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March 1, 2010

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The Honorable J. Travis Laster
New Castle County Courthouse
500 North King Street
Wilmington, Delaware 19801

Re: *In re Revlon Inc. Shareholders Litigation,*
Consol. C.A. No. 4578-VCL

Dear Vice Chancellor Laster:

Defendants in this action submit this letter in connection with the pending Motion for Leadership Designation.

Defendants take no position with respect to which plaintiffs or plaintiffs' lawyers should assume leadership of the consolidated action. Defendants' only interest is to ensure that whoever is designated Lead Counsel be bound by the contractual obligations plaintiffs have already made, and that, accordingly, Lead Counsel undertake in good faith the requirements of the binding Memorandum of Understanding, as amended, entered into by the parties to the case, and that the Court enter an appropriate order requiring such good-faith compliance with the terms of that binding agreement.

Background

On April 20, 2009, Revlon, Inc. ("Revlon") announced that MacAndrews & Forbes Holdings ("MacAndrews"), Revlon's largest stockholder, had proposed a merger transaction with Revlon. Over the next two weeks, four lawsuits were filed in this Court challenging the merger proposal. On June 24, 2009, Chancellor Chandler entered an order consolidating the four actions. Ex. 1. The Consolidation Order designated Wolf Popper LLP and Rigrodsky & Long P.A. as co-lead counsel for plaintiffs and authorized those firms to set all policy and otherwise control the consolidated litigation. *Id.* at ¶¶ 5, 8. In reliance on that Order and the authority it vested in co-lead counsel, defendants thereafter treated co-lead

counsel as empowered to direct the consolidated action on behalf of all plaintiffs and the putative class of Revlon stockholders.

On August 10, 2009, defendants and co-lead counsel reached an agreement to settle the consolidated action. The terms and circumstances of the settlement are detailed in a Memorandum of Understanding dated August 10, 2009, Ex. 2, and an Amendment No. 1 to the Memorandum of Understanding dated September 23, 2009, Ex. 3 (collectively, the “MOU”). The MOU set forth that the proposed transaction would be entirely different from the transaction originally proposed by MacAndrews. Under the terms of the MOU, the proposed transaction became a voluntary exchange offer (the “Exchange Offer”) rather than a mandatory merger—that is, Revlon stockholders would have the option of exchanging their Revlon common shares for preferred shares or, in the alternative, retaining their Revlon common shares.

As set forth below, the transaction contemplated by the MOU contained terms that benefited each constituency plaintiffs purported to protect:

First, for the benefit of those Revlon stockholders who decided to participate in the exchange, the MOU provided that the preferred stock available in the Exchange Offer would carry the following terms:

- a liquidation preference of \$5.21 per share (a 33% premium over the pre-announcement closing price); and
- the right to receive additional consideration, up to a maximum of \$12.00 per share in the aggregate, if Revlon engages in a specified change-of-control transaction within three years.

See Ex. 3 at 5.

Second, for the benefit of Revlon itself (and thus indirectly for the benefit of those stockholders who decided to retain their Revlon common shares instead of participating in the exchange), the MOU reflected an agreement that Revlon would restructure its debt on the following favorable terms:

- for each share of common stock exchanged in the offer, MacAndrews would contribute to Revlon \$5.21 of the outstanding principal of a Senior Subordinated Term Loan (the “term loan”) that Revlon’s wholly owned subsidiary owed to MacAndrews, up to a maximum of \$105.43 million (and be issued one share of Revlon common stock in

exchange), thereby dramatically reducing Revlon's outstanding debt load; and

- the maturity date of the remaining term loan owed to MacAndrews would be extended from August 1, 2010 to the fifth anniversary of the consummation of the Exchange Offer at an interest rate of 12%, further improving Revlon's debt profile.

See id.

Third, for the particular benefit of Revlon's non-tendering stockholders, the MOU provided extensive "back-end" protections for a four-year period after the consummation of the Exchange Offer that obligated Revlon to:

- use its best efforts to maintain the listing of its common stock on the NYSE or another national exchange or to otherwise provide a market for the shares;
- voluntarily furnish all periodic and other reports required by the SEC should it become no longer subject to the reporting requirements of the Exchange Act;
- maintain a majority of independent directors on its Board of Directors; and
- provide certain other protections with respect to the approval of mergers and other transactions.

See Ex. 2 at 7; Ex. 4 (Amendment No. 7 to Schedule TO (Sept. 25, 2009)) at Ex. (a)(1)(J), 20–21.

In connection with the Exchange Offer and as required by federal law, Revlon filed on September 24, 2009 a Schedule TO, including a Third Amended and Restated Offer to Exchange. Ex. 4 at Ex. (a)(1)(J). These disclosure documents included the estimates of Revlon's full-year 2009 financial performance that Revlon provided to the financial advisors involved with the proposed transaction. *Id.* at 80–81. As part of the settlement, Revlon included in the disclosure documents certain other information requested by plaintiffs, reflected in Exhibit B to the MOU. Ex. 2 at Ex. B. The MOU also provided for a broad release of all claims that had or could have been asserted in the consolidated actions. *Id.* at 10–13.

The Exchange Offer closed on October 8, 2009. In reliance on and as required under the MOU, defendants performed their obligations in full. The

Exchange Offer was voluntary; the preferred securities exchanged included the enhanced economic terms and protections provided for in the MOU; MacAndrews made the agreed contributions to the Revlon debt, thereby improving Revlon's debt profile; and defendants legally bound themselves to provide the back-end protections for the unaffiliated non-tendering stockholders and all the other provisions of the MOU.

On October 29, 2009, Revlon announced its third-quarter financial results, which were—as co-lead counsel have expressly conceded, *see* Am. Compl. ¶ 73—entirely in line with financial projections disclosed in the Exchange Offer disclosure documents. Revlon's stock price increased following the October 29 announcement.

With these market developments in hindsight, plaintiffs Gutman and Corneck filed complaints alleging that the Exchange Offer disclosure documents improperly failed to disclose information about Revlon's 2009 third-quarter results. At the same time, co-lead counsel indicated that they were not prepared to proceed with the settlement memorialized in the MOU and instead filed an amended complaint making similar Delaware-law disclosure allegations. The purported claims raised in these filings fall within the scope of the release contemplated by the MOU. *See* Ex. 2 at 10–11 (¶ 6(d)).

Defendants then filed the Motion to Enforce Settlement Agreement, which sought from the Court an order requiring co-lead counsel to perform their obligations under the MOU. Ex. 5. After this filing, defendants and co-lead counsel engaged in further discussions, which resulted in co-lead counsel's agreement to undertake confirmatory discovery as contemplated by the MOU and to present the settlement to the Court consistent with the MOU. On January 27, 2010, the Court denied the Stipulation and Proposed Order reflecting this agreement (the "Stipulation"), ordering that all outstanding cases be consolidated and that plaintiffs' leadership structure be resolved prior to any further activity in the case. Ex. 6.

Statement of Position

Defendants express no view on the pending Motion for Leadership Designation. On the legal, equitable, and policy grounds enumerated below and on the grounds outlined in their Motion to Enforce, however, defendants request that the Court enter an appropriate Order requiring whoever is designated as ongoing Lead Counsel to perform the obligations that the present co-lead counsel assumed under the MOU, including conducting the confirmatory discovery anticipated under the MOU and presenting a settlement to the Court consistent with the MOU.

1. The MOU is a binding contract. *See, e.g.*, Ex. 2 at 18 (¶ 19) (the MOU is “binding upon and shall inure to the benefit of the parties and their respective agents [and] successors”). In exchange for making material changes to the terms of the proposed transaction that significantly benefited the plaintiffs and putative class—and going forward with the transaction as substantially changed—defendants bargained for the opportunity to present the proposed settlement to this Court and to have the Court consider whether the settlement was fair to the class. *See* Ex. 2 at 14 (¶ 8) (agreeing to “use their individual and collective best efforts to obtain Final Court Approval of the Settlement and the dismissal of the [actions] with prejudice as to all claims asserted or which could have been asserted against the Defendants”). The parties’ settlement agreement is an enforceable contract, *see Loppert v. WindsorTech, Inc.*, 865 A.2d 1282, 1285 (Del. Ch. 2004), *aff’d mem.*, 867 A.2d 903 (Del. 2005), and the MOU cannot be disregarded as a mere “settlement-in-principle.” To the contrary, this Court has recently reaffirmed that so-called agreements-in-principle are not “gossamer,” cannot “be disregarded whenever situations change,” and do “create rights,” including the obligation to proceed in “good faith” to bring a preliminary agreement to the contractually anticipated conclusion. *See Global Asset Capital LLC v. Rubicon US REIT, Inc.*, C.A. No. 5071-VCL, trans. 88–89 (Del. Ch. Nov. 16, 2009) (excerpts of the *Global Asset* transcript and all unreported cases are attached alphabetically at Ex. 7). Had plaintiffs wished the MOU to be nonbinding they could have—and would have—“readily do[ne] that by expressly saying that the [agreement] is nonbinding.” *Id.* at 89. And even if new Lead Counsel is appointed, they should be “bound by the actions of [their] predecessors.” *State v. Grossberg*, 705 A.2d 608, 612 (Del. Super. Ct. 1997).

2. As described above, defendants have already exchanged substantial consideration (in the form of enhanced terms in the Exchange Offer) for the opportunity to present a settlement to the Court, and they are entitled to the benefit of their bargain. To be clear, defendants do not insist at present that they are entitled to present the settlement to the Court; any potential dispute as to whether the evidentiary record justifies presentation of the settlement is unripe because no such record has been compiled. But defendants do believe that the clear terms of the MOU, and defendants’ full performance thereunder, require plaintiffs to engage now in good-faith confirmatory discovery and to present a settlement to the Court consistent with the MOU. Defendants have performed their contractual obligations, and plaintiffs’ performance is now due. *Cf.* RESTATEMENT (SECOND) OF CONTRACTS § 237 (1981); 14 WILLISTON ON CONTRACTS § 43:5 (4th ed. 2009). Any contrary result would mean that defendants have conveyed substantial consideration to plaintiffs under a binding contract but would nevertheless be left without remedy when they receive nothing in return. This manifestly unfair result is repugnant to equity. *See, e.g., Libeau v. Fox*, 880 A.2d 1049, 1061 (Del. Ch. 2005) (plaintiff “has

no equitable or legal entitlement to renege now, having accepted all the benefits of the Agreement”).

3. Plaintiffs Gutman and Corneck argue that a conflict between tendering and non-tendering Revlon stockholders requires the appointment of a “tendering stockholders sub-class.” Gutman/Corneck Mem. at 11–12. This argument is specious. As detailed above, the settlement memorialized in the MOU was negotiated *before* stockholders decided whether to tender, and provided concrete benefits to *both* tendering *and* non-tendering stockholders. By virtue of the settlement, tendering stockholders received increased value in exchange for their Revlon stock. These benefits would not have been achieved but for the settlement. For plaintiffs to seek *more* benefits now—before even attempting to fulfill their obligations under the MOU and when the original bargain was itself a function of the settlement—is double-dipping of the most unjustifiable sort. *Cf. Immediant Corp. v. Healthrio, Inc.*, C.A. No. 01C-08-216 RRC, 2005 WL 1953027, at *7 (Del. Super. Ct. June 22, 2005) (“It is basic contract law that a Court will not excuse performance by one party because that party has freely and knowingly entered into a contract that ultimately may be shown not in the party’s best interests.”), *aff’d mem.*, 937 A.2d 139 (Del. 2007). Moreover, if a “sub-class” were required here, it would be required whenever stockholders are given a choice to tender: the *ex post* interest of the tendering stockholders will *always* diverge from the *ex post* interests of the non-tendering stockholders. This is not the law. Where—as here—the interests of all stockholders are entirely aligned *ex ante*, and when a putative class litigation is settled before the tender offer for good consideration for *all* stockholders, neither precedent nor logic nor administrative efficiency requires creation of a sub-class.

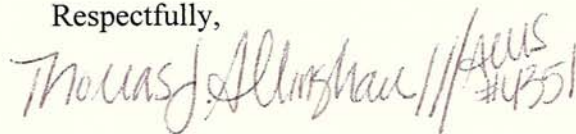
4. Requiring the lead plaintiffs to perform under the MOU creates no risk to any interests of any member of the putative class of pre-transaction Revlon stockholders. Any plaintiffs or other class members who do not agree with any settlement presented to the Court may be heard as objectors when the settlement is presented. *In re Phila. Stock Exchange, Inc.*, 945 A.2d 1123, 1145 (Del. 2008) (considering objection to scope of settlement’s release); *CME Group, Inc. v. Chicago Bd. Options Exchange, Inc.*, C.A. No. 2369-VCN, 2009 WL 1547510 (Del. Ch. June 3, 2009) (same). The ultimate decision to approve any proposed settlement will thus rest exactly where it should—with this Court in the exercise of its own judgment—when a proposed settlement is presented on the basis of a properly developed record. There is zero risk that an unfair settlement will preclude any plaintiff from advancing meritorious claims. Defendants will not object to the participation of all plaintiffs—those who are designated as Lead Counsel and any potential objectors—in all phases of confirmatory discovery.

5. Allowing Lead Counsel to avoid the obligations of the MOU would undermine accepted and salutary practice in this Court. Defendants in class litigation rely on the court-approved authority of lead counsel both in defending claims and evaluating potential settlements. Defendants—like defendants here—frequently agree to extensive revisions to transactions and disclosures in exchange for releases of claims and a termination of litigation, a practice that has been routinely approved by this Court. *See, e.g., In re Wm. Wrigley Jr. Co. S'holders Litig.*, C.A. No. 3570-VCL, 2009 WL 154380 (Del. Ch. Jan. 22, 2009) (approving settlement dismissing and releasing claims in exchange for supplemental disclosures and modifications to terms of merger agreement). To permit Lead Counsel (whether or not newly appointed) to walk away from a hard-bargained MOU after consideration has been afforded to the class would not only undermine the reliability of court-ordered leadership designations, but it would also effectively convert MOUs into one-way option agreements and overthrow customary settlement practice in this Court. *Cf. J.A. Jones Const. Co. v. City of Dover*, 372 A.2d 540, 551 (Del. Super. Ct. 1977) (rejecting construction of an agreement that would “convert the contract into an optional contract in which the sole determination of whether the contract would be performed would rest upon defendants’ choice and the buyer would assume all of the expense and inconvenience of delay”).

* * *

For these reasons, and for the further reasons outlined in their Motion to Enforce, defendants respectfully request that the Court require Lead Counsel, whoever is so designated, to conduct confirmatory discovery and otherwise perform their obligations under the MOU. Defendants would be pleased to advance these positions by separate motion and briefing if that would aid the Court in its disposition of the issues presented.

Respectfully,

Handwritten signature of Thomas J. Allingham II in black ink. The signature is written in a cursive style and includes the name "Thomas J. Allingham II" followed by "I.D. No. 476" written vertically to the right.

Thomas J. Allingham II (I.D. No. 476)

Enclosures

cc: Joseph A. Rosenthal, Esq. (by LexisNexis File & Serve)
Brian D. Long, Esq. (by LexisNexis File & Serve)
David A. Jenkins, Esq. (by LexisNexis File & Serve)

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Robert J. Kriner, Esq. (by LexisNexis File & Serve)
Andre G. Bouchard, Esq. (by LexisNexis File & Serve)
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