



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 LIFT THE STAY FOR THE
LIMITED PURPOSE OF FILING MOTION FOR LEAVE TO FILE
VERIFIED AMENDED DERIVATIVE COMPLAINT**

Lead Plaintiff Firemen's Retirement System of St. Louis hereby moves the Court to lift the stay of this action for the limited purpose of filing the attached motion for leave to file a Verified Amended Derivative Complaint (the "Proposed Pleading"). The grounds for this motion are as follows:

Background

1. This is a stockholder derivative action challenging the acquisition of NetSuite Inc. ("NetSuite") by Oracle Corporation ("Oracle"), for \$109 per share, or approximately \$9.3 billion. The transaction was approved by a Special Committee of the Board of Directors of Oracle on July 27, 2016. Lead Plaintiff seeks billions of dollars in damages on the theory that Oracle fiduciaries intentionally caused Oracle to overpay to buy NetSuite. NetSuite was controlled by Lawrence J. Ellison, the founder, Chairman of the Board, Chief Technology Officer, former long-time CEO, and largest stockholder of Oracle.

2. Lead Plaintiff filed its original Verified Derivative Complaint (the "Complaint") on July 18, 2017, following a books and records inspection pursuant

to 8 *Del. C.* § 220. The Complaint contained a single count for breach of fiduciary duty against the directors of Oracle.

3. Defendants moved to dismiss the Complaint. On March 19, 2018, the Court issued a Memorandum Opinion (the “Opinion”), which denied defendants’ motion to dismiss pursuant to Rule 23.1, denied a motion to dismiss pursuant to Rule 12(b)(6) as to defendants Larry Ellison and Safra Catz, and requested supplemental briefing respecting all other director defendants (the “Former Defendant Directors”). A central focus of the Opinion was Lead Plaintiff’s allegation that Oracle co-CEO Catz held unauthorized price negotiations with NetSuite CEO Zach Nelson:

After the Board directed Catz and Hurd to reach out to NetSuite, Catz spoke with NetSuite’s CEO, Zach Nelson. Catz ignored the Board’s instruction not to discuss price with Nelson, proposing a range of \$100 to \$125 per share, which represented a 42% to 78% premium on NetSuite’s trading price the day of the conversation. It is reasonably conceivable that Catz, who once said that she “came in with absolutely no agenda other than to help Larry,” took this step at Ellison’s direction. Catz also concealed her secret price discussions from the Board, and it is again reasonable to infer that she did so because Ellison told her to. Moreover, though she did not participate in its deliberations, Catz was heavily involved with the Special Committee, feeding it projections that the Complaint alleges were designed to make an acquisition in the \$100 to \$125 range appear reasonable. When the transaction closed in November 2016, Oracle paid \$109 per share, a figure within the range secretly discussed by Catz and Nelson.

Opinion at 60-61 (citation omitted).

4. The Opinion presented Lead Plaintiff with a tactical choice, either (a) pursue litigation options against all Defendants or (b) proceed directly to discovery on the claim against Larry Ellison and Safra Catz by stipulating to the voluntary dismissal without prejudice of the Former Defendant Directors. Lead Plaintiff elected the latter option. Lead Plaintiff believed that with the benefit of discovery, Lead Plaintiff could decide in due course whether to amend the Complaint and name additional defendants. One week after issuance of the Opinion, the parties submitted a Stipulation and Proposed Order, subsequently entered by the Court, voluntarily dismissing the Former Defendant Directors without prejudice.

5. The Board of Directors of Oracle had no intention of allowing Lead Plaintiff to obtain discovery into their wrongdoing and use it to pursue derivative claims. Ellison and Catz procured an extension of the time to answer Lead Plaintiff's complaint without disclosing the true purpose of the additional time. The Oracle Board scrambled to create a special litigation committee ("SLC"). On May 4, 2018 – the date of Ellison's and Catz's answer – the Board created a one-man SLC of Former Defendant Director Leon Panetta. Subsequently, two new directors, William G. Parrett and Charles "Wick" Moorman, were added to the SLC.

6. The SLC has spent the last fifteen months executing the Oracle Board's plan of delay and refusal to provide Lead Plaintiff information that would

further evidence claims against them. The SLC delayed from the start by taking approximately two months to file its motion to stay on July 2, 2018. At that time, the SLC sought a six-month stay and told the Court and Lead Plaintiff that “courts generally allow SLCs between six and ten months to investigate and report on pending derivative actions.” (D.I. 91 at ¶27) In December 2018, the SLC asked to extend the stay an additional six months. Lead Plaintiff consented to the stay based on the SLC’s representation that the stay until May 15, 2019 (more than a year after its formation) would provide the “additional time necessary to complete its investigation, formulate its recommendations, and determine whether and how to proceed with the litigation on Oracle’s behalf.” (D.I. 97) On May 6, 2019, without conferring with Lead Plaintiff, the SLC sought an extension until August 15, 2019 to pursue a July 2, 2019 mediation. (D.I. 114) The Court granted the extension with the exhortation that “it would be wise for the special litigation committee to think carefully about how it can accommodate and realize value from the efforts of the plaintiffs.” (D.I. 133 at 27)

7. The SLC is obliged to investigate claims against all potential defendants. The SLC has not yet submitted its report or provided notice to Lead Plaintiff of its position respecting the derivative claims. The SLC has not communicated with Lead Plaintiff ever since the hearing on June 7, 2019.

8. Lead Plaintiff does not know whether the SLC has obtained tolling agreements with any or all potential defendants, or whether the SLC intends to allow the statute of limitations to run on July 27, 2019.

Argument

9. Under the Order Staying Proceedings, dated December 28, 2018, “[a]ny party may apply to file to lift the stay for good cause shown.” Good cause exists for lifting the stay.

10. In light of the imminent running of the statute of limitations, Lead Plaintiff seeks to lift the stay for the sole purpose of obtaining authorization to file the Proposed Pleading, which asserts claims against the appropriate defendants currently known to Lead Plaintiff.

11. The Proposed Pleading differs from the Complaint in three critical ways. *First*, the Proposed Pleading realleges claims for breach of fiduciary duty against 11 of the original defendants, who were dismissed without prejudice on March 28, 2018. *Second*, the Proposed Pleading adds claims for aiding and abetting against two senior NetSuite officers, Evan Goldberg and Zachary Nelson. *Third*, the Proposed Pleading adds information recently learned in discovery from non-party T. Rowe Price Associates, Inc.

12. The Proposed Pleading presents the most comprehensive version of the claims currently known to Lead Plaintiff, based on the information currently

available. Filing the Proposed Pleading would protect Oracle from the running of the statute of limitations as to the named defendants who are not currently defendants.

13. Lifting the stay for the limited purpose of filing the Proposed Pleading would not infringe on the work of the SLC and would work no hardship on Oracle. Lead Plaintiff is not currently seeking permission to actively litigate the claims asserted in the Proposed Pleading.

14. Failure to lift the stay would expose Oracle to risk of loss if the SLC has not obtained tolling agreements from the defendants named in the Proposed Pleading.

Conclusion

For all the foregoing reasons, Lead Plaintiff respectfully requests to lift the stay for the limited purpose of filing the attached motion for leave to file the Proposed Pleading.

FRIEDLANDER & GORRIS, P.A.

/s/ Joel Friedlander

Joel Friedlander (Bar No. 3163)
Jeffrey M. Gorris (Bar No. 5012)
Christopher P. Quinn (Bar No. 5823)
1201 N. Market Street, Suite 2200
Wilmington, DE 19801
(302) 573-3500

OF COUNSEL:

ROBBINS GELLER RUDMAN
& DOWD LLP

Randall J. Baron
David T. Wissbroecker
David Knotts
655 West Broadway, Suite 1900
San Diego, CA 92101
(619) 231-1058

Words: 1,256

Co-Lead Counsel

Co-Lead Counsel

ROBBINS ARROYO LLP

Brian J. Robbins
Stephen J. Oddo
Gregory Del Gaizo
5040 Shoreham Place
San Diego, CA 92122
(619) 525-3990

Additional Counsel

DATED: July 18, 2019