose of Addressing Certain Factual Assertions” (the “Ellison/Catz Response”). The grounds for Lead Plaintiff’s motion to strike are as follows:

The Ellison/Catz Response Has No Proper Purpose

1. According to its opening sentence, the Ellison/Catz Response was purportedly filed “for the limited purpose of addressing and correcting certain factual assertions made by Lead Plaintiff in the Response.” (Ellison/Catz Resp. p. 1) The Ellison/Catz Response further states that the “only correct statement” Lead Plaintiff made about the T. Rowe Price deposition was its date. (*Id.* at 2) Yet, *the*

Ellison/Catz Response does not identify or correct a single false factual assertion made by Plaintiff in Plaintiff's response of May 16, 2019 ("Plaintiff's Response").

2. Plaintiff's Response contained a single footnote [REDACTED]

[REDACTED] (Plaintiff's Resp. p. 6 n.1) That single footnote cited specific pages of the deposition transcript, which was attached in its entirety.

3. The Ellison/Catz Response discusses the T. Rowe deposition at length. The fact that the Ellison/Catz Response fails to identify any false factual assertion by Lead Plaintiff respecting the T. Rowe Price deposition reveals that the Ellison/Catz Response has no legitimate purpose. Clearly, it was filed for the improper purpose that the Ellison/Catz Response falsely projects onto Lead Plaintiff: "to taint the record and prejudice the Court's views regarding the merits." (Ellison/Catz Resp. p. 2)

4. Lead Plaintiff advised counsel for Ellison and Catz in writing with these fundamental problems with the Ellison/Catz Response and asked them to withdraw it. Counsel for Ellison and Catz refused to do so.

5. The Ellison/Catz Response is littered with false and misleading characterizations respecting the purported import of the T. Rowe Price deposition record. The Ellison/Catz Response presents what is essentially a partial pre-trial

brief based on the deposition of a single equity analyst [REDACTED]

[REDACTED] It has no bearing on the pending motion of the Special Litigation Committee.

The Ellison/Catz Response Makes False and Misleading Assertions

6. The Ellison/Catz Response presents non-existent “correction[s]” that in no way “refute[]” or “eviscerate[]” or blow “gaping holes” in Plaintiff’s case. (Ellison/Catz Resp. pp. 2, 6, 7, 10)

7. Beginning with their opening brief in support of their motion to dismiss, Defendants have attempted to insert into this case arguments about the supposed import of the fact that one single market participant without access to non-public information, T. Rowe Price, [REDACTED]

[REDACTED] Lead Plaintiff considers this argument fundamentally misguided and without legal support. Indeed, the Ellison/Catz cites no law respecting the supposed relevance of any valuation analyses or actions taken by T. Rowe Price.

8. Moreover, the assertions made in the Ellison/Catz Response about the supposed import of T. Rowe Price’s actions are easily refuted in light of the full factual record respecting T. Rowe Price. The Ellison/Catz Response should be stricken for the additional reason that nothing about the current procedural posture

of the case presents an appropriate opportunity for Lead Plaintiff to respond in full on the substance of the factual contentions in the Ellison/Catz Response.

9. The Ellison/Catz Response contains discrete falsehoods that are falsely characterized as “corrections” of statements by Lead Plaintiff.

10. The Ellison/Catz Response falsely asserts that the T. Rowe Price deposition “unequivocally disprove[s]” Lead Plaintiff’s contention in our answering brief in 2017 that T. Rowe Price was seemingly engaged in “bumpitrag[e].”¹ (Ellison/Catz Resp. p. 4) The deponent’s testimony [REDACTED]

[REDACTED]

Q.

[REDACTED]

A.

[REDACTED]

(Dep. at 240)

11. The Ellison/Catz Response falsely contends that “Lead Plaintiff’s theory” at the motion to dismiss stage, supposedly relied upon by the Court, was

¹ See Josh Black, *M&A Activism: A Special Report*, HARV. L. SCH. F. CORP. GOV. & FIN. REG. (June 13, 2017), <https://corp.gov.law.harvard.edu/2017/06/13/ma-activism-a-special-report/> (“‘Bumpitrag[e]’—so-called because activists seek a ‘bump’ in the share price, is getting easier and more common.... Bumpitrag[e] is also an easier game to play with tender offers, which can be amended and extended and don’t require a shareholder meeting.”).

that T. Rowe Price “**tendered its stake.**” (Ellison/Catz Resp. p. 4) In fact, *defendants* had originally contended that “T. Rowe Price conceded its position.” (Ex. A at 14-15) At oral argument on the motion to dismiss, defendants argued: “T. Rowe Price finally agreed to tender its shares and the transaction closed in November of 2016.” (1/25/2018 H’rg. Tr. at 9) Accordingly, the Catz/Ellison Response’s actual quarrel is with *its own prior position in this action.*

12. On a global level, it is irrelevant that T. Rowe Price did not tender its shares, because the T. Rowe Price deposition record is consistent with Lead Plaintiff’s theory of the case. Lead Plaintiff contends that Oracle was in a position to acquire NetSuite for far less money than Oracle agreed to pay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Ex. B) When the NetSuite acquisition succeeded at \$109 per share, despite T. Rowe Price not tendering in favor of it, senior personnel described the result as

[REDACTED]

[REDACTED] (Ex. C)

13. The Ellison/Catz Response placed unwarranted importance [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Compl. ¶¶ 48-49)

Moreover, as the deponent acknowledged, [REDACTED]

[REDACTED] (Dep. at 243-45) [REDACTED]

[REDACTED]

(Dep. at 242) [REDACTED]

[REDACTED]

[REDACTED] (Dep. at 246) Despite this testimony and

documents, the Ellison/Catz Response falsely states: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ellison/Catz Resp. p. 5)

14. The Ellison/Catz Response also falsely claims that the deponent was confused about the accuracy of the following sentence in T. Rowe Price's letter to NetSuite: [REDACTED]

[REDACTED]

[REDACTED] (Ellison/Catz Resp. p. 10) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Dep. at 188-89, 190, 194, 227) [REDACTED]

[REDACTED]

[REDACTED] (Dep. at 191.)

[REDACTED] (Dep. at 229)

CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Ellison/Catz Response be stricken.

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CERTIFICATE OF SERVICE

I hereby certify that, on June 7, 2019, I caused a true and correct copy of the **Public Version - Lead Plaintiff’s Motion to Strike “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”** to be served upon the following counsel of record by

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