IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE REVLON INC. SHAREHOLDERS LITIGATION	Consol. C.A. No. 4578-VCL
EDWARD S. GUTMAN, on behalf of himself and all others similarly situated, Plaintiff, v. RONALD O. PERELMAN, *et al.*, Defendants.	C.A. No. 5158-VCL
LAWRENCE CORNECK, Individually And On Behalf Of All Others Similarly Situated, Plaintiff, v. RONALD O. PERELMAN, *et al.*, Defendants.	C.A. No. 5160-VCL

MOTION FOR CONSOLIDATION OF LATER-FILED RELATED ACTIONS AND OPPOSITION TO THE MOTION OF PLAINTIFFS GUTMAN AND CORNECK

1. Pursuant to Delaware Chancery Court Rule 42(a), plaintiffs in *In re Revlon Inc. Shareholders Litigation*, Consolidated C.A. No. 4578-VCL (the "Action"), respectfully move this Court to consolidate the actions captioned *Gutman v. Perelman, et al.*, C.A. No. 5158-VCL and *Corneck v. Perelman, et al.*, C.A. No. 5158-VCL (collectively the "Later Actions") into the Action and affirm the leadership structure for plaintiffs' counsel originally approved by the Court on June 24, 2009. Plaintiffs' counsel in the Action ("Plaintiffs' Counsel") have vigorously prosecuted the claims asserted in the Action on behalf of all of the shareholders of Revlon, Inc. ("Revlon" or the "Company"), including the claims made in the Later Actions, which claims

arose from the Exchange Offer (defined below) that is the subject of all of the actions. Plaintiffs in the Action further oppose the motion of plaintiffs Edward S. Gutman and Lawrence Corneck to consolidate the Later Actions separately from the Action and to appoint the Law Office of Curtis V. Trinko LLP and Harwood Feffer LLP as co-lead counsel and Smith, Katzenstein & Furlow LLP as liaison counsel (the "Gutman Motion") in the Later Actions for the reasons set forth below.

RELEVANT FACTS

2. Between April 24, 2009 and May 12, 2009, four class actions were filed in this Court on behalf of the public shareholders of Revlon. Each suit challenged the proposed acquisition of the Company's common stock by MacAndrews & Forbes Inc. ("MacAndrews"). MacAndrews was and is the Company's controlling shareholder.

3. On June 24, 2009, the Court entered an Order of Consolidation (Exhibit 1) by which it, among other things, appointed Co-Lead Counsel in the Action and designated an operative complaint (the "Complaint," Exhibit 2). The Court's entry of the Order of Consolidation followed motion practice and arduous negotiations between counsel for each of the plaintiffs in the four original constituent lawsuits. Ultimately, after the Court expressed its preference that counsel for plaintiffs resolve their organizational dispute on a consensual basis, counsel for each of the plaintiffs in the four original actions were able to compromise and reach agreement regarding the appointment of plaintiffs' Co-Lead and Liaison Counsel. The Order of Consolidation reflects this consensus and compromise.

4. From the inception of the Action, Plaintiffs' Counsel have vigorously litigated the claims asserted in the Complaint, as well as the related claim that arose following the execution of an MOU and Amendment No. 1 discussed below. This vigor was manifest during the months of June 2009 and July 2009, during which Co-Lead Counsel, in consultation with

their financial expert, had numerous discussions with counsel for defendants[1] concerning the status of the MacAndrews' initial proposal to acquire the shares of Company stock it did not own. For example, on July 22, 2009, Co-Lead Counsel met in-person with counsel for defendants concerning a potential resolution of the Action and discussed certain potential modifications to MacAndrews' initial proposal the terms of which had been agreed to by the Special Committee and MacAndrews.

5. Following the July 22, 2009 meeting and further discussions and negotiations, Co-Lead Counsel and counsel for defendants reached agreement concerning a potential resolution of the Action on terms set forth in a Memorandum of Understanding dated August 10, 2009 (the "MOU," Exhibit 3), subject to confirmatory discovery and Court approval. Pursuant to the MOU, Revlon agreed that it would commence an exchange offer for its common stock (the "Exchange Offer"), subject to numerous terms including a minimum tender condition.

6. The benefits to Revlon shareholders as negotiated by Co-Lead Counsel and set forth in the MOU were significant and included terms that were substantial improvements over the terms that had been previously agreed to by the Special Committee and MacAndrews. According to the MOU:

- In lieu of the initial proposal, Revlon Stockholders would be able to participate in the Exchange Offer whereby such Stockholders would be able to exchange any and all of their Class A Common Stock for Series A Preferred Stock (the "Preferred Stock") under the terms described in the Exchange Offer, including a liquidation preference of $3.71 per share, which would be mandatorily redeemed after four years, plus certain dividends based on the liquidation preference amount;

- MacAndrews would contribute $3.71 (the amount of the liquidation preference of the Preferred Stock) of the outstanding principal of the Senior Subordinated Term Loan that Revlon would continue to owe to MacAndrews (the "Term

[1] These defendants included MacAndrews, Revlon, and the members of the Special Committee of Revlon's Board of Directors formed in connection with MacAndrews' initial proposal (the "Special Committee" of the "Board").

Loan") for each share of Class A Common Stock exchanged in the Exchange Offer up to a maximum of $75 million (out of a total of $107 million);

- The maturity date of the remainder of the Term Loan that Revlon would continue to owe to MacAndrews would be extended from August 1, 2010, to the fourth anniversary of the consummation of the Exchange Offer;

- The interest rate on the remainder of the Term Loan that Revlon would continue to owe to MacAndrews would be increased from 11% to 12.75% per annum;

- Revlon would issue to MacAndrews one share of Class A Common Stock for each share of Class A Common Stock exchanged in the Exchange Offer;

- The holders of the Preferred Stock would receive a special dividend of $1.50 per share if Revlon does not engage in one of certain specified change-of-control transactions within two years of consummation of the Exchange Offer; at their election, such holders would have the right to waive such $1.50 payment and obtain the benefit, as described below, of a change-of-control transaction in a third year;

- In the event of a specified change-of-control transaction within two years, or as described above, a third year, each such holder would receive, in lieu of the $1.50 special dividend described above, a maximum of $12.50 per share in the change-of-control transaction;

- If, after the consummation of the Exchange Offer, Revlon was eligible to consummate a short-form merger in accordance with Section 253 of the DGCL, then such short-form merger would be consummated with terms substantially identical to, or no less favorable than, the terms of the Preferred Stock; and

- Significant additional disclosures were provided as reflected in Exhibit B to the MOU.

MOU at ¶¶ 1, 3.

7. Revlon commenced the Exchange Offer on August 10, 2009. Upon learning that the Exchange Offer's minimum tender condition would not be satisfied, Co-Lead Counsel successfully negotiated further concessions that would benefit both tenderers and non-tenderers in addition to those originally agreed to by the parties in the MOU, including, among other things:

- An extension of the remainder of the Term Loan owed by Revlon to MacAndrews by one additional year to the fifth anniversary of the consummation of the Exchange Offer;

- A reduction in the interest rate on the remainder of the Term Loan from 12.75%

to 12%;

- A change in the liquidation value of the Preferred Stock from $3.71 per share to $5.21 per share;

- A change in the contribution of MacAndrews of the outstanding principal of the Term Loan for each share of Class A Common Stock exchanged in the Exchange Offer from $3.71 per share to $5.21 per share up to a maximum of $105.43 million, instead of a maximum of $75 million;

- Because of the increase in the liquidation preference of the Preferred Stock, the maximum payable in the event of a change-of-control transaction would be changed to $12.00 per share and absent a change-of-control transaction, such holders would be entitled to the $1.50 per share special dividend after two years; the third-year option would no longer be available.

The parties revised the MOU to reflect these additional, agreed-upon changes to the terms of the Exchange Offer, resulting in Amendment No. 1 to the MOU ("Amendment No. 1," Exhibit 4), dated September 23, 2009, which, like the MOU, is subject to confirmatory discovery and Court approval.

8. On September 24, 2009, the Company filed Amendment No. 7 to Revlon's Tender Offer Statement and Schedule 13E-3 Transaction Statement on Schedule TO with the United States Securities and Exchange Commission ("SEC"), in which it revised the Exchange Offer. The Company announced that in lieu of MacAndrews' original proposal for a merger transaction and the original Exchange Offer, Revlon shareholders would be given the opportunity to participate in a revised Exchange Offer with the terms that were agreed to in Amendment No. 1.

9. The Exchange Offer was consummated on October 8, 2009, eight days after the close of Revlon's third quarter, and Revlon announced that it had exchanged 9,336,905 shares of Class A Common Stock for the same number of Series A Preferred Stock. As part of the transaction, MacAndrews contributed approximately $48.6 million of the Term Loan amount to Revlon and received 9,336,905 shares of Revlon Class A Common Stock.

10. On October 29, 2009, Revlon announced its financial results for its third fiscal quarter ended September 30, 2009. Although in an exhibit to the Exchange Offer, Revlon's financial advisor had forecasted a favorable EBITDA for the full year of 2009, the sole analyst following the Company consistently projected during the pendency of the Exchange Offer that Revlon would post a significant ***loss*** for the third quarter of 2009, leaving the market uncertain as to the reliability of Revlon's adviser's forecast. This uncertainty was substantially alleviated when, approximately three weeks after the consummation of the Exchange Offer, Revlon reported a substantial profit, rather than a loss, for the third quarter of 2009, which appeared consistent with the EBITDA forecast for 2009 in the Exchange Offer. Because those results were so dramatically different from what the analyst had forecast and supported the EBITDA forecast in the Exchange Offer, the price of Revlon's common stock increased from a close of $5.75 per share on October 28, 2009 (the day prior to the earnings release), to a close of $8.75 per share on the day of the release. The price of Company common stock continued to rise, reaching a closing high of $19.75 per share on December 14, 2009, and trading more recently at approximately $17 per share. Because of the increase in Revlon's stock price, the value of the 9.3 million Revlon common shares that MacAndrews was able to acquire pursuant to the Exchange Offer increased in value in only a few weeks from approximately $48.6 million it paid for the shares to over $153 million – a profit of over $100 million.

11. Following the revelations concerning the third quarter and the market's swift and dramatic reaction, Co-Lead Counsel advised defendants' counsel that they would require discovery concerning the additional potential claim that Revlon had acquired the common shares and issued a like number of common shares to MacAndrews without disclosing the excellent results for the third quarter, and that they were prepared to assert such a claim on behalf of plaintiff Gallegos and the others who had tendered their common stock in the Exchange Offer.

Plaintiffs had already received a substantial document production in confirmatory discovery and, based on the request for additional documents, received further documents related to this new claim. Thereafter, Co-Lead Counsel informed defendants' counsel that based on the document discovery conducted thus far, they were not prepared to proceed with the settlement in principle as agreed to in the MOU and Amendment No. 1, unless the claims that are now asserted in the Verified Amended and Supplemental Consolidated Class Action Complaint in the Action (the "Amended Complaint," Exhibit 5) were resolved by defendants' agreement to further modify the terms of the settlement to benefit those who tendered their shares in the Exchange Offer. On January 6, 2010, plaintiffs in the Action filed the Amended Complaint asserting the new claim on behalf of tendering shareholders.

12. Notwithstanding that plaintiffs in the Action were necessarily addressing the new Exchange Offer disclosure claim, Edward S. Gutman ("Gutman") and Lawrence Corneck ("Corneck"), purported Revlon shareholders who allegedly tendered their shares of Company common stock in the Exchange Offer, filed class action lawsuits in this Court on December 21, 2009 (the "Later Actions") based solely on such a claim. The claim asserted in the Later Actions arise from the same core set of facts as the claims currently asserted in the Action. Plaintiffs in the Action therefore seek consolidation of the Later Actions with the Action. Plaintiffs also seek the Court's affirmation of the existing leadership structure for plaintiffs' counsel. That structure, which has been operating efficiently and to great effect for months, has already provided numerous benefits to all of the shareholders of Revlon, both tenderers and non-tenderers alike, as reflected in the MOU and Amendment No. 1 thereto, and Co-Lead Counsel for plaintiffs in the Action have been aggressively investigating the new claim of the tenderers relating to the Exchange Offer, which arose subsequent to the dates of the MOU and Amendment No. 1 thereto.

ARGUMENT

A. All of the Actions Involve Common Questions of Law and Fact and, Therefore, in the Interests of Judicial Economy, Should Be Consolidated

13. Pursuant to Chancery Court Rule 42(a), consolidation of the Action with the Later Actions will serve the interests of justice, as each of the Later Actions and the Action involve common questions of law and fact. Consolidation of the actions will also promote conservation of judicial resources, and the resources of the parties.

14. "When actions involving a common question of law or fact are pending before the Court," Rule 42(a) permits the Court to "order all the actions consolidated . . . and . . . make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Ch. Ct. R. 42(a). Indeed, the power to order the consolidation and merger of cases before trial falls within the broad inherent authority of every court "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936).

15. In this case, all relevant circumstances militate in favor of consolidating the Later Actions with the Action.[2] The Action and each of the Later Actions all arise from the same core of operative facts – the facts relating to the Exchange Offer. Moreover the sole additional claim that is being asserted in the Later Actions relates to the pending settlement in principle in the Action and has been asserted by Co-Lead Counsel in the Amended Complaint. Thus, the overlap of claims clearly supports consolidation of all actions.

B. The Court Should Affirm the Organization of Plaintiffs' Counsel Originally Approved by the Court on June 24, 2009

16. The consistent quality of the pleadings, motions, and efforts of Plaintiffs' Counsel in the Action, and the vigor with which Plaintiffs' Counsel has litigated the Action,

[2] The plaintiffs in the Later Actions seek to consolidate only their cases.

warrants the Court's approval of the organizational structure that originally was approved in the Order of Consolidation entered on June 24, 2009.

17. Confirmation of the existing structure will allow the Action to proceed efficiently and without any unnecessary delay or complication, given Co-Lead Counsel's familiarity with the transaction from its inception, the discovery already taken, and the fact that the shareholders have already obtained significant benefits from Co-Lead Counsel's representation.

18. In *TCW Technology Ltd. P'ship v. Intermedia Commc'ns, Inc.*, C.A. No. 18336, 2000 Del. Ch. LEXIS 147 (Del. Ch. Oct. 17, 2000), this Court first listed factors to be considered when making a determination on a contested lead counsel application. *Id.*, at *10. These factors were repeated in *Hirt v. U.S. Timberlands Serv. Co.*, C.A. No. 19575, 2002 Del. Ch. LEXIS 89, at *5 (Del. Ch. July 3, 2002), and included:

- The "quality of the pleading that appears best able to represent the interests of the shareholder class and derivative plaintiffs";
- The willingness and ability of all the contestants to litigate vigorously on behalf of an entire class of shareholders;
- The absence of any conflict between larger, often institutional, shareholders and smaller shareholders;
- The enthusiasm or vigor with which the various contestants have prosecuted the lawsuit;
- The competence of counsel and their access to the resources necessary to prosecute the claims at issue; and
- The relative economic stakes of the competing litigants in the outcome of the lawsuit.

Id., 2002 Del. Ch. LEXIS 89, at *5 (footnotes omitted); *see Allen v. News Corp.*, C.A. No. 979-N, 2005 Del. Ch. LEXIS 27 (Del. Ch. Feb. 3, 2005) (applying *Hirt* factors). Co-Lead Counsel clearly satisfy the *TCW/Hirt* factors.

19. First, the Amended Complaint in the Action is more detailed and comprehensive

than the complaints in the Later Actions, and neither Gutman nor Corneck has filed a complaint whose quality exceeds that of the Amended Complaint. Indeed, the theory of the claim based on the failure to disclose the third quarter results and the reason such results were material despite the full-year projections provided in the Exchange Offer is not even articulated in the Later Actions.

20. Plaintiffs in the Action have shown their willingness to litigate vigorously on behalf of themselves and the other public shareholders of Revlon. In addition to filing a well-pleaded Amended Complaint containing detailed factual and analytical allegations, the plaintiffs in the Action have worked arduously to obtain benefits for Revlon shareholders that exceed those which the Special Committee originally was able to retain. Put another way, plaintiffs in the Action were not content to get on board with the Special Committee and achieve concomitant satisfaction concerning the claims originally asserted in the Action. Here, plaintiffs in the Action waited until after the Special Committee had taken its best shot and then achieved significant additional benefits.

21. Co-Lead Counsel have been diligently prosecuting the Action since its inception. The MOU and Amendment No. 1 demonstrate their skill and perseverance. To date, each Revlon shareholder who tendered into the Exchange Offer already has received a material increase in the per share consideration offered for his or her stock, which was a result of important modifications to the terms of the Class A Preferred stock received. All of Revlon's shareholders, including both tenderers and non-tenderers, moreover, received the benefits of numerous additional material disclosures made in connection with the Exchange Offer. The common shareholders also benefitted from the increased reduction in Revlon's debt load and lower interest on the remaining debt.

22. The diligence and vigor of Co-Lead and Plaintiffs' Counsel is further

demonstrated by their insistence on confirmatory discovery concerning the merits of the disclosure claim based on Revlon's third quarter, which came to light after the MOU and Amendment No. 1, and their demand for further settlement consideration based on the document discovery taken thus far.[3]

23. Finally, Co-Lead Counsel have no substantial conflict that arises from the prosecution of the sole remaining claim on behalf of tenderers. Although plaintiffs in the Later Actions make the conclusory argument that there may be some conflict that would preclude the Court from affirming the leadership structure for plaintiffs previously approved in the Action, *see* Gutman Motion at ¶ 12, the Amended Complaint asserts claims only on behalf of those who tendered; no claims are being asserted in the Amended Complaint on behalf of those who chose not to tender and remain shareholders. Therefore, no conflict can arise as a result of the prosecution of conflicting claims of different groups of shareholders as the plaintiffs in the Later Actions suggest.[4]

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[3] The fact that defendants have made a motion to enforce the settlement based on Co-Lead Counsel's efforts to obtain additional consideration after Revlon's third quarter announcement demonstrates the vigor with which Plaintiffs' Counsel are seeking to assert this new claim on behalf of the tenderers.

[4] The attorneys constituting Co-Lead Counsel possess significant experience in successfully prosecuting and resolving transactional litigation of this nature and their principal offices are located in Wilmington, Delaware and New York, New York. Attached as Exhibit 6 are the firm resumes of Rigrodsky & Long, P.A. and Wolf Popper LLP.

CONCLUSION

24. For the foregoing reasons, plaintiffs in the Action respectfully request that: (a) the above-captioned cases be consolidated; and (b) the Court affirm the previous appointment of Co-Lead Counsel in the Action, even after the Later Actions are consolidated with the Action.

Dated: January 12, 2010

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