IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF ROSEVILLE EMPLOYEES' RETIREMENT SYSTEM and SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, derivatively on behalf of Oracle Corporation,

Plaintiffs,

v.

LAWRENCE J. ELLISON, JEFFREY S. BERG, H. RAYMOND BINGHAM, MICHAEL J. BOSKIN, SAFRA A. CATZ, BRUCE R. CHIZEN, GEORGE H. CONRADES, HECTOR GARCIA-MOLINA, DONALD L. LUCAS, and NAOMI O. SELIGMAN

Defendants.

-and-

ORACLE CORPORATION,

Nominal Defendant.

C.A. No. 6900-VCP

REDACTED PUBLIC VERSION

Filed July 11, 2014

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR FINAL APPROVAL OF THE PROPOSED SETTLEMENT AND AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 5

A. Background of Transaction 5

1. History of Oracle..5

2. Oracle Creates The Committee on Independence Issues To Address Potential Conflicts of Interest 7

3. History of Pillar...9

4. Ellison and Catz Negotiate the Acquisition of Pillar................10

B. Background of the Litigation 11

C. Requests for Production, Subpoenas and Motion to Compel 13

D. Depositions...15

E. Experts..17

F. Post-Discovery Motion Practice...19

G. Preparation for Trial 21

H. The Negotiation and Effect of Settlement..................................22

ARGUMENT 24

I. The Proposed Settlement is Fair, Reasonable and Adequate 24

A. The Litigation and Settlement Confer Substantial Benefits on the Company 26

B. Strengths of the Claims and Difficulty of Litigation 27

1. Standard Of Review To Be Applied At Trial 27

2. Liability of Ellison 30

3. Liability of Catz 31

4. Liability of the Outside Directors 32

5. Potential Damages 35

(a) Discount Rate 38

(b) Allocation of Synergies 39

C. The Experience and Opinion of Counsel and Their Clients Favors Approval of the Settlement 40

D. The Beneficiary of the Settlement Supports Approval of the Settlement And There Have Been No Objections 41

II. Under The Circumstances Of This Case, The Requested Attorneys' Fees And Expenses Are Reasonable And Should Be Awarded In Full 42

A. The Benefits Achieved 44

B. The Requested Fee is Within the Range Awarded in Other Shareholder Litigation Settling After Significant Litigation 46

C. The Efforts of Counsel 49

D. The Complexities and Complications of the Case were Unusual 53

E. The Contingent Nature of the Fee 54

F. The Standing and Ability of Counsel 55

G. The Expenses Incurred were Reasonable Given the Circumstances of this Case 56

H. Public Policy Considerations 57

CONCLUSION 60

TABLE OF AUTHORITIES

Page(s)

CASES

Allied Artists Pictures Corp v. Baron,
413 A.2d 876 (Del. 1980) 58

Amsellem v. Shopwell, Inc.,
C.A. No. 5683, 1979 WL 2704 (Del. Ch. Sept. 6, 1979) 24

In re American International Group, Inc. Consolidated Derivative Litigation,
C.A. No. 769-VCS (Del. Ch. Jan. 25, 2011) (TRANSCRIPT)..........................48

In re AXA Fin. Inc. S'holders Litig.,
C.A. No. 18268, 2002 WL 1283674 (Del Ch. May 22, 2002)...........................52

Barkan v. Amsted Indus., Inc.,
567 A.2d 1279 (Del. 1989) 26

Berger v. Pubco Corp.,
C.A. No. 3414, 2010 WL 2573881 (Del. Ch. June 23, 2010)......................46, 51

In re Berkshire Realty Co., Inc. S'holder Litig.,
C.A. No. 17242 (Del. Ch. Aug. 10, 2004) (ORDER) 47

In re Best Lock Corp. S'holders Litig.,
C.A. No. 16281-CC (Del. Ch. Oct. 16, 2002) (TRANSCRIPT)........................48

Bomarko Inc. v. Int'l Telecharge, Inc.,
794 A.2d 1161 (Del. Ch. 1999) 29

Cal-Maine Foods, Inc. v. Pyles,
858 A.2d 927 (Del. 2004) 53

In re Caremark Int'l Inc. Derivative Litig.,
698 A.2d 959 (Del. Ch. 1996) 25

Carlson v. Hallinan,
925 A.2d 506 (Del. Ch. 2006) 45

Chrysler Corp. v. Dann,
223 A.2d 384 (Del. 1966) 43, 55

In re Cox Radio, Inc. S'holders Litig.,
C.A. No. 4461-VCP, 2010 WL 1806616 (Del. Ch. May 6, 2010).....................44

Crowhorn v. Nationwide Mutual Ins. Co.,
836 A.2d 558 (Del. Super. 2003)..47

Dagron v. Perelman,
C.A. No. 15101-CC (Del Ch. Aug. 29, 1997) (TRANSCRIPT)........................52

In re Del Monte Foods Co. S'holders Litig.,
C.A. No. 6027, 2011 WL 2535256 (Del. Ch. June 27, 2011)................48, 49, 54

In re Digex, Inc. S'holder Litig.,
C.A. No. 18336 (Del. Ch. Apr. 6, 2001 (TRANSCRIPT)..................................53

Dow Jones & Co. v. Shields,
C.A. No. 184, 1991, 1992 WL 44907 (Del. Ch. Mar. 4, 1992)..........................44

In re First Interstate Bancorp S'holders Litig.,
756 A.2d 353 (Del. Ch. 1999) 55

Franklin Balance Sheet Inv. Fund v. Crowley,
C.A. No. 888, 2007 WL 2495018 (Del. Ch. Aug. 30, 2007) ....*passim*

In re Freeport McMoran Sulpher Inc. S'holder Litig.,
C.A. No. 16729-N (Del. Ch. Apr. 20, 2006) (TRANSCRIPT)..........................47

Gatz v. Ponsoldt,
C.A. No. 174-CC, 2009 WL 1743760 (Del. Ch. June 12, 2009) 46

In re Genentech, Inc. S'holder Litig.,
C.A. No. 3911-VCS (Del. Ch. July 9, 2009) (TRANSCRIPT)....................51, 52

In re Golden State Bancorp Inc. S'holders Litig,
C.A. No. 16175, 2000 WL 62964 (Del. Ch. Jan. 7, 2000) 43

In re GSI Commerce, Inc. S'holder Litig.,
C.A. No. 6346-VCN (Del. Ch. Nov. 15, 2011) (TRANSCRIPT)......................51

Hollinger Int'l, Inc. v. Black,
844 A.2d 1022 (Del. Ch. 2004) 28

In re Home Shopping Network, Inc. S'holder Litig.,
C.A. No. 12868 (Del. Ch. Jan. 24, 1995) (ORDER) 47

IBEW Local Union 98 v. Noven Pharms., Inc., et al.,
C.A. No. 4732-CC (Del. Ch. Dec. 8, 2009) (TRANSCRIPT) 57

In re Intek Global Corp. S'holders Litig.,
C.A. No. 17207-VCS (Del. Ch. Apr. 24, 2000) (ORDER) 47

Julian v. Eastern States Constr. Service, Inc.,
C.A. No. 1892, 2009 WL 154432 (Del. Ch. Jan. 14, 2009) ....*passim*

Kahn v. Lynch Commc'n Sys., Inc.,
638 A.2d 1110 (Del. 1994) 29

Kahn v. Tremont Corp.,
694 A.2d 422 (Del. 1997) 28

In re Loral Space & Commc'ns Inc. Consol. Litig.,
C.A. No. 2808-VCS, 2008 WL 4293781 (Del. Ch. Sept. 19, 2008)..................33

Louisiana Mun. Police Employees' Ret. Sys. v. Crawford,
C.A. No. 2635-CC (Del. Ch. June 8, 2007) (ORDER) 52

Loventhal v. Silverman,
C.A. No. 306-N (Del. Ch. Aug. 19, 2004) (ORDER) 51

Marie Raymond Revocable Trust v. MAT Five, LLC,
980 A.2d 388 (Del Ch. 2008) 47

In re NCS Healthcare S'holders Litig.,
C.A. No. 19786, 2003 WL 21384633 (Del. Ch. May 28, 2003) 52

Neponsit Inv. Co. v. Abramson,
405 A.2d 97 (Del. 1979) 24, 41

In re Plains Resources Inc.,
C.A. No. 071-N, 2005 WL 332811 (Del. Ch. Feb. 4, 2005) 59

Polk v. Good,
507 A.2d 531 (Del. Ch. 1986) 25, 26, 40

In re Primedia Inc. Deriv. Litig.,
910 A.2d 248 (Del. Ch. 2006) 29

In re Resorts Int'l S'holders Litig. Appeals,
570 A.2d 259 (Del. 1990) 24

Rome v. Archer,
197 A.2d 49 (Del. 1964) 24

Ryan v. Gifford,
C.A. No. 2213, 2009 WL 18143 (Del. Ch. Jan. 2, 2009) 26, 58

S. Muoio & Co. LLC v. Hallmark Entm't Invs. Co.,
C.A. No. 4729-CC, 2011 WL 863007 (Del. Ch. Mar. 9, 2011) 54

Seinfeld v. Coker,
847 A.2d 330 (Del. Ch. 2000) ....*passim*

Sugarland Indus., Inc. v. Thomas,
420 A.2d 142 (Del. 1980) 43, 44

Superior Vision Servs., Inc. v. ReliaStar Life Ins. Co.,
C.A. No. 1668, 2006 WL 2521426 (Del. Ch. Aug. 25, 2006) 30

Tandycrafts, Inc. v. Initio Partners,
562 A.2d 1162 (Del. 1989) 43

In re TD Banknorth S'holders Litig.,
C.A. No. 2557-VCL (Del. Ch. June 25, 2009) (ORDER)....................................47

Teachers Ret. Sys. Of La. v. Greenberg, et al.,
C.A. No. 20106-VCS (Del. Ch. Dec. 17, 2008) (TRANSCRIPT and ORDER)....................................47, 52

In re Telecorp. PCS, Inc. Shareholder Litigation,
C.A. No. 19260-VCS (Del. Ch. Aug. 20, 2003) (TRANSCRIPT and ORDER)....................................48

In re Triarc Cos., Inc. Class & Deriv. Litig.,
791 A.2d 872 (Del. Ch. 2001) 24

In re Vitalink Commc'ns Corp. S'holders Litig.,
C.A. No. 12085, 1991 WL 238816 (Del. Ch. Nov. 8, 1991) 55

In re Walt Disney Co. Derivative Litig.,
907 A.2d 693 (Del. Ch. 2005) 55

Williamson v. Cox Commc'ns, Inc.,
C.A. No. 1663-N, 2006 Del. Ch. LEXIS 111 (Del. Ch. June 5, 2006) 29

OTHER AUTHORITIES

Court of Chancery Rule 23.1 24

Plaintiffs City of Roseville Employees' Retirement System ("Roseville") and Southeastern Pennsylvania Transportation Authority ("SEPTA," and collectively with Roseville, "Plaintiffs"), derivatively on behalf of Oracle Corporation ("Oracle" or the "Company"), respectfully submit this memorandum in support of: (1) final approval of the proposed settlement ("Settlement"), as set forth in the June 13, 2014, Stipulation And Agreement Of Compromise, Settlement And Release ("Stipulation") that fully resolves the above-captioned action (the "Action"); and (2) an award of attorneys' fees and expenses to Plaintiffs' Counsel.[1] A hearing is scheduled for August 12, 2014 at 10:00 a.m. for the Court to consider these matters.

PRELIMINARY STATEMENT

This Action was brought derivatively on behalf of Oracle to recover damages it suffered as a result of its acquisition of Pillar Data Systems, Inc. ("Pillar") pursuant to a novel earn-out mechanism ("Earn-Out"). Plaintiffs alleged that Lawrence Ellison's ("Ellison") control of both Oracle and Pillar led to an unfair process and resulted in Oracle's agreement to pay a grossly excessive and unfair price for Pillar.

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[1] "Plaintiffs' Counsel" means Chimicles & Tikellis LLP ("C&T") and Grant & Eisenhofer P.A. ("G&E").

After almost three years of hard fighting and based solely on their efforts, shortly before trial, Plaintiffs and Plaintiffs' Counsel achieved a very favorable Settlement with Ellison and the other Defendants,[2] all of whom are officers and/or directors of Oracle. The Settlement provides for a reduction in the purchase price of Pillar, requiring Ellison, the 76% majority owner of Pillar, to pay back to Oracle 95% of the amount paid under the Earn-Out. At the time it approved the acquisition of Pillar (the "Transaction"), the Oracle Board of Directors ("Board") expected that Oracle would pay about $463 million for Pillar. Accordingly, the Settlement provides a monetary benefit of about $440 million – the amount of the reduction in the expected Earn-Out amount. Significantly, Oracle itself is a signatory to the Stipulation and supports the Settlement.

The Settlement becomes even more valuable considering the unique circumstances that Plaintiffs and Plaintiffs' Counsel faced in challenging the Transaction. The Earn-Out is unusual, as no Delaware court has previously reviewed the fairness of an acquisition pursuant to an earn-out mechanism, and few courts anywhere have addressed earn-outs at all. Indeed, the parties' respective

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[2] "Defendants" means Ellison, Jeffrey S. Berg, H. Raymond Bingham, Michael J. Boskin, Safra A. Catz, Bruce R. Chizen, George H. Conrades, Hector Garcia-Molina, Donald L. Lucas, and Naomi O. Seligman.

experts had little or no experience in earn-outs, and agreed that there is no market for earn-outs.

Here, the Earn-Out provides for an acquisition price equal to Pillar's revenue in the third year after the acquisition, minus Pillar's net losses during the three years following the acquisition, multiplied by three. Plaintiffs claimed that application of this Earn-Out would yield an amount that is unfair as it far exceeded Pillar's value at the time the Transaction was approved. Plaintiffs also claimed that the entire process leading up to the Transaction was unfair, as it was negotiated and structured by Ellison and his faithful subordinate at Oracle – Safra Catz ("Catz").

Plaintiffs and Plaintiffs' Counsel assumed the risk of litigating the novel issues in this case without any roadmap for doing so. At the outset, as the Earn-Out amount would not be set for three years, Plaintiffs faced the risk that their claims would be deemed unripe for resolution. Indeed, Defendants raised this argument (and others) in their motion to dismiss, but that argument failed. Defendants continued to vigorously defend the case, challenging Plaintiffs' efforts in discovery, attempting to relitigate certain issues decided on their (largely) failed motion to dismiss, and filing an initial motion for summary judgment.

As Plaintiffs prevailed on their motions to compel and discovery proceeded, Plaintiffs learned that Pillar had sought funding from sources other than Ellison, and had sought to sell itself to other companies but failed in all those attempts. Plaintiffs also learned that the decision to use the Earn-Out was made by, and all of its material terms were set by, Ellison and Catz.

But Plaintiffs faced risks as they prepared for trial. Plaintiffs and Defendants each filed motions to strike the other side's expert reports and testimony. Defendants also filed a renewed motion for summary judgment seeking dismissal of all claims against the outside directors and a ruling that the business judgment rule rather than entire fairness would apply.

The Settlement itself – clearly the product of arms-length negotiations – required significant effort. Plaintiffs engaged in countless informal negotiations, along with two formal mediations, with Defendants. Even after an initial settlement was reached, that agreement collapsed [redacted] upon which the initial settlement was conditioned. The parties then resumed their preparations for trial. It was only after continued discussions, and an agreement by Plaintiffs' Counsel to reduce their request for attorneys' fees and expenses by 25%, that the Settlement was reached.

Against that complex backdrop and only after the expenditure of thousands of professional hours and substantial out-of-pocket costs on a fully contingent basis, Plaintiffs and Plaintiffs' Counsel negotiated and achieved the Settlement. Plaintiffs and Plaintiffs' Counsel respectfully submit that the proposed Settlement represents a significant and valuable result and is fair, adequate and in the best interests of Oracle, and should be approved. As compensation for the substantial benefit achieved in this Action, Plaintiffs' Counsel respectfully request an award of $15 million in fees and expenses, which represents only 3.4% of the benefit provided. Plaintiffs submit that this amount is fair and well under the amounts awarded by this Court in similar situations.

STATEMENT OF FACTS

A. BACKGROUND OF TRANSACTION

1. History of Oracle

Oracle Corporation ("Oracle or the "Company") is the world's largest enterprise software company and a leading provider of computer hardware products and services. Ellison founded Oracle in 1972, and has been its CEO and a director since the Company's inception. Ellison is Oracle's largest stockholder, owning roughly 22.4% of Oracle at the time of the Transaction.

Ellison's control over Oracle has been widely documented. A biography on Ellison titled "Everyone Else Must Fail" documented how Oracle is dominated by Ellison like no other large company. One former Board member, Joe Costello, was quoted in the Ellison biography as saying that Ellison treats the Oracle Board as a "necessary inconvenience." According to the book, Costello resigned from the Board because Ellison threatened to ruin Costello and his reputation. Ellison's handling of the situation with Costello is one of many reported instances where Ellison forced out executives and Board members over personality conflicts or perceived threats to his leadership. For instance, in 2000, Ellison reportedly forced Oracle President, Chief Operating Officer and Director Ray Lane to resign after conflicting with Ellison over the leadership at Oracle. Similarly, Terence Garnett was removed from Oracle after he was instructed by Ellison to steer business opportunities and Oracle resources to a company owned by Ellison but refused to do so.

Adding to the reports of Ellison forcing out Oracle executives, current Board members have been quoted as saying that "[Ellison] still wants total control" and "as a founder, owner, operator, you can equate [Ellison] to the owner of a team

who can sit up in a skybox and own the franchise." Compl. ¶94.[3] Donald L. Lucas ("Lucas") acknowledged Ellison's control in an article in Forbes magazine where he stated: "This is a team, and Larry is the only captain. If someone wants to pop up and announce they're the star – poof! You're out." *Id.* at ¶89. Similarly, Safra Catz, President, CFO and director of Oracle, has been quoted as saying "I came in [to Oracle] with absolutely no agenda other than to help Larry. That actually makes my job incredibly easy. If Larry wants something done, now it happens because I'm going to check that it has." *Id.* at ¶95.

2. Oracle Creates The Committee on Independence Issues To Address Potential Conflicts of Interest

Oracle's Committee on Independence Issues ("Independence Committee") was established for the purpose of reviewing and approving any transaction between Oracle and any executive officer, director or beneficial owner of more than 5% of the Company's common stock. At the time of the Transaction, the Independence Committee consisted of Raymond Bingham ("Bingham"), Hector Garcia-Molina ("Garcia-Molina"), and Lucas. Despite being called the

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[3] "Compl. ¶ __" refers to Plaintiffs' Second Amended Verified Shareholder Derivative Complaint.

Independence Committee, the members of the Independence Committee lacked independence from Ellison.

Lucas was essentially Ellison's father figure, having been "very close personal friends" with Ellison for decades. Lucas was also Oracle's first outside director and investor and serves as co-trustee of trusts for the benefit of Ellison's children. Additionally, Lucas is a major supporter of Stanford, donating millions of dollars to the Stanford Research Institute for Economic Policy ("SIEPR") and to the Stanford University School of Medicine. Compl. ¶91.

Garcia-Molina has significant ties to Ellison due to Garcia-Molina's employment at Stanford University which has received massive donations from Oracle and its various Board members. *Id.* at ¶95.

Bingham's two-decade-long personal and professional relationship with Lucas raises questions about his independence from Ellison. In addition, Bingham has invested in several early-stage investments with Lucas and donated [redacted] to have a new building named after Lucas at Santa Clara University.

In addition to their personal and professional relationships, the members of the Independence Committee had significant financial interest in maintaining their positions on the Oracle Board. Not only were the members of the Independence

Committee compensated millions of dollars for their Board service, but the options granted to non-employee Board members vest 25% a year from the date of the grant and can only be exercised if the director remains on the Board. Compl. ¶105. Members of the Independence Committee stand to lose millions of dollars if they are removed from the Board. *Id.*

3. History of Pillar

Pillar was founded by Ellison in July 2001. Pillar developed and sold certain types of enterprise storage products. Since Pillar's inception, Ellison was Pillar's only outside investor, investing through his private venture capital company, Tako Ventures LLC. Prior to the Transaction, Ellison was Pillar's majority owner, holding 76% of Pillar's common stock, and Pillar's largest creditor to the tune of $544 million.

During its ten-year history, Pillar had never been profitable, and would have had to grow its profits five-fold in order to meet Pillar management's projections to earn its first profit in 2014. In fact, for 2011 and 2012, Pillar was expected to lose an additional $81 million, losses which would need to be funded by Ellison. Pillar's inability to generate a profit was so debilitating that, if Ellison had stopped funding Pillar, it would have been unable to meet its payroll and would have ceased operations. Pillar tried to obtain funding from sources other than Ellison on

several occasions but was unable to do so. Pillar was also unsuccessful in attempting on several occasions to sell itself.

4. Ellison and Catz Negotiate the Acquisition of Pillar

On October 1, 2009, the Independence Committee was notified that Ellison was interested in selling Pillar to Oracle and that Oracle management had been reviewing Pillar as a possible acquisition target since August of 2009. The Independence Committee did **not** retain its financial advisor, Perella Weinberg Partners LP ("Perella Weinberg") until March 2011 and did not consult with it until April 2011, **after** Ellison and Catz had negotiated the material terms of the Earn-Out.

From October 1, 2009 to June 24, 2011, the Oracle Board and the Independence Committee allowed Oracle management to lead the due diligence process and allowed Ellison to negotiate the material terms of the acquisition of Pillar with his most trusted lieutenant, Oracle's President and CFO, Catz. Ellison proposed the acquisition of Pillar and also proposed structuring the acquisition as an Earn-Out. Catz readily agreed to the use of an Earn-Out whereby the purchase price would be based on what Pillar was worth three years after the Transaction closed. Under the terms of the Earn-Out set by Ellison and Catz, Oracle would pay a purchase price equal to (1) Pillar's revenue in the third year after the acquisition,

(2) minus Pillar's net losses during the three years following the acquisition, and (3) multiplied by three. Thus, the Earn-Out would pay Ellison, three years after Pillar had been acquired and incorporated into Oracle, three times Pillar's revenue after Oracle had invested time and resources to develop Pillar's business.

On June 24, 2011, the Independence Committee and Oracle Board approved the acquisition of Pillar in exchange for a payment in 2014 to be determined by the Earn-Out. According to the materials Perella Weinberg provided to the Board on June 24, 2011 (upon which the Board relied in approving the Transaction), the present value of what Oracle expected to pay under the Earn-Out ranged from $325 million to $575 million, with a midpoint of $463 million.

B. BACKGROUND OF THE LITIGATION

On July 8, 2011, Roseville served on Oracle a demand pursuant to 8 Del. C. § 220 to inspect certain of Oracle's books and records related to the Transaction. After receiving documents in response to its demand, Roseville filed a shareholder derivative action on September 30, 2011. The initial complaint alleged that Ellison and the Board had breached their fiduciary duties to the Company in connection with the negotiation and approval of the Transaction.

SEPTA made a Section 220 demand on Oracle on October 14, 2011. After SEPTA received documents responsive to its demand, on November 15, 2011, this

Court entered a stipulation and order allowing SEPTA to intervene. Thereafter, on November 30, 2011, the Court entered an order appointing Roseville and SEPTA as Co-Lead Plaintiffs and G&E and C&T as Co-Lead Counsel. On January 17, 2012, Plaintiffs filed their First Amended Verified Shareholder Derivative Complaint ("First Amended Complaint"). The First Amended Complaint brought derivative claims for breach of fiduciary duty, aiding and abetting, waste, and unjust enrichment, alleging that Ellison and the Oracle Board acquired Pillar at an unfair price pursuant to an unfair process.

On February 29, 2012, Defendants moved to dismiss the First Amended Complaint, arguing that: (1) the claims were unripe for adjudication; (2) the First Amended Complaint failed to plead that the Transaction was unfair; and (3) the First Amended Complaint failed to state a claim under Rule 12(b)(6). During a hearing on August 22, 2012, then-Chancellor Strine denied Defendants' motions to dismiss Plaintiffs' fiduciary duty claims,[4] and rejected Defendants' argument that the claims would not be ripe until the end of 2014. In so holding, the then-Chancellor held that Plaintiffs' claims must be adjudicated based upon the facts

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[4] The Court did grant Defendants' motion to dismiss Plaintiffs' aiding and abetting, waste and unjust enrichment claims and dismissed all claims against Oracle directors Jeffrey O. Henley and Mark Hurd.

known or knowable to the Board at the time the Transaction was approved, and thus prohibited discovery into post-Transaction facts. August 22, 2012 Tr. at 70-71. Thereafter, Defendants began a rolling production of documents on October 15, 2012.

C. REQUESTS FOR PRODUCTION, SUBPOENAS AND MOTION TO COMPEL

Over the course of this Action, Plaintiffs' Counsel reviewed more than 400,000 pages of documents produced by Defendants and third parties. Between June 18, 2012 and April 13, 2013, Plaintiffs served three sets of Requests for Production of Documents on Defendants and three sets of Interrogatories Directed to All Defendants ("Discovery Requests"). The Discovery Requests sought, *inter alia*, documents and information concerning: the Transaction and any alternative transactions considered by Oracle; Pillar's strategic plans and valuation; personal and professional relationships among the Defendants; opportunities available to Pillar; the Earn-Out and how it was negotiated; advisor conflicts; minutes of Board and Independence Committee meetings; and retention agreements for advisors retained in relation to the Transaction.

Plaintiffs also served subpoenas on third parties Edward Hayes, Jr., the former CFO of Pillar; Ian G. Angelo, Pillar's VP of Finance and Operations; and Skadden, Arps, Slate, Meagher and Flom LLP ("Skadden Arps") and Perella

Weinberg, the Independence Committee's legal and financial advisors, demanding the production of documents in those parties' possession related to the Transaction. On March 1, 2013, Defendants served their First Set of Interrogatories Directed to Plaintiffs and First Request For Production of Documents Directed to Plaintiffs.

Plaintiffs were forced to file three motions to compel discovery. The first Motion to Compel, filed on February 11, 2013 ("First Motion to Compel"), sought draft minutes of meetings of the Oracle Board and Board committees that Defendants had withheld as privileged. On March 5, 2013, Plaintiffs moved to compel answers to interrogatories and the depositions of Michael J. Boskin and Bruce R. Chizen ("Second Motion to Compel"). On April 15, 2013, Plaintiffs filed a third motion to compel ("Third Motion to Compel"), seeking the production of additional documents improperly withheld by Defendants, including drafts of a letter of intent prepared in January 2011. Plaintiffs were successful in obtaining all of the discovery sought by all three motions.[5]

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[5] Shortly after Plaintiffs filed the First Motion to Compel, Defendants mooted the motion by producing all of the documents sought by the motion. On April 29, 2013, the Court issued a telephonic ruling on Plaintiffs' Second Motion to Compel, granting the motion in its entirety. Plaintiffs received all of the relief requested by the Third Motion to Compel after: (1) Defendants voluntarily produced the documents related to the drafts of the letter of intent, and (2) a May 29, 2013 Telephonic Ruling wherein the Court found that the Independence Committee

D. DEPOSITIONS

Between March 7, 2013 and July 31, 2013, seventeen depositions were taken:

- Douglas Kehring, Oracle's Senior Vice President, Corporate Development and Strategic Planning, was deposed in Menlo Park, California, on March 7, 2013.
- Edward Screven, Oracle's Chief Corporate Architect, was deposed in Menlo Park, California, on March 8, 2013.
- Michael Workman, Pillar's former CEO, now Oracle VP of Storage Axiom Group, was deposed in Menlo Park, California on March 21, 2013.
- Catz, Oracle's President, CFO and member of the board of directors, was deposed in Menlo Park, California on March 22, 2013.
- Hector Garcia-Molina, a member of the Board and a member of the Independence Committee, was deposed in Menlo Park, California on March 26, 2013.

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could not selectively waive privilege to certain documents but withhold other documents as privileged. May 29, 2013 Tr. at 8-10.

- John Fowler, Oracle's Executive Vice President of Systems, was deposed in Menlo Park, California on April 12, 2013.
- Mark Hurd, President of Oracle and member of the Board, was deposed in Menlo Park, California on April 19, 2013.
- Edward Hayes, Jr., Pillar's former CFO, was deposed in Menlo Park on April 21, 2013.
- Ellison, Oracle's CEO and member of the Board, was deposed in Menlo Park, California on April 25, 2013.
- John Varughese, a Partner at Perella Weinberg, was deposed in San Francisco, California on April 26, 2013.
- Bingham, a member of the Board and member of the Independence Committee, was deposed in Menlo Park, California on April 29, 2013.
- Nancy Holleran, Pillar's former President and COO, was deposed in Menlo Park, California on April 30, 2013.
- Michael F. Bronson, Vice Chair of City of Roseville, was deposed in New York, New York on May 2, 2013.
- Nicholas J. Staffieri, Counsel to the Board of SEPTA, was deposed in Wilmington, Delaware on May 3, 2013.

- Kenton J. King, a Partner at Skadden Arps, was deposed in Palo Alto, California on June 26, 2013.
- Chad Coffman ("Coffman"), Plaintiffs' valuation expert, was deposed in Wilmington, Delaware on July 17, 2013.
- Bradford Cornell ("Cornell"), Defendants' valuation expert, was deposed in Pasadena, California on July 31, 2013.

E. EXPERTS

Plaintiffs' valuation expert was Chad Coffman of Global Economics Group, a firm that specializes in the application of economics, finance, statistics, and valuation principles to a variety of issues, including litigation. Coffman is a Chartered Financial Analyst and regularly serves as a consulting or testifying expert in valuation and damages matters. Coffman submitted his initial report on May 13, 2013 ("Coffman Report"). Coffman opined that: (1) on the date of the Transaction, Pillar had a fair market value of between negative $51 million and positive $8 million; (2) Oracle should have captured most, if not all, of the value of synergies in the Transaction due to the disparity in bargaining leverage between Oracle and Pillar; and (3) Perella Weinberg's valuation of Pillar was fundamentally flawed and unreliable.

Defendants' principal expert, Professor Bradford Cornell, is a Senior Consultant to Compass Lexecon, an international consulting firm. Cornell issued his initial report on May 13, 2013 ("Cornell Report"). Cornell opined that: (1) the Earn-Out structure balances the risk and reward between the parties to the Transaction; and (2) the Earn-Out structure protects Oracle against overpaying for Pillar under a wide range of future scenarios. Cornell did not opine on Pillar's fair market value at the time of the Transaction. As support for his opinions, Cornell attempted to place a value on Pillar's net operating losses ("NOLs") to Oracle by relying on the analysis of an undisclosed tax expert within Oracle.

Coffman submitted his rebuttal report on June 21, 2013, and a corrected rebuttal report on July 16, 2013. Coffman asserted that the Cornell Report: (1) reinforced several of Coffman's opinions; (2) was insufficient to support the fairness of the Earn-Out; (3) applied a discount rate in its Discounted Cash Flow analysis ("DCF") analysis that was inconsistent with Pillar's stage of development; and (4) improperly assumed that Pillar's growth as a standalone entity would be the same as its growth as part of Oracle.

Cornell submitted his rebuttal report on June 21, 2013. Professor Cornell asserted that: (1) Coffman's opinions of the parties' respective bargaining power were flawed; (2) Coffman failed to analyze the Earn-Out formula or the expected

magnitude of the Earn-Out payment; (3) Coffman's analysis of Pillar's standalone value was conceptually flawed; and (4) Coffman's criticisms of Perella Weinberg's analysis were not well taken.

F. POST-DISCOVERY MOTION PRACTICE

On May 3, 2013, Plaintiffs filed the Second Amended Verified Shareholder Derivative Complaint ("Second Amended Complaint"). The Second Amended Complaint built upon the claims contained in the First Amended Complaint with additional facts learned during discovery.

After the close of fact discovery, on June 4, 2013, Defendants notified Plaintiffs that they intended to rely on post-closing evidence at trial. On June 10, 2013, Plaintiffs filed their Motion to Strike References to Post-Transaction Events From the Expert Report of Bradford Cornell and Motion *In Limine* to Exclude Evidence Relating to Post-Transaction Events ("Motion *In Limine*").

On June 14, 2013, Defendants filed a Motion for Summary Judgment, and on July 1, 2013 moved for entry of a briefing schedule on Defendants' Motion for Summary Judgment. On July 24, 2013, then-Chancellor Strine held a teleconference wherein the Court denied Defendants' Motion for Entry of a Briefing Schedule and granted Plaintiffs' Motion In Limine. During the teleconference, the Court reiterated that:

> the focus of whether the entry of the contract was the product of a breach of fiduciary duty should focus, as in every other case, on what they knew at the time and what was knowable.

July 24, 2013 Tr. at 6. Then-Chancellor Strine again made clear that the fairness of the Transaction would be judged by comparing (a) what Defendants understood and expected that Oracle would pay under the Earn-Out when Oracle's Board approved the Transaction, and (b) what Pillar was actually worth on that date.

On July 31, 2013, Defendants filed a motion to reconsider the Court's denial of Defendants' Motion for Entry of a Briefing Schedule and granting of Plaintiffs' Motion *In Limine*. In a letter dated that same day, the Court denied Defendants' motion for reconsideration, holding in part that Defendants could "not limit discovery into a subject matter and then use selective evidence regarding the subject matter offensively." July 31, 2013 Letter Opinion at 2.

On August 21, 2013, Plaintiffs filed a Motion to Strike Defendants' Expert Professor Bradford Cornell and Preclude Trial Testimony by Greg Huffaker. Plaintiffs argued that Cornell: (1) was not qualified to render his opinions on earn-outs, tax or NOLs; (2) relied on unverified data, analysis and opinions from Defendants legal counsel, Davis Polk & Wardwell LLP, and Oracle; and (3) failed to utilize proper methodologies or consider critical facts. In addition, Plaintiffs argued that the Court should not consider opinions that were first articulated during

Cornell's deposition, and that Defendants could not rehabilitate Cornell with the testimony of Greg Huffaker. On May 20, 2014, this Court heard argument on the Motion to Strike and reserved judgment.[6]

On August 20, 2013, Defendants moved to exclude Coffman's expert report and testimony. The bases for Defendants' motion included: (1) Coffman's use of a "venture capital" discount rate and opinions on the bargaining leverage between Oracle and Pillar were not based on reliable principles and methods; and (2) Coffman's opinions were irrelevant.[7]

G. PREPARATION FOR TRIAL

After the close of expert discovery, the parties continued to prepare for trial, which was scheduled to begin on November 18, 2013 and continue through November 22, 2013. Pursuant to the Stipulation and Proposed Scheduling Order entered by the Court on October 1, 2012, the parties exchanged their trial witness lists on August 9, 2013. As part of the effort to prepare the pre-trial order,

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[6] The Motion to Strike was argued months after that motion was briefed and after the contingent settlement unraveled. At the hearing on the Motion to Strike, this Court stated that the arguments made by Plaintiffs were "strong" and "worth serious consideration." May 20, 2014 Tr. at 63.

[7] On June 5, 2014, Defendants submitted a letter to the Court stating that they were content to reserve their arguments until the pre-trial hearing or trial.

Plaintiffs culled through the entire discovery record and prepared a trial exhibit list. In addition, Plaintiffs prepared a comprehensive pre-trial order that contained, among other things, proposed stipulated facts, Plaintiffs' description of the action, Plaintiffs' statement of legal issues to be litigated, and the relief Plaintiffs sought. Plaintiffs provided Defendants with their draft pre-trial order on September 16, 2013. On September 23, 2013, Defendants provided Plaintiffs with a markup of the draft pre-trial order.

H. THE NEGOTIATION AND EFFECT OF SETTLEMENT

The discovery in this case was extensive and instrumental in facilitating settlement discussions, enabling Plaintiffs to refine their theory of the case and making clear to both sides the significant risks in proceeding to trial. At various points throughout the litigation, the parties discussed the possibility of resolving Plaintiffs' claims.

On September 3, 2013, the parties, along with Oracle's director and officer insurance carriers ("D&O Insurers"), engaged in a one-day mediation before Vice Chancellor Glasscock. In anticipation of the mediation, the parties prepared and submitted mediation statements to the Vice Chancellor. Thereafter, the parties engaged in follow-up discussions and on October 2, 2013, the parties agreed to a

settlement contingent on the D&O Insurers providing certain coverage for Oracle and the Individual Defendants.

However, [redacted] Accordingly, the parties returned their focus to preparing for trial. On March 31, 2014, the Court held a scheduling conference to set a schedule with trial beginning on August 12, 2014. During the conference, this Court highlighted then-Chancellor Strine's prior ruling that post-transaction information was excluded. March 31, 2014 Tr. at 7. In addition, during the conference, the Court granted Defendants' request to file a limited renewed Motion for Summary Judgment ("Renewed Motion") but cautioned Defendants not to make post-transaction arguments. March 31, 2014 Tr. at 7, 13. The Court noted that even if Defendants filed a limited Renewed Motion, it likely would not have time to rule on the Renewed Motion before trial. March 31, 2014 Tr. at 21, 22. On April 18, 2014, Defendants filed their Renewed Motion with a supporting brief ("Renewed Brief").

While Plaintiffs drafted their opposition to Defendants' Renewed Brief, which was due to be filed on June 30, 2014, the parties continued to discuss a potential resolution of the Action. On May 5, 2014, the parties, along with Oracle's D&O Insurers, attended a second mediation, this time before former Vice

Chancellor Lamb. After several follow-up discussions, the parties reached an agreement and filed the Stipulation of Settlement with the Court on June 16, 2014.

The Settlement, if approved, requires Ellison to pay back to Oracle 95% of any moneys paid by Oracle under the Earn-Out. As the Board expected the Earn-Out amount to be $463 million (the midpoint of the range of the expected Earn-Out amount), the 95% payback represents a monetary benefit of $440 million.

ARGUMENT

I. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

Delaware has long favored the voluntary settlement of contested claims. *See, e.g.*, *In re Triarc Cos., Inc. Class & Deriv. Litig.*, 791 A.2d 872, 876 (Del. Ch. 2001); *In re Resorts Int'l S'holders Litig. Appeals*, 570 A.2d 259, 265-66 (Del. 1990); *Neponsit Inv. Co. v. Abramson*, 405 A.2d 97, 100 (Del. 1979); *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964). Settlements are particularly favored in complex derivative actions because they promote the interests of judicial economy. *See Amsellem v. Shopwell, Inc.*, C.A. No. 5683, 1979 WL 2704, *2 (Del. Ch. Sept. 6, 1979).

Court of Chancery Rule 23.1 requires that derivative claims "shall not be dismissed or compromised without the approval of the Court." In determining

whether to approve the proposed settlement of a derivative action, the Court is required "to exercise an informed judgment whether the proposed settlement is fair and reasonable in light of all relevant factors." *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 966 (Del. Ch. 1996) (citing *Polk v. Good*, 507 A.2d 531 (Del. Ch. 1986)). In so doing, the Court "attempts to protect the best interests of the corporation and its absent shareholders all of whom will be barred from future litigation on these claims if the settlement is approved." *Id.* at 966-967.

When deciding whether to approve a proposed settlement of a derivative action, the Court need not decide any of the issues on the merits, but must look to the facts and circumstances upon which the plaintiff's claims are based and exercise its informed judgment as to whether the proposed settlement is fair and reasonable. *Polk*, 507 A.2d at 535-36 (citing *Rome*, 197 A.2d at 53-54). The "facts and circumstances" to be considered by the Court include: (1) the probable validity of the claims; (2) the apparent difficulties in enforcing the claims through the courts; (3) the delay, expense and trouble of litigation; (4) the amount of the compromise as compared with the amount of any collectible judgment; and (5) the views of the parties involved. *See Polk*, 507 A.2d at 536.

A. THE LITIGATION AND SETTLEMENT CONFER SUBSTANTIAL BENEFITS ON THE COMPANY

One factor of particular importance in assessing the fairness of the settlement is the balance of the strength of the plaintiffs' claims being compromised against the benefits the settlement secures. *See Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1285-86 (Del. 1989); *Polk*, 507 A.2d at 536. Plaintiffs pursued this litigation with the goal of reducing the amount of money that Oracle will pay for Pillar (and thus to Ellison) to an amount that properly reflects Pillar's fair market value at the time of the Transaction. The proposed Settlement accomplishes this goal by reducing the amount Oracle will pay to Ellison under the Earn-Out by 95%. *See Ryan v. Gifford*, C.A. No. 2213, 2009 WL 18143, at *10 (Del. Ch. Jan. 2, 2009) ("the Settlement provides benefits to [the company] that are substantial and certain."); *Seinfeld v. Coker*, 847 A.2d 330, 332 (Del. Ch. 2000) (finding that settlement in a derivative case was reasonable and fair, given that "defendants' potential arguments appear strong and pose a risk that the case, if litigated to its conclusion, would result in a complete loss for the plaintiffs"). The requirement that Ellison pay back to Oracle 95% of any Earn-Out payments results in a benefit to Oracle of roughly $440 million (95% of $463 million). This substantial monetary benefit is solely the product of Plaintiffs' efforts and

represents a significant achievement in light of the risks attendant in pursuing this Action through trial.

B. STRENGTHS OF THE CLAIMS AND DIFFICULTY OF LITIGATION

While Plaintiffs believe that their claims were and are meritorious, they recognized that they would have to overcome certain obstacles to achieve a recovery for the Company if the case were tried, with the distinct possibility that any judgment – even if Plaintiffs prevailed – might have provided the Company with less of a benefit than it will enjoy under the terms of the Settlement. Plaintiffs' Counsel carefully weighed the risks of proceeding prior to entering into the Settlement.

1. Standard Of Review To Be Applied At Trial

One of the overriding risks at trial was whether the "entire fairness" or "business judgment rule" standard of review would apply to Plaintiffs' claims. Indeed, this issue remained before the Court in Defendants' Renewed Brief. The Court's ultimate determination regarding which standard of review applies may have been potentially outcome determinative. Plaintiffs would have argued that the entire fairness standard applied because the Transaction was an interested transaction where Oracle's *de facto* controlling stockholder, Ellison, caused it to purchase 100% of the shares of a second corporation (Pillar) controlled by Ellison.

See Kahn v. Tremont Corp., 694 A.2d 422 (Del. 1997). Plaintiffs would have argued that as Oracle's CEO, founder, and 22.4% owner, Ellison also had control over the Oracle Board.

To support this argument, Plaintiffs would have pointed to (1) Ellison's history of removing anyone from the Company who challenged Ellison; (2) the public statements by members of the Oracle Board indicating that Oracle is Ellison's company; and (3) the fact that the Oracle Board has never rejected any interested transaction between Oracle and Ellison or an entity associated with Ellison. Plaintiffs would have also demonstrated that Ellison proposed that Oracle acquire Pillar and controlled the negotiation of the Transaction, including dictating the timing of the Transaction, determining that the consideration would be calculated with an Earn-Out and, along with Catz, setting the specific terms of the Earn-Out. *See Hollinger Int'l, Inc. v. Black*, 844 A.2d 1022, 1032 (Del. Ch. 2004) (the Court found Conrad Black to be a "formidable controlling stockholder" due in part to the facts that Hollinger International's ("Hollinger") top executives worked for Black in his capacity of CEO, Black at all times held himself out as able to control Hollinger, and the boards of the holding companies that controlled Hollinger comported themselves in a supine manner when considering Black's wishes).

Thus, Plaintiffs would have argued that Defendants bore the burden to demonstrate "fair dealing" and "fair price." *See Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1115 (Del. 1994) ("A controlling or dominating shareholder standing on both sides of a transaction…. bears the burden of proving its entire fairness"); *Bomarko Inc. v. Int'l Telecharge, Inc.*, 794 A.2d 1161, 1179 (Del. Ch. 1999) ("When the entire fairness test applies, the burden of persuasion initially lies with the defendant. … [T]he burden remains with Haan and the corporate defendants … because Haan's misconduct interfered with or corrupted the proper functioning of the Special Committee"); *In re Primedia Inc. Deriv. Litig.*, 910 A.2d 248, 257 (Del. Ch. 2006) ("plaintiffs need not demonstrate that [the controlling shareholder] oversaw the day-to-day operations of the [company]. Allegations of control over the particular transaction at issue are enough."); *Williamson v. Cox Commc'ns, Inc.*, C.A. No. 1663-N, 2006 Del. Ch. LEXIS 111, *15 (Del. Ch. June 5, 2006) (Where a controlling stockholder "stands on both sides of a transaction," the transaction "will be viewed under the entire fairness standard as opposed to the more deferential business judgment standard.").

On the other hand, Defendants asserted in their Renewed Brief, and would likely assert at trial, that the Transaction is subject to the business judgment rule. Defendants would argue that Ellison is not a "controlling stockholder" of Oracle

because he does not own a majority interest in Oracle or exercise actual control over the business affairs of the Company. *See* Renewed Brief at 21 (citing *Kahn*, 638 A.2d at 1113). In their Renewed Brief, Defendants argued that Ellison's ownership of 22.4% of Oracle's equity did not reach the level of a majority interest, *see* Renewed Brief at 21, 22, and that Ellison's position as the CEO of Oracle is alone insufficient to demonstrate control because what matters is "control of the board." *Superior Vision Servs., Inc. v. ReliaStar Life Ins. Co.*, C.A. No. 1668, 2006 WL 2521426, at *4 & n.38 (Del. Ch. Aug. 25, 2006). Alternatively, in the event that the entire fairness standard were found to apply, Defendants would likely claim that the Independence Committee's review of the Transaction served to shift the burden of proof to Plaintiffs.

2. Liability of Ellison

Even assuming the Court held that the entire fairness standard applied to the Transaction, Plaintiffs recognize that there were risks in establishing Defendants' liability at trial. At trial, Plaintiffs would seek to prove Ellison's liability as both an officer and director of Oracle by demonstrating that Ellison proposed the Transaction and dictated the terms of the Earn-Out. Plaintiffs would also argue that, as the controlling stockholder of both Oracle and Pillar, Ellison would be required to show that the Transaction was the result of a fair process and resulted

in a fair price. In response, Ellison would likely testify that the Transaction was the product of arm's-length negotiations between a committee comprised of disinterested and independent directors, on the one hand, and Ellison, as the controlling stockholder of Pillar, on the other. Plaintiffs believe, based on the evidence adduced in discovery, that they had a strong likelihood of obtaining a judgment against Ellison for breaching his fiduciary duties as an officer, director and controlling stockholder of Oracle, due to his role in proposing and structuring the Transaction, and due to the unfairness of its terms to Oracle.

3. Liability of Catz

Plaintiffs would have to address several legal and factual issues at trial in order to establish Catz's liability as an officer and director of Oracle. Among these issues is whether Catz breached her fiduciary duties to Oracle in her negotiations of the Transaction with Ellison. Plaintiffs would argue that Catz was the sole representative of Oracle to negotiate the Transaction with Ellison and, given Catz's lack of independence from Ellison, there was very little in the way of actual "negotiation" that took place. Plaintiffs would seek to demonstrate that while Catz's first inclination was to structure the Transaction as an upfront payment, she acceded to Ellison's wishes and agreed to use an Earn-Out structure because the expected Earn-Out payment would provide more consideration to Ellison than any

upfront payment. Moreover, Plaintiffs would demonstrate that Catz, consistent with her deposition testimony, was the one who proposed material terms of the Earn-Out that were beneficial to Ellison, including the three-year term, the subtraction of net losses from revenues, and the multiplier of three, and demonstrating that Catz never attempted to negotiate a multiple lower than three. Plaintiffs would also argue that Catz's negotiation of the Transaction was undertaken as an officer of Oracle, thus removing her from the protection of Oracle's 8 Del C. §102(b)(7) charter provision.

Defendants would counter by asserting that the Independence Committee gave Catz the authority to negotiate with Ellison and provided direct input into her negotiation of the deal terms with Ellison. Defendants would also assert that Catz's role was limited to making a preliminary determination that Pillar was worth pursuing, and once this determination was made, the Independence Committee vetted the terms of the Transaction and engaged in further negotiations with Pillar. Plaintiffs believe there was a strong likelihood that they would receive a judgment against Catz at trial for her role in negotiating the Transaction.

4. Liability of the Outside Directors

As the Renewed Brief illustrated, there were factual and legal issues on which Plaintiffs would need to prevail in order to establish liability on the part of

the Outside Directors.[8] Defendants raised in their Renewed Brief, and would likely argue at trial, that Oracle's exculpatory charter provision would protect the Outside Directors from liability because there is no evidence from which to infer that the Outside Directors "acted with the requisite state of mind to have committed a non-exculpated loyalty breach." *See In re Loral Space & Commc'ns Inc. Consol. Litig.*, C.A. No. 2808-VCS, 2008 WL 4293781, at *33 (Del. Ch. Sept. 19, 2008). Defendants would have tried to prove at trial that the Outside Directors engaged in a lengthy and deliberate process and relied in good faith upon the advice of independent advisors and therefore have demonstrated that they did not approve the Transaction in bad faith. Renewed Brief at 34, 35.

To counter this argument, Plaintiffs would assert that the members of the so-called Independence Committee lacked independence from Ellison, and acted as nothing more than a rubber stamp for a Transaction solely negotiated by Ellison and Catz. Specifically, Plaintiffs would present facts to prove that the relationship between Ellison and Lucas was akin to a father and son, going so far as to have Lucas as the co-trustee of the trusts for the benefit of Ellison's children. Lucas

[8] "Outside Directors" refers to Jeffrey S. Berg, Bingham, Michael J. Boskin, Bruce R. Chizen, George H. Conrades, Garcia-Molina, Lucas and Naomi O. Seligman.

also publicly recognized that Ellison was the "captain" of Oracle and would remove anyone who challenged his position. Moreover, Garcia-Molina and Bingham had close personal and professional relationships with Ellison and Lucas and had millions of dollars of options that they would lose if they were removed from the Board.

Plaintiffs would also present evidence that the Independence Committee first learned of Ellison's interest in selling Pillar to Oracle in late 2009, and was aware of ongoing discussions between the companies' managers during 2010 and early 2011. Yet, as of March 25, 2011, the Independence Committee had taken no steps to institute a process free of taint by Ellison. The Independence Committee did not consult a financial advisor until April 2011 and by that time, Ellison and Catz had already negotiated the material terms of the Earn-Out and Oracle had delivered a letter of intent embodying those terms to Pillar. Plaintiffs would also seek to prove at trial – consistent with what they discovered during depositions – that the Independence Committee and its advisors did not negotiate any of the material terms of the Transaction, and their input on the Earn-Out formula was limited to making suggested revisions to the assumptions to be used in calculating net losses and then waiting to see if management would accept the revisions.

While Plaintiffs believe there was a likelihood they would obtain a judgment against the Outside Directors, there was a risk that the Court would rule at trial that their conduct was protected by Oracle's exculpatory charter provision.

5. Potential Damages

Assuming Plaintiffs were able to establish that the entire fairness standard applied to the Transaction, and were successful in establishing liability, Plaintiffs faced a significant risk in the damages phase of a trial, given the battle between the experts and the unusually difficult issues in valuing an earn-out formula. Prior to discovery, at the motion to dismiss hearing, the Court framed the issue of how the fairness of the price will be determined, specifically holding:

> If you wish to complain about the fairness of an economic transaction consummated by the board of directors, you're allowed to do that. But you actually have to challenge the fairness of the exchange as of the time that that exchange was entered into based on the information that was reasonably available and knowable to the directors, as of the time they took it . . . .

August 22, 2012 Tr. at 6. Then-Chancellor Strine also suggested that the Court would look at the market for earn-outs in an effort to reform the Earn-Out terms to market. *See* July 24, 2013 Tr. at 9 ("The most obvious remedy would be something like an adjustment to the [Earn-Out] formula to market, if there is a market in earnouts"). However, both parties' financial experts agreed that valuing

the potential damages at the time of the Transaction is not a simple exercise because this Transaction is unique and there is ***no*** market for earn-outs. Cornell Tr. at 94:25-95:11; Coffman Tr. at 29:10-20.

At the meeting where the Independence Committee and Board approved the Transaction, Perella Weinberg provided a presentation that estimated a range of Earn-Out payments of $325 million to $575 million, with a midpoint of $463 million as the present value of what Oracle expected to pay under the Earn-Out. In attacking the fairness of the price, it would be necessary to show that the expected Earn-Out payment fell above a range that could be considered "fair." Plaintiffs' ability to establish that fact was far from certain and the parties advocated differing methodologies to address the fairness of the expected Earn-Out amount.

Plaintiffs were prepared to argue at trial that the appropriate way to value the Earn-Out would be to calculate Pillar's fair market value at the time of the Transaction and compare it to what the Board believed, given all of the information provided to it, the present value of the Earn-Out would be on the day the Board approved the Transaction. Plaintiffs' expert Coffman employed a DCF analysis to calculate Pillar's stand-alone value as of the date of the Transaction. Coffman's analysis led to a valuation range for Pillar of no more than $8 million and as low as negative $51 million. Thus, under Plaintiffs' damages methodology,

and using the top end of the range for Pillar's stand-alone value as of the time the Board approved the Transaction, the mid-point of what the Board expected to pay under the Earn-Out was $455 million ($463 million minus $8 million) more than what Pillar was actually worth on a stand-alone basis.

Defendants' valuation expert Cornell took a different approach to evaluating the fairness of the Earn-Out. He calculated the amount Oracle expected to pay under the Earn-Out using ten hypothetical compound annual growth rates ("CAGR") for Pillar, and compared those values to Pillar's enterprise value as part of Oracle. Cornell calculated Pillar's hypothetical enterprise value as part of Oracle by using a DCF analysis and reviewing purportedly "Comparable Transactions." Cornell's Comparable Transactions analysis involved comparing the multiples observed in contemporaneous transactions with the expected growth rates of the acquired companies and applying the observed multiples to the hypothetical CAGR scenarios that Cornell created. In his DCF analysis, Cornell determined the present value of the projected free cash flows under the same ten hypothetical CAGR scenarios. Under Cornell's analysis, the fact that the value of Pillar under these analyses exceeded the estimated net Earn-Out payment demonstrated that the Earn-Out was fair to Oracle. Cornell did not offer any opinion on Pillar's fair-market value at the time of the Transaction.

If the Court were to adopt Cornell's approach, it would likely find the damages to Oracle to be far less than those calculated by Coffman. However, Plaintiffs believe that Defendants faced a significant risk of having the Court give Cornell's opinion minimal or no weight for the reasons set forth in Plaintiffs' Motion to Strike.

Assuming the Court adopted Plaintiffs' valuation model, in order to prove that Oracle was damaged by the Transaction, Plaintiffs would still need to demonstrate that the assumptions underlying Coffman's valuation of Pillar were proper. Defendants challenged several of Coffman's inputs as follows:

(a) Discount Rate

In calculating the discount rate, the primary difference between the parties was whether to apply a "venture capital" discount rate to Pillar due to its early stage of development. Coffman observed that because Pillar had never been profitable and needed continued financing from Ellison, it is appropriate to classify Pillar as a second stage venture capital company. Based upon that classification, Coffman opined that it would be appropriate to apply a venture capital discount rate of 40% to Pillar. Coffman's selection of a venture capital discount rate was supported by evidence obtained in discovery from Pillar's long-time advisor, Duff & Phelps, from Pillar's former CFO, and from Independence Committee member,

Bingham. Cornell disagreed with Coffman's selection of a venture capital discount rate to value Pillar. Instead, Cornell calculated Pillar's discount rate using the capital asset pricing model ("CAPM") and opined that applying a discount rate of 14% in a DCF analysis was appropriate. Cornell's discount rate was similar to Perella Weinberg's selected rate of 15%.

The difference in the discount rate applied by Coffman (40%) and Cornell (14%) has a significant impact on the valuation of Pillar. Holding all other metrics the same but applying a discount rate of 15% would increase the valuation using Coffman's assumptions by tens if not hundreds of millions of dollars.

(b) Allocation of Synergies

Another primary area of dispute between the parties and their experts was whether Oracle or Pillar should have received most of the value of the synergies created by the Transaction.

Coffman observed that Pillar was in a desperately weak negotiating position relative to Oracle because: (1) Pillar was unprofitable and required large capital infusions to survive; (2) Oracle was a Fortune 100 company; (3) no other company was willing to finance or acquire Pillar; and (4) Oracle had viable alternatives to Pillar. Due to Pillar's weak negotiating leverage, Coffman opined that Oracle should capture most, if not all, of the synergistic value of the Transaction.

In his rebuttal opinion, Cornell opined that Oracle had no alternatives to Pillar. According to Cornell, the alternative acquisition targets did not provide technology as attractive as Pillar's, and Oracle's building its own product would be too costly and time consuming. Cornell also opined that Pillar did not need to be acquired by Oracle because Ellison could have continued to fund Pillar or could have sold Pillar to another company. Cornell also opined that target companies traditionally receive the majority of synergistic value in transactions. Changing the allocation of synergies between Oracle and Pillar could affect the fair market value of Pillar by hundreds of millions of dollars.

In sum, all of these factors demonstrated that success in the litigation was far from certain.

C. THE EXPERIENCE AND OPINION OF COUNSEL AND THEIR CLIENTS FAVORS APPROVAL OF THE SETTLEMENT

Delaware courts consider the opinion of experienced counsel in determining a settlement's fairness. *Polk*, 507 A.2d at 536. Plaintiffs' Counsel, G&E and C&T, are each well known to the Court. The senior-most attorneys from both firms litigated the case, weighed the merits of Plaintiffs' claims extensively and immersed themselves thoroughly in the facts of the case in preparation for trial. They view the Settlement as fair, reasonable and in the Company's best interest.

Plaintiffs' Counsel determined this only after conducting extensive discovery, including reviewing over 400,000 pages of documents; taking 13 fact depositions; taking and defending expert depositions; defending client depositions; conferring with a retained financial expert on several aspects of the Transaction; fully analyzing the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses; fully preparing for trial; and engaging in multiple sessions of arm's-length negotiations with opposing counsel, including two separate mediations. Accordingly, Plaintiffs' Counsel's opinion is informed and supports approval of the Settlement, and Plaintiffs respectfully submit that the Settlement is an excellent result, fully meriting the Court's approval. *See Neponsit*, 405 A.2d at 101 (approving settlement based, in part, on plaintiff's counsel's conclusion, reached after conducting pretrial discovery, that the settlement was fair and in the class's best interest).

D. THE BENEFICIARY OF THE SETTLEMENT SUPPORTS APPROVAL OF THE SETTLEMENT AND THERE HAVE BEEN NO OBJECTIONS

Plaintiffs are not the only proponents of the Settlement as being in the best interest of Oracle and its public stockholders. Unlike the typical derivative case where the corporation is a party in name only, here Oracle and its counsel were direct participants in the settlement process and Oracle's counsel is a signatory to

the Stipulation. The fact that Oracle – the beneficiary of the Settlement – has consented to its terms validates the fairness and reasonableness of the result and weighs heavily in favor of Court approval.

Moreover, the fact that to date, there have been no objections to the Settlement from Oracle stockholders, weighs in favor of approval of the Settlement.[9] Plaintiffs' Counsel and Oracle each posted the Notice of Settlement and the Stipulation of Settlement on their respective websites on or before June 17, 2014. On June 23, 2014, Defendants published the Court-approved notice in *Investor's Business Daily*.

II. UNDER THE CIRCUMSTANCES OF THIS CASE, THE REQUESTED ATTORNEYS' FEES AND EXPENSES ARE REASONABLE AND SHOULD BE AWARDED IN FULL

Plaintiffs' Counsel respectfully request that they be awarded attorneys' fees and expenses totaling $15 million for their efforts in this litigation – an amount that was negotiated between the parties and which Oracle has agreed to pay.[10] The standards for determining an award of counsel fees and expenses in corporate

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[9] The objection deadline is July 22, 2014. If any objections are received between now and then, Plaintiffs' Counsel will respond to those objections in their reply brief, to be filed on or before August 7, 2014.

[10] A portion of this will be reimbursed by the D&O Insurers.

litigation under Delaware law are well established. *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989); *Seinfeld v. Coker*, 847 A.2d at 333. Fees are awarded when the litigation results in a benefit to a corporation or its stockholders. *Chrysler Corp. v. Dann*, 223 A.2d 384, 386 (Del. 1966). As this Court explained in *Julian v. Eastern States Constr. Service, Inc.,* C.A. No. 1892, 2009 WL 154432, at *1 (Del. Ch. Jan. 14, 2009), where "a derivative plaintiff . . . succeeds in conferring a monetary benefit on the corporation" the Court may award that plaintiff "his reasonable attorneys' fees and expenses in obtaining that benefit."

The amount of the award is left to the broad discretion of the Court. *Tandycrafts*, 562 A.2d at 1165; *Chrysler Corp*., 223 A.2d at 386, 389; *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980). There is "no set method or fixed formula to assess an application for attorney's fees," and Delaware courts instead "examine the totality of [the] circumstances." *In re Golden State Bancorp Inc. S'holders Litig*, C.A. No. 16175, 2000 WL 62964, at *3 (Del. Ch. Jan. 7, 2000).

In determining the amount of attorneys' fees to award, the Court typically applies the well-established *Sugarland* factors. In exercising its discretion in setting a fee, this Court should consider: (1) the benefits achieved in the action; (2)

the efforts of counsel and the time spent in connection with the case; (3) the contingent nature of the case; (4) the difficulty of the litigation; and (5) the standing and ability of counsel. *Sugarland,* 420 A.2d at 147-50; *Julian*, 2009 WL 154432, at *2. The Court may also consider fee awards in other cases where similar benefits were achieved. *Dow Jones & Co. v. Shields*, C.A. No. 184, 1991, 1992 WL 44907, at *3 (Del. Ch. Mar. 4, 1992) (looking at similar awards of counsel fees and concluding the award was not excessive when compared to other awards). All of these factors fully support the requested award of $15 million in attorneys' fees and expenses.

A. THE BENEFITS ACHIEVED

It is well-settled that the benefit achieved by the litigation should be accorded the greatest weight in determining the fee to be awarded. *Sugarland*, 420 A.2d at 149-50; *Franklin Balance Sheet Inv. Fund v. Crowley*, C.A. No. 888, 2007 WL 2495018, at *8 (Del. Ch. Aug. 30, 2007) ("courts assign the greatest weight to the benefit achieved by the litigation"); *Julian*, 2009 WL 154432, at *2 (same); *In re Cox Radio, Inc. S'holders Litig.*, C.A. No. 4461-VCP, 2010 WL 1806616, at *20 (Del. Ch. May 6, 2010) ("the size of the benefit being of paramount importance").

Here, Plaintiffs' Counsel's efforts achieved a significant monetary benefit, securing for Oracle a $440 million benefit through Ellison's agreement to pay back to Oracle 95% of the amounts paid under the Earn-Out. This benefit accrues directly to Oracle and indirectly to its shareholders. As this Court explained in *Carlson v. Hallinan*, 925 A.2d 506, 547 (Del. Ch. 2006), in the "typical derivative suit" where a corporation obtains a monetary recovery, "the corporation is the direct beneficiary in the sense that it receives the damages, while the corporation's shareholders benefit indirectly from the increased value of the corporation. The plaintiff thus has secured a benefit for the corporation and all of its shareholders." Here, Oracle benefits directly, and its shareholders indirectly, from the repayment by Ellison of 95% of the Earn-Out.

This Settlement provides for one of the largest benefits achieved in shareholder derivative settlements in Delaware Chancery Court – an expected saving by Oracle of $440 million from the $463 million (midpoint of the range) that Oracle's Board approved as the price to be paid for Pillar. Additionally, the benefit provided by the Settlement was achieved shortly before trial (scheduled to begin August 12, 2014) and after almost three years of litigation.

B. THE REQUESTED FEE IS WITHIN THE RANGE AWARDED IN OTHER SHAREHOLDER LITIGATION SETTLING AFTER SIGNIFICANT LITIGATION

In determining the appropriate amount of fees to award, the Court should apply a percentage to the monetary benefit obtained in the litigation. As this Court explained in *Julian*:

> When the benefit [achieved in the litigation] is quantifiable, such as where the plaintiff's litigation secured a significant financial benefit for the corporation "that they probably could not have achieved otherwise," courts typically apply a "percentage of the benefit" approach.

2009 WL 154432, at *2 (quoting *Franklin Balance Sheet*, 2007 WL 2495018, at *8, 10).

The requested award of $15 million in fees and expenses represents only 3.4% of the $440 million benefit. This is far below the parameters of awards that the Court of Chancery has found to be reasonable in other complex shareholder litigation. *See, e.g., Berger v. Pubco Corp.*, C.A. No. 3414, 2010 WL 2573881, at *1 (Del. Ch. June 23, 2010) (awarding 26% after a lengthy litigation "and not a quick settlement" and noting that the award was "at the bottom of the 25-33% range that is found in many Court of Chancery cases"); *Gatz v. Ponsoldt*, C.A. No. 174-CC, 2009 WL 1743760, at *3 (Del. Ch. June 12, 2009) (awarding 33% and finding that it was "within the range of reasonable fee awards in other class action

cases"); *In re Freeport McMoran Sulpher Inc. S'holder Litig.*, C.A. No. 16729-N (Del. Ch. Apr. 20, 2006) (TRANSCRIPT) (awarding 33 1/3% fee for monetary fund obtained on the eve of trial); *Teachers Ret. Sys. Of La. v. Greenberg, et al.*, C.A. No. 20106-VCS (Del. Ch. Dec. 17, 2008) (TRANSCRIPT and ORDER) (after acknowledgment that plaintiffs' counsel "worked very hard and are singularly responsible for producing this benefit," awarding fee of 22.5% of benefits obtained on the eve of trial); *Crowhorn v. Nationwide Mutual Ins. Co.*, 836 A.2d 558, 564 (Del. Super. 2003) (awarding 33% of a $5 million benefit following motions to dismiss and extensive discovery); *In re TD Banknorth S'holders Litig.*, C.A. No. 2557-VCL, at 12-14 (Del. Ch. June 25, 2009) (ORDER) (awarding 27.5% of the $50 million settlement fund, plus nearly $1 million in expenses for pre-trial settlement).[11]

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[11] *See also Marie Raymond Revocable Trust v. MAT Five, LLC*, 980 A.2d 388, 410 n. 71 (Del Ch. 2008) (approving fee request of 14% of the benefit achieved, citing multiple cases where the Court has approved fee requests of 30% or more of the benefits of a settlement); *Franklin Balance Sheet*, 2007 WL 2495018, at *13 (awarding 15% of total claimed damages, and 5% "of the excess benefit"); *In re Berkshire Realty Co., Inc. S'holder Litig.*, C.A. No. 17242 (Del. Ch. Aug. 10, 2004) (ORDER) (fee equal to 30% of $6.25 million fund, plus expenses); *In re Intek Global Corp. S'holders Litig.*, C.A. No. 17207-VCS (Del. Ch. Apr. 24, 2000) (ORDER) (fee equal to 33% of $4.3 million settlement) (cited in *Seinfeld*, 847 A.2d at 357 n.31); *In re Home Shopping Network, Inc. S'holder Litig.*, C.A. No. 12868 (Del. Ch. Jan. 24, 1995) (ORDER) (fee equal to 30% of $13.925 million

Similarly, in *In re Telecorp. PCS, Inc. Shareholder Litigation*, C.A. No. 19260-VCS (Del. Ch. Aug. 20, 2003) (TRANSCRIPT and ORDER), the Court awarded fees in the amount of 30% of a $47,000,000 cash settlement arrived at shortly before trial. The fee was contested and the Court flatly rejected the objector's argument that there should be a declining percentage when the recovery is large.

Likewise, in *In re American International Group, Inc. Consolidated Derivative Litigation*, C.A. No. 769-VCS, Strine, V.C. (Del. Ch. Jan. 25, 2011) (TRANSCRIPT), the Court awarded plaintiffs' counsel a fee award equal to 22.5% of the $90 million common fund in a derivative settlement. In doing so, the Court explained:

> [S]ometimes it's forgotten when folks see things like this is that big fees, when much is achieved, they're deserved, particularly when much is at risk. The plaintiffs as a collective put in thousands of hours which could have come to naught.
>
> …
>
> And so it's a big fee, but I think it's important – and I've said this before and I will continue to say it – that, you know, you don't reduce people's fees because they gain much. You should, in fact, want to create an incentive for real litigation. That's what benefits diversified

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settlement fund); *In re Best Lock Corp. S'holders Litig.*, C.A. No. 16281-CC, at 11-12 (Del. Ch. Oct. 16, 2002) (TRANSCRIPT) (30% of projected fund worth $55 to $71 million resulting from pre-trial settlement).

> investors, when people will take, you know, good cases and actually prosecute them and take risk. What doesn't benefit investors is simply the filing of a case every time there's a valuable business opportunity and simply having a handout and getting a toll. *Id.* at 9:17-10:17.

C. THE EFFORTS OF COUNSEL

The time and effort of counsel serves as a "backstop check" on the reasonableness of a fee award. *Franklin Balance Sheet,* 2007 WL 2495018, at *14; *see also In re Del Monte Foods Co. S'holders Litig.*, C.A. No. 6027, 2011 WL 2535256, at *12 (Del. Ch. June 27, 2011) (time and effort serves as a "cross-check"). This factor has two separate components – time and effort – with effort being more important. *Del Monte*, 2011 WL 2535256, at *12-13.

In total, Plaintiffs' Counsel here expended 10,351.50 hours in the prosecution and settlement of this Action through June 30, 2014. *See* Affidavit of Megan D. McIntyre ("McIntyre Aff.") at ¶3; Affidavit of Pamela S. Tikellis ("Tikellis Aff.") at ¶2. As explained above, the services provided by Plaintiffs' Counsel included: making Section 220 demands; investigating the relevant facts; drafting and amending detailed complaints; reviewing and analyzing over 400,000 pages of discovery from Defendants and third parties; researching the applicable law to formulate litigation and negotiation strategies; working with a financial expert to evaluate the fairness of the Transaction; conducting seventeen

depositions over the course of five months, including two expert depositions; preparing for and participating in several mediation sessions; extensive briefing and arguments on, *inter alia*, motions to dismiss, to compel, for a briefing schedule, and for summary judgment; preparing for trial; negotiating the terms of the Settlement; and preparing the Settlement documents. The mediations and negotiations over the Settlement alone were protracted and complicated, with the initial settlement being terminated [redacted] (requiring Plaintiffs' Counsel to cut their fee request in order to retain the favorable settlement for Oracle and its shareholders).

As explained in *Del Monte*, more important than the hours is "what plaintiffs' counsel actually did." In that case, as in this case, "the answer is 'quite a bit.'" 2011 WL 2535256, at *13. Plaintiffs' Counsel respectfully submit that the services they rendered were of a high quality, and were of a sort that could have been rendered only by lawyers who are well-qualified and highly experienced in prosecuting shareholder litigation.

Plaintiffs' Counsel also expended their time efficiently. As reflected in the affidavits of counsel, Plaintiffs' Counsel invested substantial time and expenses to prosecute this action, and the requested fee is reasonable when viewed in comparison to these hours and expenses. At Plaintiffs' Counsel's current hourly

billing rates, the "lodestar" value of their time is $5,402,399.25, based on 10,351.50 hours of work. Plaintiffs' Counsel's litigation expenses total $532,800.06, leaving $14,467,199.94 of the requested $15 million to be allocated to fees. The fee portion of the requested award ($14,467,199.94) therefore represents an effective hourly rate of $1,398, which is below the implied hourly fee awards in other cases. *See, e.g., In re GSI Commerce, Inc. S'holder Litig.*, C.A. No. 6346-VCN at 23-27 (Del. Ch. Nov. 15, 2011) (TRANSCRIPT), at 20, 25 (finding case was "vigorously litigated" and awarding fee which amounted to approximately $1900 per hour); *Berger v. Pubco Corp.*, 2010 WL 2573881, at *1 (awarding fee which translated to an average hourly rate of $3,450, which "is nestled within the range of hourly rates found among Court of Chancery monetary-benefit cases" and noting the benefit was realized "only at the conclusion of lengthy and thorough litigation by counsel"); *In re Genentech, Inc. S'holder Litig.*, C.A. No. 3911-VCS (Del. Ch. July 9, 2009) (TRANSCRIPT), at 8 (awarding fee at over $5,400 per hour); *Seinfeld*, 847 A.2d at 339 (finding "counsel performed at the highest professional level" and awarding in excess of $2,600 per hour). *See also Franklin Balance Sheet Inv. Fund*, 2007 WL 2495018, at *14 (awarding fee of $4,023 per hour); *Loventhal v. Silverman*, C.A. No. 306-N (Del. Ch. Aug. 19, 2004) (ORDER) (awarding fee and expenses of $2.2 million, which equated to

approximately $2,400 per hour); *In re AXA Fin. Inc. S'holders Litig.*, C.A. No. 18268, 2002 WL 1283674, at *7 (Del Ch. May 22, 2002) (fee award represented hourly rate of more than $2,630); *In re NCS Healthcare S'holders Litig.*, C.A. No. 19786, 2003 WL 21384633, at *3 (Del. Ch. May 28, 2003) (fee represented hourly rate of approximately $3,030 per hour); *Dagron v. Perelman*, C.A. No. 15101-CC, at 49, 51 (Del Ch. Aug. 29, 1997) (TRANSCRIPT) (awarding fee equivalent to $3,500 per hour).

Additionally, the $14,467,199.94 fee portion represents a 2.68 multiple of Plaintiffs' Counsel's lodestar, which is below the lodestar multiple of fees awarded by the Court of Chancery in many cases. *See, e.g., In re Genentech,* (TRANSCRIPT), at 7, 42, 48 (awarding a fee where "the multiple of the lodestar is something like 11.3" following "hard fought litigation" and "in light of the difficulty of the issues"); *Teachers' Ret. Sys. Of La. v. Greenberg,* C.A. No. 20106-VCS (Del. Ch. Dec. 17, 2008) (ORDER) (noting the extensive work plaintiffs put into the case and awarding fee that was more than 3 times counsel's lodestar after case settled on the "eve of trial"); *Louisiana Mun. Police Employees' Ret. Sys. v. Crawford*, C.A. No. 2635-CC (Del. Ch. June 8, 2007) (ORDER) (commenting on the "vigorous discovery" and the "great deal of effort" put into the case by plaintiff's counsel and awarding $20 million fee representing a lodestar multiplier

of 6.5); *Cal-Maine Foods, Inc. v. Pyles*, 858 A.2d 927, 930 (Del. 2004) (affirming Chancery Court's award of a fee representing approximately three times the normal hourly rates of the firms involved, a "premium that the Court found reasonable"); *In re Digex, Inc. S'holder Litig.*, C.A. No. 18336 (TRANSCRIPT) at 141-47 (Del. Ch. Apr. 6, 2001) (noting that the "case involved complex legal questions and required acute legal skills" and an awarding a fee representing lodestar multiplier of 9).

D. THE COMPLEXITIES AND COMPLICATIONS OF THE CASE WERE UNUSUAL

As the Court is well aware, the claims in this case involved complex and disputed questions of fact and law, the settlement of which favors approval of the requested fee award. The issues concerning the Earn-Out were novel – few cases anywhere have addressed an earn-out at all, and no Delaware court has previously addressed the fairness of an acquisition based on an earn-out formula. Plaintiffs and Defendants each argued in their respective motions to strike the other side's expert that the opposing expert had no experience or expertise in earn-outs. *See* Plaintiffs' Opening Brief In Support Of Their Motion To Strike Defendants' Expert Professor Bradford Cornell And To Preclude Trial Testimony By Greg Huffaker ("Plaintiffs' Opening Brief To Strike"), at 8-11; Defendants' Opening

Brief In Support Of Their Motion In Limine To Exclude The Expert Reports And Testimony Of Chad Coffman, at 16-20. Additionally, as Plaintiffs also argued, Defendants' expert had never even seen a 100% earn-out as used in this case, nor is there any market for such an earn-out. *See* Plaintiffs' Opening Brief To Strike, at 10. Quite clearly, this litigation presented novel and complex issues. This factor weighs in favor of approving the requested fee. *See Del Monte*, 2011 WL 2535256, at *13 (awarding fees of 33% of fund, noting that "[t]his was not cookie cutter deal litigation . . . . The relative complexity of the litigation supports an award at the higher end of the range."); *cf. Franklin Balance Sheet,* 2007 WL 2495018, at *13 (awarding fees of 15% of claimed damages even though Court did "not find that this case presented particularly novel or complex issues").

E. THE CONTINGENT NATURE OF THE FEE

Plaintiffs' Counsel undertook the representation on a contingency basis, with the understanding that they would devote many hours of hard work to the prosecution of this Action without any assurance of receiving compensation for their services, or even reimbursement of out-of-pocket expenses. Additionally, due to the complexity of the issues in the case, Plaintiffs' Counsel faced a very real risk that they would not recover anything for the Company. *See S. Muoio & Co. LLC v. Hallmark Entm't Invs. Co.*, C.A. No. 4729-CC, 2011 WL 863007 (Del. Ch. Mar.

9, 2011) (following a trial on derivative claims, concluding that the challenged recapitalization was entirely fair and entering judgment in favor of defendants after trial); *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693 (Del. Ch. 2005) (following a thirty-seven day trial on derivative claims, concluding that the director defendants did not breach their fiduciary duties or commit waste and therefore entering judgment in favor of the defendants as to all claims). Delaware courts recognize that where, as here, counsel's compensation is contingent on achieving a successful result, a premium over counsel's hourly rate is appropriate. *See Chrysler Corp.*, 223 A.2d at 389 (affirming award of attorneys' fees in part "in consideration of the contingent nature of the litigation"); *In re First Interstate Bancorp S'holders Litig.*, 756 A.2d 353, 363 (Del. Ch. 1999) (in considering award of attorneys' fees, court considers factors including "'the contingent nature of the case'") (citations omitted); *In re Vitalink Commc'ns Corp. S'holders Litig.*, C.A. No. 12085, 1991 WL 238816, at *17 (Del. Ch. Nov. 8, 1991) ("In all fairness, the contingent nature of [counsel's] fee agreement demands a higher fee for [counsel's] work").

F. THE STANDING AND ABILITY OF COUNSEL

G&E and C&T are both experienced firms with successful track records in the field of shareholder class and derivative litigation. G&E's and C&T's

qualifications and experience are already well known to the Court. The excellent reputations and skill of the law firms representing the Defendants, including Richards, Layton & Finger, P.A., Morris Nichols Arsht & Tunnell, and Davis Polk & Wardwell LLP are also well-known to this Court. As the Court has witnessed, all of these firms defended their clients' interests vigorously. The ability of opposing counsel enhances the significance of the results Plaintiffs' Counsel were able to achieve, and thus favors approval of the request for attorneys' fees.

G. THE EXPENSES INCURRED WERE REASONABLE GIVEN THE CIRCUMSTANCES OF THIS CASE

Plaintiffs' Counsel incurred a total of $532,800.06 in out-of-pocket litigation expenses. *See* McIntyre Aff. ¶¶4-6; Tikellis Aff. ¶3. These expenses were reasonably and necessarily incurred in the pursuit of litigation on behalf of Oracle. *Id.* Over 54% of these expenses, $290,226.97, were expert fees paid to Chad Coffman and his firm. The remaining costs include such items as mediation expenses; duplication costs; computerized research costs; electronic filing fees; costs associated with maintaining an electronic discovery database; travel and lodging expenses (most of the depositions occurred in California where Oracle's officers and directors were located); court reporting services; postage; and

telephone charges. *See id.* Plaintiffs' Counsel and Plaintiffs respectfully submit that reimbursement of these expenses should be approved.

H. PUBLIC POLICY CONSIDERATIONS

"It is important for shareholders to bring derivative suits because these suits . . . operate as an *ex post* check on corporate behavior." *Seinfeld*, 847 A.2d at 333. *See also IBEW Local Union 98 v. Noven Pharms., Inc., et al.*, C.A. No. 4732-CC (TRANSCRIPT) at 55 (Del. Ch. Dec. 8, 2009) (discussing "the importance of stockholder litigation in terms of policing the behavior of fiduciaries."). Often, however, the costs of obtaining adequate representation on an hourly fee basis will outweigh an individual shareholder's economic interest in the dispute. *Seinfeld*, 847 A.2d at 333. Accordingly, shareholders must have reasonable access to counsel with the ability and experience to analyze complex corporate issues, who are willing to take on derivative cases on a contingent fee basis, advancing all expenses. *See Julian,* 2009 WL 154432, at * 2 ("The public policy of Delaware includes 'provid[ing] an incentive to stockholders to bring a derivative suit to enforce the rights of the corporation as a whole under circumstances in which filing suit to enforce only their individual rights would be prohibitively costly or otherwise impracticable, thereby leaving unchallenged actionable wrongs against the corporation.'") (quoting *Carlson*, 925 A.2d at 547-48).

Attorneys' fee awards should reflect the public policy goal of encouraging competent and experienced counsel to represent plaintiffs in these types of cases. *See generally Allied Artists Pictures Corp v. Baron*, 413 A.2d 876, 878 (Del. 1980) (awarding attorneys' fees even though defendant corporation took steps to moot litigation by producing same or similar benefit sought by shareholder plaintiffs, in order to "prevent frustration of the remedial policy of providing professional compensation for such suits when meritorious"). As explained in *Seinfeld*:

> The greater and more certain the fee, the greater the incentive for plaintiffs' lawyers to bring meritorious suits.
>
> Fee awards thus function as *ex post* judgments that will have the effect of either encouraging or discoursing future lawsuits. It will encourage them if it offers plaintiffs' lawyers the opportunity to make more money than they would make doing something else, that is, their lost opportunity cost. For most lawyers, opportunity costs are measured by their hourly rate. If the fee is large enough to cover both their lost opportunity costs and the risks associated with bringing the suit, as well as provide a premium, it should induce monitoring behavior.

Seinfeld, 847 A.2d at 333-34. *See also Ryan v. Gifford*, CA. 2213, 2009 WL 18143, at *13 (Del. Ch. Jan. 2, 2009) ("This Court has recognized that an attorney may be entitled to a much larger fee when compensation is contingent than when it is fixed on an hourly or contractual basis."); *Franklin Balance Sheet*, 2007 WL 2495018, at *12 ("Fee awards should encourage future meritorious lawsuits by compensating the plaintiffs' attorneys for their lost opportunity costs (typically

their hourly rate), the risks associated with the litigation, and a premium."); *In re Plains Resources Inc.*, C.A. No. 071-N, 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005) ("[T]he plaintiffs' counsel were all retained on a contingent fee basis, and stood to gain nothing unless the litigation was successful. It is consistent with the public policy of Delaware to reward this risk-taking in the interests of shareholders.").

This is a meritorious case, and through their efforts, Plaintiffs' Counsel secured a substantial monetary benefit. Thus, Plaintiffs' Counsel are entitled to an award of fees and expenses. As explained herein, Plaintiffs' Counsel's application for an award of $15 million in attorneys' fees and expenses – which Oracle has agreed to pay – is reasonable under all of the circumstances, is consistent with awards in other Court of Chancery cases, and warrants approval to promote the public policy of encouraging competent, experienced counsel to pursue important shareholder litigation.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that their motion for approval of the proposed Settlement and an award of $15 million in attorneys' fees and expenses should be granted in its entirety.

Dated: July 9, 2014 Respectfully submitted,

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