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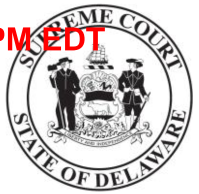

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IROQUOIS MASTER FUND LTD., On Behalf of Itself and All Others Similarly Situated, Lead Plaintiff Below-Appellant	No. 109, 2014
v.	Court Below: Court of Chancery of the State of Delaware Consol. C.A. No. 6170-VCN
ANSWERS CORPORATION, ROBERT S. ROSENSCHEIN, YEHUDA STERNLICHT, MARK B. SEGALL, W. ALLEN BEASLEY, R. THOMAS DYAL, MARK A. TEBBE, LAWRENCE S. KRAMER, SUMMIT PARTNERS L.P., AFCV HOLDINGS, LLC, and A-TEAM ACQUISITION SUB, INC., Defendants Below-Appellees	

APPELLANT'S REPLY BRIEF

ROSENTHAL, MONHAIT & GODDESS, P.A.
Jessica Zeldin (Del. Bar No. 3558)
919 North Market Street, Suite 1401
Wilmington, DE 19801
(302) 656-4433

Attorneys for
Lead Plaintiff Below-Appellant

OF COUNSEL:

ABBEY SPANIER, LLP
Arthur N. Abbey
Karin E. Fisch
Jeremy Nash
212 East 39th Street
New York, NY 10016

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INTRODUCTION

The parties have set out fully their respective positions in their opening briefs. Yet, one question still remains unanswered: why did the deal have to get done on February 2, 2011 when positive, market-moving results for the fourth quarter of 2010 ("4Q") were scheduled to be released just a few days later? In their opposition brief, the Director Defendants focus almost exclusively on the legitimacy of the sale process with the Buyout Group, and largely ignore concrete evidence of the higher shareholder value expected from the market following the 4Q earnings release and ensuing discussion of those results and of the outlook for 2011. In trying to excuse their failure to wait just five days for the market reaction to the completed 4Q results as a business judgment, the Director Defendants cite to generic, and unsubstantiated, business concerns – the market in general might turn down or Google may suddenly destroy Answers' business. However, based on the record, the most plausible explanation for the execution of the deal as of February 2 was that Defendants wanted to prevent the market from learning of the completed Q4 operating results and 2011 outlook so to prevent Answers' stock price from trading higher and eviscerating the touted premium over market in this transaction. The Buyout Group had not budged on price for three months, but when explicitly and repeatedly warned by UBS in January 2011 that the impending release of Q4 financial information would be detrimental to the deal, decided to

trade an extra quarter to get the deal done in an "expedient fashion" and thus to prevent the market from trading past the offer price in a few days.

These facts raise serious issues about highest attainable value under *Revlon*. Defendants have not provided rational, credible answers to the ultimate question surrounding the timing of the deal sufficient to negate the strong inference from the record that the reason for signing the deal prior to the earnings announcement was that the market would likely eliminate the premium. Without the premium, the deal would not give the shareholders the highest value reasonably obtainable in a cash-out transaction. As the record stands, there is no credible evidence or rational explanation sufficient to outweigh the inference that Defendants knowingly and deliberately manipulated the market – an inference that supports a claim of bad faith.

Rather than address head-on the ultimate question of whether the market could produce a higher immediate and reasonably sustainable value than the $10.50 deal, the Director Defendants deflect by offering generalities about breach of fiduciary duty under Delaware law and reducing *Revlon* to a meaningless process checklist. The Director Defendants' atomistic approach to the process, without a credible or rational explanation for their rush to ink the deal knowing the market would likely produce higher value in five days' time, elevates form over substance and essentially neuters *Revlon*. Defendants concentrate their response

on defending the sale but never come to grips with the essential issue in this case -- the timing of the sale to prevent shareholders from recognizing immediate higher value in the market than the $10.50 to be received in the deal two months later.

Defendants' deliberate manipulation of the market is particularly troublesome because, in the Proxy Statement, the Board unequivocally recommended the change-of-control deal because (1) the $10.50 price provided the shareholders with an attractive premium over the then current market; and (2) the $10.50 price offered greater value than the market were Answers to remain independent. A151-52. The Proxy is silent that the Board's financial expert said several times that the market was very likely to move higher starting on February 8, and thus would have eliminated the premium had the Q4 earnings and 2011 upbeat projections been disclosed before the announcement of any deal. A561, 573, 575.

Finally, the Director Defendants urge this Court to adopt a general rule that Plaintiffs cannot show bad faith no matter how egregious the facts without establishing a self-dealing motive on the part of the outside directors. *See* Answering Brief of the Answers Defendants-Appellees ("Answering Br.") at 22. Delaware law should not require an affirmative showing of self-dealing as the only way to establish bad faith under all circumstances. Even in the business judgment context, a plaintiff can plead and prove bad faith by showing that a decision lacked

any rationally conceivable basis, which permits a court ***to infer an improper motive and breach of duty of loyalty***. *Chen v. Howard-Anderson*, 87 A.3d 648, 685 (Del. Ch. 2014).[1] It cannot be that the requirements for showing bad faith in an enhanced scrutiny context are more lenient than in a case where business judgment is the standard. Thus, while motive is certainly relevant and perhaps the easiest way to show bad faith, motive can be inferred where the Board's conduct is inexplicable on any grounds other than bad faith. *Id.* Deliberately throttling the market and denying shareholders an admittedly value-maximizing opportunity can support an inference of bad faith.

Plaintiffs believe that this case presents a unique and "extreme set of facts" on which a finding of bad faith can be predicated. *See In re Lear Corp. S'holder Litig.*, 967 A.2d 640, 654 (Del. Ch. 2008). There is no credible (or undisputed) explanation in the record for the timing of the deal other than to manipulate the market, to artificially lock in a slim and ever-shrinking premium and to deprive

[1] Citing William T. Allen, Jack B. Jacobs, & Leo E. Strine, Jr., Realigning the Standard of Review of Director Due Care with Delaware Public Policy: A Critique of Van Gorkum and its Progeny as a Standard of Review Problem, 96 Nw. U, L, Rev. 449, 452 (2002) (defining an irrational decision as "one that is so blatantly imprudent that it is inexplicable, in the sense that no well-motivated and minimally informed person could have made it"); *Brehm v. Eisner*, 746 A.2d 244, 264 (Del. 2000) ("Irrationality is the outer limit of the business judgment rule. Irrationality may be the functional equivalent of the waste test or it may tend to show that the decision is not made in good faith, which is a key ingredient of the business judgment rule.") (footnote omitted); and *In re J.P. Stevens & Co. Inc. S'holders Litig.*, 542 A.2d 770, 780-81 (Del. Ch. 1988) ("A court may, however, review the substance of a business decision made by an apparently well motivated board for the limited purpose of assessing whether that decision is so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any ground other than bad faith.").

Answers' shareholders of the highest immediate value for their shares. Defendants' explanations for doing the deal on February 2, such as Google risk or a potentially "bearish" market, are not supported in the record by contemporaneous evidence or analysis, and are insufficient to outweigh the strong inference that the deal was deliberately timed to preclude the market from pricing in the 4Q earnings results and 2011 outlook. In fact, the only evidence in this case, in a deal that had been under discussion since March of 2010, that expressly references any need for haste are the January 2011 warnings to the Buyout Group and the Board to move quickly due to Q4 outperformance, an upcoming earnings release and the likely market reaction thereto.

Defendants' market manipulation represents conduct far more egregious than director inaction or a due care violation. The Board's affirmative decision to expedite the deal on February 2 to avoid disclosure of a completed quarter raises serious questions about the Director Defendants' loyalty and good faith to Answers' shareholders.

ARGUMENT

I. MATERIAL ISSUES OF FACT REMAIN WHETHER THE BOARD OBTAINED THE BEST PRICE REASONABLY AVAILABLE UNDER *REVLON* AND ACTED IN GOOD FAITH

A. Defendants Fail to Establish that There are No Genuine Issues of Fact Relevant to the Bad Faith Analysis

The Director Defendants mistakenly argue that this case fails under *Lyondell Chem. Co. v. Ryan*, 970 A.2d 235 (Del. 2009). This Court's analysis in *Lyondell*, in the end, hinged on the fact that "all of the evidence" indicated that the price offered was a "blowout" price, with a "substantial premium," and that the Board felt it had to present the deal to the shareholders quickly. 970 A.2d at 238, 244. Here, the contemporaneous documentary evidence belies the assertion that the Director Defendants considered $10.50 to be such an attractive price as to warrant signing a firm deal five days before the release of fourth quarter results and an earnings conference call addressing those results and the outlook for 2011. For example, Defendant Segall stated that $10.25 was too low. A391. The Board characterized $10.25 as inadequate on several occasions and the deal sat stagnant at $10.25 for almost three months while the Buyout Group attempted to obtain financing. A147-48. Janine Shelffo indicated that, "with the stock price rising and the company outperforming," the Answers Board soon would not likely be in a position to accept a price "anywhere near the price vicinity discussed." A573. By February 2, 2011, the required premium over market had all but evaporated. On

November 8, 2010, when the $10.25 offer was made, the offer represented a $4.00 premium. By February 2, 2011, after the offer had been raised to $10.50, Answers' stock traded as high as $9.15, reducing the premium to just $1.35.[2] The Director Defendants cannot seriously argue here that they thought $10.50 was such a blowout price that the deal needed to be done with haste. Instead, the record strongly suggests that the Director Defendants rushed the deal to artificially capture the already razor-thin premium and to avoid its complete evaporation.

The Director Defendants also claim that the premiums here and in *Lyondell* were similar. Answering Br. at 20 n.3. This argument entirely misses the point that the premium in this case was illusory because the Director Defendants timed the deal to cap the market. In *Lyondell*, just the opposite was true – a Schedule 13D filing by the buyer, which had made previous overtures to Lyondell, expressly disclosed the buyer's interest in a potential transaction with Lyondell. *Lyondell*, 970 A.2d at 237. This signaled to the market that the Company was in play, causing Lyondell's stock price to jump from $33 to $37 on the day the 13D was filed. *Id.* Because the market and Lyondell's shareholders knew that the company was in play, Lyondell's stock could price in this disclosure. These facts contrast sharply with the facts here where Answers' insiders and the Buyout Group had

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[2] Defendants repeatedly use $8.78 as the price by which to measure the premium by saying the deal was signed "as of February 1, 2011" but Answers' share price reached $9.15 on February 2, 2011 before the deal was announced on February 3, 2011. Answering Br. at 20; A151.

access to material information regarding 4Q outperformance and 2011 projections, yet the market and Answers' shareholders were denied this information deliberately to make it appear that the $10.50 price represented an honest premium over a non-manipulated market.

In *Lyondell*, further, the buyer put strict time constraints on the offer. The buyer (Blasell) made its best offer to Lyondell on July 9, 2007 knowing that July 11 was the last day that it could make a higher bid for Huntsman Corporation, for which it was involved in a bidding war. *Id.* Here, in contrast, it was the Director Defendants themselves through their own representative who urged the slow-moving Buyout Group to firm up financing and to move expeditiously due to "continued outperformance" and a "looming q4 earnings call." A562. Further, in *Lyondell*, the board analyzed and eliminated the market (*i.e.*, no transaction at all) as a better potential alternative to the deal by requiring its financial expert to assess the potential going-forward price of Lyondell's stock should it remain independent. Unlike UBS, which did no forward analysis of market price, Deutsche Bank derived market price valuations from company projections, several of which valuations yielded ranges that did not even reach the offer price of $48 per share. *Id.* at 238. After performing these analyses, Deutsche Bank described Blasell's

offer as "an absolute home run." *Id.* at 239. This lies in sharp contrast to UBS' known view that "time is not a friend to this deal." A561, 573, A575.[3]

Moreover, in *Lyondell*, the Court took a holistic approach to analyzing bad faith that is ignored here by the Director Defendants. Regardless of what the Lyondell board of directors did or did not do in the months leading up to the deal, the Court ultimately viewed the entire process through the prism of a deal price known to the target's directors to be too good to true, thereby negating any inference of bad faith. *Id.* at 244. Concerns with regard to the speed with which the transaction was consummated or any other alleged deficiencies in the process were counterbalanced fully by unrefuted evidence regarding the "blowout" price – evidence that took the form of contemporaneous documents indicating that several of the buyer's directors had voted against the deal because the price was too high and that Lyondell's adviser considered the price to be "an absolute homerun." *Id.* at 239, 244. The Court concluded that, even if there were deficiencies in process, the ultimate "blowout" price fully negated an inference of bad faith.

Here, the ultimate offer price and the Director Defendants' actions in the days leading up to the announcement of the deal yield the opposite conclusion.

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[3] The Director Defendants continue to try to downplay the importance of what they describe as a "handful of emails" by asserting that these emails were part of a "negotiating position." Answering Br. at 30. The Director Defendants ignore Ms. Shelffo's testimony that she believed what she said – namely, that with continued outperformance and a looming conference call, were additional time to pass, the Answers Board would not be able to do a deal at anywhere near the then current offer price. A1018 at 199:14-199:25.

There is no dispositive fact in the record that fully negates an inference of bad faith and absolves the Director Defendants from liability for process flaws and failing to obtain the best price reasonably available. Quite to the contrary, the ultimate fact (fully supported in the record) that the deal was rushed to avoid the market-moving impact of the 4Q earnings release and 2011 outlook, and to maintain the illusion of a premium, demonstrates bad faith, or at least creates a triable issue as to whether the Director Defendants "utterly" failed to act in a change of control setting by failing to wait, failing to analyze or discuss the potential impact of the 4Q earnings release and discussion of 2011, and thereby creating the illusion that this deal was better than the market. Plaintiffs contend that the record here goes far beyond mere flawed efforts, and into the realm of a conscious disregard of known duties.

The recent Court of Chancery decision in *Chen* contains a detailed analysis of the issue of bad faith under *Lyondell* and in the context of *Revlon*. 87 A.3d at 679-685. In *Chen*, the Court first reiterated that *Revlon* does not establish a specific set of conduct obligations:

> "As is well known, *Revlon* does not require that a board, in determining the value-maximizing transaction, follow any specific plan or roadmap in meeting its duty to take reasonable steps to secure—i.e., actually attain—the best immediate value." Instead, *Revlon* is a standard of review in which "the reviewing court has leeway to examine the reasonableness of the board's actions under a standard that is more stringent than business judgment review and yet less severe than the entire fairness standard.

Id. at 682 (quoting *In re Dollar Thrifty S'holder Litig.*, 14 A.3d 573, 598 (Del. Ch. 2010)). The *Chen* Court next addressed the various theories of bad faith and explained the difficulty of applying an "utter failure to attempt" standard using an analogy to a field goal kicker who misses a field goal. *Id.* at 683-85. Specifically, the Court noted that "if an attempt is all that matters, as the 'utter failure' test suggests, then one can well wonder how a board ever could 'utterly fail' in the change of control setting." *Id.* at 685. The *Chen* Court resolves this seeming impossibility by comparing the test for showing bad faith in the business judgment context and in the enhanced scrutiny context concluding that

> [t]he defendants therefore cannot obtain summary judgment in their favor simply by observing that they did not utterly fail to attempt to fulfill their fiduciary duties. **The plaintiffs can defeat summary judgment by citing evidence which, when evaluated under the Rule 56 standard, supports an inference that the directors made decisions that fell outside the range of reasonableness for reasons other than pursuit of the best value reasonably available, *which could be no transaction at all.*"**

Id. (emphasis added).

As discussed in Plaintiffs' opening brief, there is evidence in the record calling into question the loyalty to shareholders of at least defendants Beasley, Dyal and Rosenschein. Opening Br. at 34-36. However, even without these facts supporting a traditional allegation of improper motive or self-dealing, genuine issues of fact exist regarding the credibility and validity of the reasons the Director Defendants posit for (1) failing to wait a mere five days to permit the market to be

on equal footing with the Buyout Group; (2) failing to perform any analyses or discuss what impact the fourth quarter results and 2011 projections might have on the Company's stock price; and (3) simply ignoring the sentiment of UBS that time is not a friend to this deal and the obvious possibility that Answers stock price might trade through the deal price. These Board decisions fall outside of the range of reasonableness and it remains hotly disputed whether there were valid and supportable reasons for these critical decisions that are consistent with the honest pursuit of the best value reasonably available to Answers' shareholders.

B. Defendants Miss the Point with Respect to the Fourth Quarter Results

The Director Defendants miss the point when asserting that, by challenging their timing decisions, Plaintiffs are asking this Court to create a new "single blueprint" under *Revlon.* Answering Br. at 24. Plaintiffs are not seeking to establish a general rule that a target must wait to announce quarterly results before signing a merger agreement. Rather, Plaintiffs assert that, in light of the unique facts of this case, there is no rational explanation for the Board's agreement to sign a deal on February 2 having known of Q4 outperformance and improved 2011 projections since December 2010.[4] Given the facts of this case, where the deal had

[4] The 2011 projections that ultimately appeared in the Proxy showed Revenue of $26.7 million and Adjusted EBITDA of $9.3 million. A150. Answers ultimately reported actual results for 2010 of $21.471 million in revenue and $6.567 million in adjusted EBITDA. B717. Thus, for 2011, Answers was projecting a more than 40% increase in adjusted EBITDA. This information, which was given to the Buyout Group before the deal was executed, was only provided to shareholders after the market was capped at the deal price. The one-year projection shows that

been discussed for nine months and had sat stagnant for almost 90 days at $10.25 while the Buyout Group was seeking financing, there is no credible explanation for Board's actions other than to get the deal signed before any disclosure and discussion of the actual Q4 results and 2011.

In the event that the market ultimately provided a better price than the deal, the only people who stood to lose were Redpoint (which needed a third party liquidity event to exit its investment), Rosenchein (whose job was uncertain) and UBS (whose fee would be zero if no deal was done). A board of directors may tilt the playing field towards one particular alternative, but only if it is in the shareholders' interest to do so. *J.P. Stevens*, 542 A.2d at 782. Here, in the months prior to February 2, the Director Defendants tilted the playing field towards the deal, rather than towards higher value from the market, to avoid a market value that might scuttle the deal. In the weeks leading up to the signing of the deal, the Board may have focused on getting an extra quarter,[5] but completely disregarded the likelihood of getting a much higher stock price from the market. The Board took these steps to consummate the $10.50 deal knowing that its actions, and inaction, would benefit only Redpoint, UBS and Rosenschein.

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the Q4 2010 outperformance would continue and accelerate in 2011, thus providing a strong basis for a sharp and sustained increase in Answers' stock price for the immediate future.

[5] The assertion that the Director Defendants got more than $.25 because AFCV had uncovered liabilities of $.84 is wholly disingenuous. Answering Br. at 28. Defendants expressly state in the Proxy that Answers disputed these claims of additional contingent liabilities. A148.

Not only did the Director Defendants tilt the playing field towards the deal by failing to wait until the Q4 results and 2011 outlook were announced and priced into the stock, they did not even analyze or discuss what effects the Q4 earnings release and 2011 outlook might have on Answers' market price. Unlike *Lyondell*, no Board member asked UBS and UBS did not provide any analysis of the potential short-term market effect of the Company's release of Q4 results and improved forecast on the Company's 2011 stock price. In a company with over $25 million in cash and no debt, not a single banking analysis was produced assessing value either by staying public as is or with a strategic value creating alternative such as a stock buyback or a dividend. Specific analyses of strategic alternatives were not done and it is clear that UBS was not retained to and did not analyze or opine on any value-seeking alternatives other than a sale. A156, 370-77, 1009.

These analyses could and should have been done as they were in *Lyondell* so that the Board could assess whether any alternative to the change-of-control transaction offered higher immediate value than $10.50. The Proxy contains certain UBS analyses only to justify the fairness of the $10.50 deal, including analyses of selected companies and selected transactions. A156-58. Each of these analyses relied on the Company's one-year 2011 projection, made "with confidence" (A156), and each showed the positive effect of the 2011 projections

upon Answers' multiples.[6] The significant drops in the multiples derived from UBS' analyses form the foundation for higher stock prices in 2011 and belie any assertion that the Q4 outperformance was a "blip." Answering Br. at 27-28. In fact, when this one-year projection finally was included in the Proxy in April 2011, adjusted projected EBITDA for 2011 was up over 50% from 2010. A150. Yet, UBS did not use this 2011 projection to assess where Answers' stock price might trade going forward and even disclaimed any effort to look forward with respect to stock price. A156. Instead UBS, whose fee was totally contingent on a third-party deal, expressly declined to do any analysis of price that might call into question the fairness of the $10.50 deal.

The view of the market relayed by UBS to the Buyout Group is the best evidence bearing upon the likely market reaction to the upcoming Q4 earnings release and conference call addressing Answers' results and outlook. That view was that the earnings announcement and ensuing discussion would cause Answers' stock price to trade up near or possibly through the offer price making the Board unable to accept an all cash deal at "anywhere near" $10.25. A573.

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[6] In the Selected Companies analysis, for example, multiple of revenues drops almost 25%, multiple of EBITDA drops 33% and multiple of Adjusted EBITDA drops 33% from 2010 to 2011. A156. It is fair to conclude, when multiples of revenues and earnings drop in relation to a $10.50 price because of projected outperformance, that Answers' stock price would become more valuable.

C. Defendants Fail to Establish Conclusively that their Decisions were Driven by Google or other Business Risk in the Short-Term

In *Lyondell*, the Court found that the "blowout" price being offered, among other things, negated an inference of bad faith on the part of the Lyondell Board. 970 A.2d at 244. Here, the Director Defendants attempt to find any potential exculpatory facts to eradicate the possibility of a finding of bad faith. The Director Defendants thus argue that, in their business judgment, business risk precluded them from waiting just five days to gauge market reaction to the announcement of the Q4 earnings announcement. The primary risk they identified, on which the Court of Chancery heavily relied, was the risk Google posed to Answers' business. Opinion at 31 (noting "plausible business concerns about the stability and future success of the Company."). Plaintiffs have set out considerable record evidence in their opening brief calling into question the Google excuse and Defendants' claims of other purported risks immediately threatening Answers' business. With respect to Google, that record evidence includes the Buyout Group's lack of concern with Google, Answers' positive 2011 projections and the almost identical description of the Google risk in Answers' public filings from year to year prior to the transaction and even repeated verbatim in Answers' 2010 10K filed after the deal was signed. Opening Br. at 22-26. Moreover, the Proxy never says that the primary reason for accepting $10.50 was a heightened Google or other business risk as of February 2011. The Proxy expressly recommends the deal to shareholders because of the

premium to market, even when Defendants and their experts knew this premium was transitory and would likely evaporate in a matter of days. Beyond that, Plaintiffs have provided substantial evidence supporting an alternate theory for the timing of the deal – namely, that the Board timed the deal deliberately so as to keep market-moving information from being publicly disclosed before locking in the $10.50 deal with AFCV. Op. Br. at 16-18. The choice between the two theories must be left to trial.

In *Lyondell*, there was no evidence counterbalancing the record of a "blowout price" that was labelled as a "homerun" and thus no facts supporting a bad faith contention. *Id.* at 239, 244. Here, however, there is substantial contemporaneous evidence contravening the assertion of heightened Google or other business risks and a well-supported counter theory for the rushing of the deal that supports a showing of bad faith. No explanation, be it Google or other business risk, has been given sufficient to justify the failure to wait just a matter of days before entering into the $10.50 deal. Rather, the evidence suggests that all Defendants deliberately timed the execution of the agreement and public disclosure of the transaction to the detriment of the shareholders having been put on notice that the release of Q4 outperformance and a looming earnings call would be "unfriendly" to the deal.

The Director Defendants also asserted that unsubstantiated concerns regarding "the market turning bearish" were enough to justify their decision to deprive Answers' public shareholders of the right to know what premium the deal offered to an uncapped market or whether the market provided higher value than the deal. Answering Br. at 26. This assertion contradicts the bedrock principle that directors have an unflinching duty to attempt to secure the highest available control premium in a change-of-control transaction. *Paramount Commc'ns, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 44 (Del. 1994). This is true even if the highest value may be obtained through the normal working of the stock market, *i.e.*, through no transaction at all. *See Chen*, 87 A.3d at 682. Here, the Answers Board was obliged to maximize shareholder value and to make a rational, fully informed determination as to which scenario offered a higher value – $10.50 or the market. *See id.* This unflinching duty does not change, nor does the conduct complained of here become reasonable, just because a director points to some wholly speculative fear the market might one day turn bearish or because the Company is facing some business risk that it has faced since day one of its existence.

In this case, the Proxy expressly represented (without support) that the receipt of the merger consideration was more favorable than the stock value likely to be realized in the event of no transaction. A152. The time to assess the premium was either on February 2, or arguably no later than April 12, the date of

the shareholder meeting. Here, every possible metric indicated that the price of Answers stock was poised to go up during that time period, continuing the upward trend of the prior months, with the announcement of positive fourth-quarter earnings and improved 2011 projections. The January 2011 projections provided to the Buyout Group were made "with confidence" and reflected further substantial upward trends in Answers' business. A156-157. Defendant Rosenschein had commented positively to the Board about the business of the Company and noted that Answers was stable, profitable and sitting on a strong cash position and was accreting cash. A389. Answers' earnings conference calls reflected great upside, cooperation with Google, proactive steps taken to address weakness in RPMs and that Answers was "well-positioned to remain a leader in the Q&A space." B801. Redpoint commented positively on Answers, its profit-generating ability, its cash position and its ability to handle Google at an internal presentation the day before the deal was signed. A623. And, again, UBS warned the buyer that the earnings release would cause the stock to trade through the deal price and that the Board would not be in a position to approve a deal at "anywhere near" the offer price. A573. These facts undercut the notion Answers was somehow "treading water" as the Director Defendants claim such that that deal had to get done on February 2. Answering Br. at 27.

D. Genuine Issues Remain for the AFCV Defendants

The AFCV Defendants' primary argument is that there was no fiduciary breach that they could aid and abet. As discussed herein, that is wrong. With respect to knowing participation, Plaintiffs rest on their Opening Brief (at 38-40).

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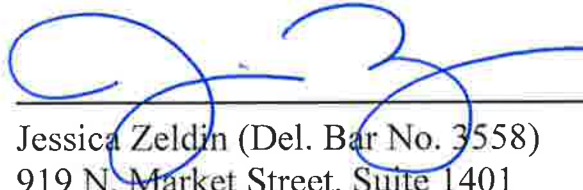
For the foregoing reasons, the Court of Chancery erred in granting summary judgment to all Defendants.

ROSENTHAL, MONHAIT & GODDESS, P.A.



Jessica Zeldin (Del. Bar No. 3558)
919 N. Market Street, Suite 1401
P.O. Box 1070
Wilmington, DE 19899
(302) 656-4433

Attorneys for
Lead Plaintiff Below-Appellant

OF COUNSEL:

ABBEY SPANIER, LLP
Arthur N. Abbey
Karin E. Fisch
Jeremy Nash
212 East 39th Street
New York, NY 10016

June 6, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 6th day of June, 2014 that I caused to be served a copy of the foregoing APPELLANT'S REPLY BRIEF upon the following in the manner indicated:

BY E-FILING

William M. Lafferty, Esquire
D. McKinley Measley, Esquire
MORRIS, NICHOLS, ARSHT & TUNNELL
1201 North Market Street, 18th Floor
Wilmington, DE 19899-1347

Kevin R. Shannon, Esquire
Berton W. Ashman, Esquire
POTTER, ANDERSON & CORROON, LLP
Hercules Plaza
1313 North Market Street, 6th Floor
Wilmington, Delaware 19801

Jessica Zeldin (Del. Bar No. 3558)