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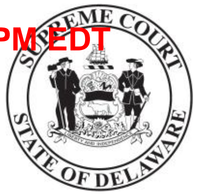

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IROQUOIS MASTER FUND LTD., on behalf of itself and all others similarly situated,

Lead Plaintiff-Below, Appellant,

v.

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.

No. 109, 2014

On appeal from the Court of Chancery of The State of Delaware in Consol. C.A. No. 6170-VCN

ANSWERING BRIEF OF THE ANSWERS DEFENDANTS-APPELLEES

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NATURE OF PROCEEDINGS

Plaintiffs appeal from a February 3, 2014 Order and Memorandum Opinion ("Op.") of the Court of Chancery granting summary judgment dismissing plaintiffs' duty of loyalty claims against the defendant directors of Answers Corporation. Plaintiffs had alleged that the directors breached their duty of loyalty in approving a merger in which AFCV Holdings acquired Answers for $10.50 per share — a 34% premium over Answers' 90-day average share price, and more than twice the closing price of Answers' stock just six months earlier. The Court of Chancery determined that there were no triable issues, because it was undisputed that the majority of the Board (i) was independent, (ii) had extensively negotiated with AFCV, an unaffiliated third-party acquirer, over the course of several months until AFCV increased its initial offer by almost 30%, (iii) conducted a market check, and (iv) properly relied on the advice and opinion of an independent financial advisor. The Court of Chancery found that the independent directors, who had no motive to fail to attempt to maximize shareholder value, did not intentionally disregard their duties by their decision to take the highest sale price from the only potential acquirer.

Plaintiffs filed their Notice of Appeal on March 2, 2014 and Opening Brief on April 16, 2014. This is the Answering Brief of the Answers Defendants, Appellees.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly applied Delaware law, most notably *Lyondell Chem. Co. v. Ryan*, 970 A.2d 235 (Del. 2009), in concluding that plaintiffs had failed to raise a material issue of fact as to whether the four disinterested directors who constituted a majority of the Board consciously disregarded their duties under *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986). Plaintiffs do not dispute that the Board (i) rejected as inadequate four separate offers until AFCV ultimately raised its offer by 30%, (ii) rejected AFCV's demands for exclusivity, (iii) shopped the Company to at least ten potential acquirers, none of whom made a competing offer, (iv) relied on the advice and opinion of an independent financial advisor, who counseled the Board among other things that no higher bidder was likely and that AFCV's offer was fair, and (v) obtained a substantial premium for Answers' stockholders. Based on these undisputed facts, the Court should affirm the Court of Chancery's decision.

2. Denied. There is no authority under Delaware law for the new rule that plaintiffs urge this Court to create: that an independent Board is prohibited from exercising its business judgment and entering into a merger agreement conferring a substantial premium on common stockholders simply because the target might announce favorable earnings in the near future. The Court of Chancery correctly found that plaintiffs had failed to offer evidence that the

independent directors were motivated by anything other than the best interests of stockholders.

3. Denied. Plaintiffs failed to raise a material issue of fact concerning either the Board's actions with respect to the fourth quarter results or the market check. The Court of Chancery correctly applied *Lyondell*, 970 A.2d at 243, in holding that the decision by the independent directors to take the "bird in the hand" did not comprise an "extreme set of facts" as "required to sustain a disloyalty claim premised on the notion that disinterested directors were intentionally disregarding their duties." (Op. 27, 33, 35).

Moreover, there is no dispute that the directors were entitled to and did rely on their independent financial advisor's advice that the market check was sufficient, no higher bidders were likely, and the $10.50 offer was fair to Answers' stockholders. This fact alone defeats plaintiffs' claim of bad faith.

4. Denied. The Court of Chancery correctly concluded that plaintiffs' disagreement with the Board's analysis of the threat posed by Google did not deprive the Board of the business judgment rule's presumption of loyalty. Again, plaintiffs have failed to explain why the disinterested and independent directors would gratuitously disregard their fiduciary duties.

5. Denied. (*See* Answering Brief submitted by the AFCV Defendants).

COUNTERSTATEMENT OF FACTS

The following record facts are not or cannot be fairly disputed by plaintiffs.

A. The Parties.

Prior to its acquisition by AFCV, Answers operated Answers.com, an Internet community-driven "Question and Answer" site. Internet users pose questions to the site, which then generates answers to those questions. Answers was "doubly dependent" on Google, for approximately 90% of its traffic and 75% of its revenues. But the company had no control over the Google algorithms that either directed traffic to the website or placed ads there. (Op. 2; *see also* A725). As lead outside director Mark Tebbe put it, Answers "lived and died by Google's decisions." (Op. 31; *see also* A1252). "[O]ur business was literally at the whim of the Google algorithm . . . . [E]very day we woke up and feared that Google's going to change its algorithm and kill our traffic." (A1242; A1254).

The Answers' Board consisted of seven members, six of whom were outside directors and all of whom owned Answers' stock. (A160, 162). In addition to the company's CEO and founder Bob Rosenschein, the Answers' Board included (i) Lawrence Kramer, President and Publisher of *USA Today*, (ii) Mr. Tebbe, a software pioneer, (iii) Mark Segall, a respected investment banker, (iv) Yehuda Sternlicht, an accountant with more than thirty years of experience, and (v) Allen Beasley and Thomas Dyal of Redpoint Ventures, a venture-capital firm that owned

close to 30% of Answers' stock. (Op. 2). Answers' Certificate of Incorporation contains an exculpatory provision pursuant to 8 *Del. C.* § 102(b)(7) barring the recovery for damages for breach of the duty of care. (Op. 22 n.92; *see also* B779).

Plaintiffs acknowledge that the majority of the Board — Messrs. Kramer, Tebbe, Segall and Sternlicht — was disinterested. (Op. 2; *see also* A249).

B. Over Several Months, Answers Rejects AFCV's Increasing Offers As Inadequate.

In March 2010, Redpoint received an unsolicited expression of interest from AFCV, a portfolio company of the private equity firm Summit Partners, concerning the possibility of a business combination with Answers. (Op. 3; A141, A284). Redpoint passed the information to Mr. Rosenschein, who discussed the issue with the Board later that month. (Op. 3; A141). Contrary to plaintiffs' claim that Redpoint was "driving this ship" (Pl. Br. 34), Redpoint's Mr. Beasley did not have any conversations with AFCV's CEO David Karandish after an initial meeting. (Op. 3 n.8) Neither AFCV nor its affiliates had any prior relationship with Answers or the directors. Plaintiffs do not claim that the independent directors had any ulterior reason to favor AFCV. (Op. 33; A1126).

Answers' Board formally met ten times beginning in March 2010 to discuss strategic alternatives and the ongoing negotiations with AFCV. (Op. 4, 28; B510-60). The Financing Committee, led by Mr. Segall, met several times to discuss the transaction. (Op. 4, 28; A145, A148). After evaluating several different potential

financial advisors, the Board retained UBS Securities to assist in the sale process and ultimately to conduct a market check. (Op. 6; B9-10; A143-44). There is no dispute that UBS was independent and presented no conflicts.[1]

In September 2010, AFCV submitted an offer of $7.50 to $8.25 a share. The Board concluded that price range was inadequate. After extensive discussions, AFCV raised its offer to $9 a share on October 19, 2010, then to $10 a share on November 4, and yet again to $10.25 a share on November 8. The Board rejected each offer as inadequate. (Op. 7-9; A144-45). Despite repeated demands by AFCV, the Board refused to negotiate exclusively with AFCV. (*Id.*).

C. The Board and Its Financial Advisor Reach Out to Other Potential Buyers.

Even before AFCV's offer, Answers had been considering a possible sale to strategic or financial partners. Beginning in January 2010, Answers discussed a possible acquisition of the Company with at least four different entities: (i) a major media company with whom Mr. Rosenschein met at a conference in January

[1] Whether plaintiffs challenge UBS' independence on this appeal is unclear. (Pl. Br. 6 n.2). Plaintiffs did not raise the argument below, and cited no evidence in their Opening Brief. The Court of Chancery had noted that "Plaintiffs have not alleged that UBS, the Board's financial advisor, was conflicted." (Op. 23). Below, plaintiffs argued only that the Board members should not have relied on UBS's opinion because it was flawed, not because UBS was conflicted. (A101-02). Any such belated challenge now would be improper and meritless. Del. Supr. Ct. R. 8; *In re Infinity Broadcasting Corp. S'holders Litig.*, 802 A.2d 285, 289 (Del. 2002) ("[t]his Court generally will not address the merits of any issue not presented to the trial court."). UBS had no meaningful connection to the parties — plaintiffs cite none — and the contingent nature of UBS' fee did not create a conflict. *See, e.g.*, *In re Smurfit-Stone Container Corp. S'holder Litig.*, 2011 WL 2028076, at *23 (Del. Ch. May 20, 2011).

2010, (ii) a private equity firm to whom Answers gave a presentation in February 2010, (iii) another private equity firm with whom Mr. Rosenschein met three times to discuss a possible strategic transaction, and (iv) a potential financial acquirer with whom Mr. Rosenschein met in November 2010 while the negotiations with AFCV were ongoing. (Op. 4 n.15; *see also* A141, A145, A741, A754).

Meanwhile, by September 2010 and under the supervision of Answers' Board, UBS developed a list of potential bidders. (Op. 10; B580-81). After given the go-ahead from the Board in early December, UBS approached ten parties that it had previously identified as the most promising potential buyers. (Op. 10; A146). Even prior to that meeting, UBS had already begun informal discussions with potential bidders. Answers' December 8, 2010 Board minutes state that Janine Shelffo, the lead UBS banker, "described the status of conversations with other interested parties, and shared her thoughts as to the probability of any of these parties becoming serious candidate acquirers." (Op. 10; A401; *see also* A649 ("Beginning in November 2010, after receiving an unsolicited offer from [AFCV], UBS conducted a market check contacting potential buyers to gauge their interest in a potential transaction with [Answers].")). The Answers' Board never told UBS to stop the market check (Op. 12; B110; A1265), which continued until the date the parties signed the Merger Agreement. (Op. 12; A578; A1022-23; A1072; A1236).

As a result of UBS' market check efforts, UBS and management made formal presentations to three potential acquirers. (A740). These presentations were designed to get the best buyer possible for the Company (A1338), and included the same financial information provided to AFCV, as well as the Company's fourth quarter projections as of the date of each presentation. (B606 ("As discussed last week, we should present [to potential bidder] the 2011 numbers presented to [AFCV] . . . . We can address verbally the outperformance we've seen in q4."); B659; B680). UBS also reached out to seven other companies, including several prominent internet giants. (A146; A740). Despite the net cast by Answers and UBS, as well as the substantial effort by Answers' executives (*e.g.*, A1338), AFCV was the only potential buyer to submit a bona fide bid. (Op. 12).

D. After Weighing Competing Considerations, the Board Votes to Approve the Answers-AFCV Merger.

As forecast during Answers' third quarter earnings call (B801), Answers had a relatively strong fourth quarter 2010 — although no better than the Company's fourth quarter 2009 results. (B717). While Answers' revenue in 2010 was $21.5 million, a slight 3.5% increase over 2009, adjusted EBITDA declined by 15.6% compared to 2009, to $6.5 million. (*Id.*). Management largely attributed the strong fourth quarter results to an algorithm change that Google had made that was expected to be "temporary," and warned that there was "no assurance we will see continued strength as seen in Q4." (Op. 13; A551, A1015).

Rather than quickly conclude a deal at an allegedly deficient price after learning of the Company's fourth quarter results as plaintiffs charge, Answers used those results as leverage to obtain a higher offer. (Op. 14-16; A1243). Mr. Rosenschein informed the Board in late January 2011 that AFCV was "stand[ing] at $10.25," but that "[i]n light of recent Q4 out-performance and rise in stock price, we will be pushing for more, but obviously expect strong pushback." (A578). Financing Committee Meeting minutes dated January 26, 2011 noted that Answers would try to obtain a higher bid from AFCV in light of "the recent outperformance of the business" and "the fact that the Company's stock price had moved up significantly since the $10.25 offer had been made by [AFCV]." (A587).

On February 1, 2011, AFCV offered $10.50 per share, but not "a penny more." (Op. 17; B712). That figure was 30% higher than AFCV's original offer, 34% higher than Answers' 90-day average share price, and more than twice the closing price of the stock just six months earlier. (A144, A151). To provide further perspective, except for two days in October 2009, Answers' stock had not traded above $10.50 since 2007. The stock had traded as low as $2.82 during that period and over a sustained period traded in the $3-$4 range. (A758-59; B840-62).

After extracting the $10.50 offer, Mr. Rosenschein immediately informed the Board, stating that "this is a big decision, requiring full Board review of pros

and cons." (B712). That is exactly what happened. The Board met on February 2, 2011 to consider and vote on a proposed Merger Agreement. (Op. 18). The Board heard presentations from its general counsel and outside counsel concerning among other things the Board's *Revlon* duties. (*Id.*; A641). Mr. Rosenschein made a "dispassionate" presentation, citing the pros and cons of the proposed deal. (*Id.*; A1087-88). The minutes state that Mr. Rosenschein:

> first reviewed certain considerations that argued against entering into a transaction for the sale of the Company at this time. The Company's stock price had been moving up in recent weeks, he noted. Certain of the Company's properties were under-monetized. The Q&A space was "hot" with a good deal of potential. Traffic to the Company's site has been encouraging. There was, he explained, upside to various projects that the Company was in the process of undertaking. . . . (A640; *see also* Op. 18-19).

Mr. Rosenschein also presented factors favoring the AFCV offer, including "major execution risk to the Company's current initiatives," and that "[t]he Company was continuing to experience declining RPMs," a measurement of monetization of user page views. (*Id.*). Mr. Rosenschein then focused on the tenuous state of the Company's business in light of its dependence on Google:

> Mr. Rosenschein next addressed the Company's dependence on Google and increasing competition. Google, he said, provided 90% of the Company's traffic and three quarters of its revenues. Changes that might be made by Google were outside the Company's control and could have a major adverse impact on the Company. Also, competition in the Q&A space was intensifying. (*Id.*; *see also* Op. 19).

Mr. Rosenschein also noted the increased competition in the Q&A field from companies far larger than Answers:

> The major risk of competition, he said however, comes from Google and Facebook. Google has recently purchased the Q&A site Aardvark, so that there is now the potential for Google to become a major competitor in the Q&A space. Facebook has recently added a questions feature to its site. Currently, Facebook is closed to search engines, but should it determine to open the questions feature of the site to the search engines, the Company would face competition from a community with 600 million participants. While the recent developments in the Q&A space bring opportunity, Mr. Rosenschein said, there are also major competitive and execution risks facing the Company going forward. (A641; Op. 19).

UBS also presented its fairness analysis and concluded that the $10.50 consideration was fair from a financial point of view. (Op. 18; A639). UBS' analysis specifically took into account Answers' fourth quarter results. (B489). Even with all the factors favoring the AFCV bid, the directors still sought a higher offer. But UBS concluded, based on its market check, that was not likely:

> Questions were then asked whether there might be other potential acquirers whom UBS had not canvassed and whether any such acquirer could still come forward. In response, Ms. Shelffo said that UBS was not aware of any such "dark horse" and that, based on the market check performed by UBS, it was not likely that the Company would receive a topping bid. (A641; Op. 19).

After the directors "probed the factors for and against the transaction, focusing especially on the increased competitive risks faced by the Company, particularly from Google and Facebook," the Board unanimously approved the Merger. (A641-43). None of the four independent directors were pressured by

either Redpoint or Mr. Rosenschein to vote in favor of the Merger, and each testified that he believed the transaction was fair and would not have voted in favor if he believed otherwise. (Op. 20; A1086-87; A1150-51; A1265-66; B42).

Answers released its fourth quarter results on March 17, 2011, six weeks after executing the Merger Agreement. (Op. 20; B717). Contrary to plaintiffs' repeated declarations (Pl. Br. 9, 16, 19, 20, 31, 33), there is nothing in the record indicating that Answers' fourth quarter earnings were or were supposed to be released on February 8, 2011. (Pl. Br. 8 n.8). After Answers announced those results, no party expressed any serious interest in the Company, even though a topping bid would have needed to be just 40 cents per share higher than AFCV's offer to present a superior proposal under the Merger Agreement. (Op. 20 n.86, 33).

On April 14, 2011 — after the Court of Chancery denied a motion by plaintiffs for a preliminary injunction — the majority of Answers stockholders voted in favor of the Merger, and Answers became a wholly-owned subsidiary of an affiliate of AFCV. (Op. 20-21; A264; B244-55; B262).

In April 2012, the Court of Chancery granted defendants' motion to dismiss plaintiffs' duty of care and disclosure claims, but held that their duty of loyalty claim survived on account of plaintiffs' allegations of (i) "potential conflicts and domination" by Messrs. Beasley, Dyal and Rosenschein, and (ii) bad faith conduct

by the four independent directors. (Op. 22; B267-77). Nevertheless, the court recognized that "Plaintiffs have not offered any particularly persuasive explanation as to why [the independent directors] Sternlicht, Segall, Tebbe, and Kramer agreed to manipulate the sales process," and questioned whether "an explanation will emerge because disinterested and independent directors do not usually act in bad faith." (B274). As shown below, after giving plaintiffs the full opportunity to conduct discovery and drawing all inferences in plaintiffs' favor, the Court of Chancery correctly held that plaintiffs had not raised a disputed issue of material fact as to their remaining duty of loyalty claim.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY RULED THAT PLAINTIFFS HAVE FAILED TO RAISE A GENUINE ISSUE OF MATERIAL FACT.

A. Questions Presented.

Did the Court of Chancery properly grant summary judgment dismissing Plaintiffs' duty of loyalty claim, given that plaintiffs do not dispute that the majority of the Board (i) was independent, (ii) negotiated with AFCV over the course of several months and obtained a price 30% higher than AFCV's original offer, (iii) conducted a market check by contacting at least ten potential bidders, (iv) was advised by its independent financial advisor that the merger price was fair and that no higher bid was likely to emerge if the market check continued, (v) obtained a substantial premium for Answers' stockholders, and (vi) had no motive to consciously disregard its duties to stockholders?

B. Scope of Review.

Rule 56 mandates dismissal of claims when no genuine issue of material fact exists. Ch. Ct. R. 56. While the Court reviews the decision below *de novo*, *Arnold v. Soc'y for Sav. Bancorp, Inc.*, 650 A.2d 1270, 1276 (Del. 1994), "on appeal from a decision granting summary judgment, this Court reviews the entire record to determine whether the Chancellor's findings are clearly supported by the record and whether those findings are the product of an orderly and logical reasoning

process." *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 48 (Del. 2006). The Court "does not draw its own conclusions with respect to those facts unless the record shows that the trial court's findings are clearly wrong and justice so requires." *Id.*

C. Merits of the Argument.

1. *Lyondell* Mandates Summary Dismissal of Plaintiffs' Claims.

Plaintiffs ask this Court to depart from the definition of "bad faith" established in *Lyondell* and expand directors' liability by holding that imperfect attempts to fulfill *Revlon* duties constitute bad faith. Delaware law is squarely to the contrary.

This Court has made clear that boards need follow "no single blueprint" to fulfill their *Revlon* duties. *Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1286 (Del. 1989). The policy underlying this legal principle is salutary; when, as here, no conflicts are present, independent directors should be accorded leeway to make change-of-control decisions without undue fear of legal liability. Thus, to sustain their duty of loyalty claim plaintiffs must show that the Board's conduct was "so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any ground other than bad faith." *Brinckerhoff v. Enbridge Energy Co.*, 67 A.3d 369, 373 (Del. 2013) (quoting *Parnes v. Bally Entm't Corp.*, 722 A.2d 1243, 1246 (Del. 1999)). Moreover, "imperfect attempt[s] to carry out *Revlon* duties" do

not constitute bad faith. *Lyondell*, 970 A.2d at 241. Rather, "an 'extreme set of facts' is 'required to sustain a disloyalty claim premised on the notion that disinterested directors were intentionally disregarding their duties.'" 970 A.2d at 243 (citation omitted).

The Court of Chancery properly applied this standard. The court noted that "[i]t is undisputed that four of the seven directors, a majority of the Board, are disinterested," and therefore to sustain their duty of loyalty claim plaintiffs had to show that the four independent Board members were either controlled by an interested party or acted in bad faith. (Op. 27). Plaintiffs did not make any tenable control allegations below (Op. 35-40), and do not raise that issue on appeal. Furthermore, the court below found that plaintiffs failed to raise a genuine issue of fact as to whether the independent directors had acted in bad faith. As the Court of Chancery noted and as is undisputed, the directors (i) met ten times during the course of the negotiations with AFCV and considered a variety of transactions, including the AFCV acquisition, (ii) had discussions with several other possible acquirers, yet none was seriously interested in exploring a transaction, (iii) rejected AFCV's requests for exclusivity, thereby "preserving [Answers'] opportunity to identify and negotiate with other purchasers," (iv) rejected as inadequate four offers from AFCV until AFCV several months later increased its offer to $10.50 per share — 30% above AFCV's initial offer, and (v) followed UBS' advice that,

after UBS' market check, additional bidders were unlikely to come forward and that the merger price was fair. (Op. 28). The Court of Chancery thus properly concluded that "Defendants' evidence is consistent with a board's attempt to comply with its fiduciary duties and to obtain the best price it could." (*Id*).[2]

Far from "extreme," these undisputed facts mirror those that had mandated summary judgment in *Lyondell.* The record in *Lyondell* — that the directors attempted to negotiate a higher price and "solicited and followed the advice of their financial and legal advisors" — led to "only one possible conclusion," that the Lyondell directors did not breach their duty of loyalty. 970 A.2d at 244. Here, plaintiffs do not dispute that Answers' Board met ten times during the negotiations with AFCV. *See Lyondell*, 970 A.2d at 244 ("The Lyondell directors met several times to consider Basell's premium offer"). Nor do plaintiffs dispute that the Board rejected four separate offers from AFCV until AFCV increased its offer to $10.50 per share — 30% above its initial offer, and a price deemed fair by UBS. *See id.* at 241 (Lyondell's CEO "negotiated the price up from $40 to $48 per share

[2] Since plaintiffs did not contest that a majority of the Board was independent, the court below made no determination whether Messrs. Beasley and Dyal were conflicted on account of Redpoint's 27% stake in Answers, or whether Mr. Rosenschein was conflicted because he was purportedly promised employment by AFCV, as plaintiffs alleged. (*But see, e.g.* Op. 36 (noting "skeptic[ism] about Rosenschein's alleged conflict" but holding it need not address the issue because no facts supported an inference that he controlled or dominated the Board), 38 (same as to Beasley and Dyal)). On this appeal, Plaintiffs appear to have abandoned their arguments below that the three directors were conflicted. Plaintiffs have not raised facts establishing any conflict by the Redpoint directors or Mr. Rosenschein. Redpoint received the same Merger consideration as other stockholders (A173), and was "under no pressure to exit the investment." (A924 at 97; *see also* A1183).

— a price that Deutsche Bank opined was fair."). Plaintiffs likewise do not dispute that, separate from the market check conducted by UBS, Answers' management met with four other parties concerning a potential acquisition during the year-long negotiations with AFCV. *See id.* at 244 (Lyondell's directors "were generally aware of the value of their company and they knew the chemical company market"). And in *Lyondell*, "no other acquiror expressed interest during the four months between the merger announcement and the stockholder vote." *Id.* at 241. Here too, in the months between the announcement of the Merger and the Answers stockholder vote no new bidder emerged – even after the supposedly "dramatically changed circumstances" trumpeted by plaintiffs on this appeal, namely Answers' announcement of its fourth quarter results. (Pl. Br. 7). And as in *Lyondell*, the directors "solicited and followed the advice of their financial . . . advisor[]" who, as in *Lyondell*, "explained why it believed no other entity would top [the lone bidder's] offer." *Id.* at 239, 244.

Defendants' motion here is even stronger than that granted in *Lyondell*. Answers conducted a market check that targeted ten potential acquirers and, additionally, merger negotiations lasted over several months. By contrast, in *Lyondell,* "[t]he merger was negotiated and finalized in less than one week, during which time the directors met for a total of only seven hours to consider the matter."

And the Lyondell directors "did not seriously press [the acquirer] for a better price, nor did they conduct even a limited market check." *Id.* at 241.

Plaintiffs ignore the dispositive effect of *Lyondell*. They contend that the Answers directors were "uninformed" because they purportedly did not undertake particular analyses. (Pl. Br. 32). *Lyondell* addressed whether a "failure to inform one's self of available material facts, without more, can [] constitute bad faith," and held that "[t]he answer is clearly no." 970 A.2d at 240 (citation omitted). Plaintiffs also maintain (Pl. Br. 21) that the Board was under a fiduciary duty to conduct a formal analysis of any short-term market effect of the fourth quarter results. Even putting aside that UBS actually took into account the fourth quarter results in its fairness opinion (B489), *Lyondell* counsels that "there are no legally prescribed steps that directors must follow to satisfy their *Revlon* duties." *Id.* at 243. Plaintiffs go on to assert (Pl. Br. 22, 26) that this Court should not excuse what they vaguely call the Board's "inaction." *Lyondell*, however, held that "inaction" claims state only a duty of care claim. *Id.*, at 244. Finally, plaintiffs declare that they have raised facts as to whether the Board members "utterly failed to obtain the best price available." (Pl. Br. 34). That misstates the governing standard. Rather, the issue is whether the Board "utterly failed **to attempt** to obtain the best sale price." *Lyondell*, 970 A.2d at 244 (emphasis added). The Board's rejection of AFCV's first four offers and repeated requests for exclusivity

as well as the market check were "attempts to comply with the Board's fiduciary duties . . . even if Plaintiffs have suggested several ways in which the Board's efforts could have been more robust." (Op. 29-30).[3]

Beyond the rhetoric, at bottom plaintiffs complain about steps they claim the independent directors should have taken but did not. According to plaintiffs, the directors should have (i) contacted additional potential acquirers after January 1 (Pl. Br. 26-29), (ii) approached financial buyers instead of only the strategic buyers that UBS thought were the best fit for the Company (*id*. at 12), (iii) provided updated confidential nonpublic information to the potential bidders who had previously expressed no interest in the transaction (*id*. at 14, 16-17), (iv) conducted additional formal analyses concerning the prospect of remaining independent (*id*. at 21), and (v) above all, waited until the fourth quarter results were public before entering into the Merger. (*Id*. at 16-22). By these arguments, plaintiffs fundamentally misunderstand *Lyondell*. Merely "questioning whether disinterested, independent directors did everything they (arguably) should have done to obtain the best sale price" is not enough to meet plaintiffs' heavy burden

[3] Below, plaintiffs tried to distinguish *Lyondell* only at oral argument, when counsel asserted that *Lyondell* does not apply because there was no "blowout price" offered by AFCV. (B912). *Lyondell* did not hold that the presence or absence of a "blowout price" is dispositive in assessing bad faith. In any event, the "blowout price" in *Lyondell* consisted of a 20% premium over the stock's closing price the day before the merger was announced. *Ryan v. Lyondell Chem. Co.*, 2008 WL 2923427, at *1 n.3 (Del. Ch. July 29, 2008), *rev'd on other grounds*, 970 A.2d 235 (Del. 2009). Here, AFCV's final offer represented a 19.6% premium over the closing stock price on the day before the Merger Agreement was signed. (A151).

on a duty of loyalty claim. *Lyondell*, 970 A.2d at 244. Plaintiffs may now second-guess the Answers' Board, asserting that it could have handled the sale process differently, but "there is a vast difference between an inadequate or flawed effort to carry out fiduciary duties and a conscious disregard for those duties." *Id.* at 243.

Finally, plaintiffs offer scant legal authority in their Opening Brief, and the cases plaintiffs do cite bolster rather than detract from the decision below. Plaintiffs repeatedly cite *In re Rural Metro Corp. S'holders Litig.*, 2014 WL 971718 (Del. Ch. Mar. 7, 2014), but that case involved only aiding and abetting duty of care claims against the banker; the target's directors had already settled. *Id.* at *18. Nonetheless, the court noted that had they not settled, the claims against the directors might have been barred by the exculpatory provision in the company's charter "[i]f those directors acted in the good faith belief that they were pursuing the corporation's best interests." *Id.* at *21 (internal citations and quotations omitted). In *Chen v. Howard-Anderson*, 87 A.3d 648, 691 (Del. Ch. 2014) (Pl. Br. 29), the directors conducted a "market check" consisting of contacting and giving potential acquirers just 24 hours over the July 4th weekend to negotiate a merger agreement, and did not follow-up with any parties who expressed interest. The Court nevertheless found that the directors did not breach their duty of loyalty, because plaintiffs had failed to show that the outside directors acted for an "improper motive." *Id.* at 685. And the Court granted summary

judgment in *Metcap Sec. LLC v. Pearl Senior Care, Inc.*, 2009 WL 513756 (Del. Ch. Feb. 27, 2009), *aff'd*, 977 A.2d 899 (Del. 2009) (Pl. Bl. 30).

In short, plaintiffs have not cited a single case in which a court denied summary judgment in a conflict-free situation like ours, where a disinterested Board advised by an independent banker had a sale process in place that solicited a range of potential bidders and accepted the highest bid only after months of negotiations.

2. Plaintiffs Have Not Identified Any Motive for the Independent Directors to Have Consciously Disregarded Their Duties.

Why would Answers' independent directors gratuitously breach their duty of loyalty and consciously not try to attempt to get the best deal for shareholders? Plaintiffs ignore this hole in their case, as well as the legal significance of the absence of motive.

Under plaintiffs' theory, Answers' disinterested and independent directors, all prominent in their fields, consciously disregarded their duties for no reason at all — or in plaintiffs' words, "for whatever reason." (Pl. Br. 37). Despite ample opportunity in discovery, plaintiffs, who deposed every director, offered no "greed . . . hatred, lust, envy, revenge, shame, or pride," or other "human motivation," *Chen*, 87 A.3d at 684, to refute the directors' uniform testimony that they acted with one purpose only — to try to obtain for Answers' shareholders the highest

value reasonably available for their shares. (A1086-87; A1151; A1266; B42).

The Court of Chancery found that the lack of motive weighed heavily in favor of summary dismissal of plaintiffs' duty of loyalty claim. (Op. 26). This Court should reach the same conclusion. *See Lyondell,* 970 A.2d at 240 ("fiduciary action taken solely by reason of gross negligence and without any malevolent intent . . . clearly" does not constitute bad faith); *Malpiede v. Townson*, 780 A.2d 1075, 1098 (Del. 2001) (dismissing fiduciary duty claims; plaintiffs failed to allege how majority of independent directors acted in their own personal interests rather than in the best interests of the stockholders).[4]

3. Plaintiffs Have Not Raised a Disputed Factual Issue Concerning Answers' Fourth Quarter Results.

Constrained by *Lyondell* and the absence of any motive, in trying to establish an "extreme set of facts" plaintiffs principally focus on the directors' supposed mis-steps with respect to Answers' fourth quarter results. According to plaintiffs, Answers' Board "rushed" into the Merger before announcing the positive fourth quarter results, thereby "[d]eliberately manipulat[ing] . . . the market" and "fail[ing] to react to dramatically changed circumstances." (Pl. Br. 2,

[4] *See also In re Morton's Rest. Group, Inc. S'holders Litig.*, 74 A.3d 656, 662 (Del. Ch. 2013) (dismissing complaint alleging that disinterested directors breached their duty of loyalty in approving a merger transaction; "[b]ecause the Complaint fails to plead any rational motive for the directors to do anything other than attempt to maximize the sale value of Morton's, it fails"); *Houseman v. Sagerman*, 2014 Del. Ch. WL 1478511, at *8 (Del. Ch. Apr. 16, 2014) (dismissing claims; "the Plaintiffs have not attempted to suggest what could have caused these directors with substantial economic interests in the Company to utterly abandon their responsibilities to maximize value in selling the Company.").

7-9, 17). The court below properly found that even drawing all inferences in their favor, plaintiffs' hyperbolic allegations do not create triable issues.

Plaintiffs essentially ask this Court to create a new "single blueprint" under *Revlon* prohibiting independent directors from entering into a merger agreement for fair consideration and providing a substantial premium, simply because the company might shortly announce favorable quarterly earnings — although here, the results in question were not announced until more than a month later. There is no authority under Delaware law for this proposition, and plaintiffs have cited none — certainly none holding that such conduct constitutes a breach of the duty of loyalty. *See Barkan*, 567 A.2d at 1286 (Del. 1989); *Paramount Commc'ns Inc. v. QVC Network Inc.*, 637 A.2d 34, 45-46 (Del. 1994) ("If a board selected one of several reasonable alternatives, a court should not second-guess that choice even though it might have decided otherwise or subsequent events may have cast doubt on the board's determination."). Nor is there any reason to hamstring directors by creating such a rule, which would chill merger negotiations for positive-performing companies in possession of non-public information. As this Court observed in *Lyondell*, "[n]o court can tell directors exactly how to [get the best price for shareholders], because they will be facing a unique combination of circumstances, many of which will be outside their control." 970 A.2d at 242.

Even were there such a requirement, plaintiffs have not offered any evidence that the Board was aware of and consciously disregarded it, as would be required to sustain a duty of loyalty claim.

The directors were advised by legal counsel and were aware that they had fiduciary duties (A641), and all believed that they could accept the AFCV offer consistent with those duties. The independent directors unanimously testified that they believed the Merger process was fair, that they had gotten the highest price that they could, and that the Merger was in the best interests of shareholders. (Op. 34; A1086; A1147; A1151; A1266; B42). The independent banker took into account the fourth quarter results and still determined that the merger consideration was fair to Answers' stockholders. (B489; *see also* Pl. Br. 32). In *Lyondell*, this Court rejected the contention that *Revlon* imposed an obligation to take specific steps such that a board would act in bad faith by consciously disregarding those steps, and held that plaintiffs must show that the independent directors "intentionally fail[ed] to act in the face of a known duty to act, demonstrating a conscious disregard for [their] duties." *Lyondell*, 970 A.2d at 243. *See also Stone ex rel. Am. South Bancorp. v. Ritter*, 911 A.2d 362, 370 (Del. 2006) ("imposition of liability requires a showing that the directors knew that they were not discharging their fiduciary obligations."). Plaintiffs have not come close to this showing.

Beyond that, the premises underlying plaintiffs' theory cannot be squared with the undisputed record. The independent directors did not "rush[] to approve the Transaction." (Pl. Br. 2). On the contrary, the Board members testified that they did not speed up the market check on account of the fourth quarter results. (A1086; A1150; A1265-66). The Board directed UBS to "continue its exploration of alternative transactions" after meeting on December 23, 2010 (A147) and never told UBS to stop the market check. (A1151, A1265; B110). Board members continued to solicit third-party interest even after the parties signed the merger agreement. (B110; B730). Meanwhile, negotiations with AFCV dragged on for nearly a year. The directors were informed of the fourth quarter results as of December 8, 2010 (Pl. Br. 8), yet Answers did not sign the Merger Agreement until eight weeks later, a month after the fourth quarter closed.

Moreover, plaintiffs have offered no citation for their speculative claim that the Board knew that the fourth quarter results would have caused "Answers' share price . . . to move up dramatically." (Pl. Br. 22). On the contrary, the February minutes indicate that Mr. Rosenschein discussed with the Board that "It was likely . . . that the stock would come under substantial pressure if the market turned bearish." (A640). Mr. Rosenschein testified without contradiction that he believed the stock might have gone down. (A761). Mr. Kramer testified that he thought the risk factors "were, if anything, worsening." (A1086). As the court below

recognized, "[w]hen the Board was informed of the [fourth quarter] results, it indicated its concern about the Company's dependence on Google and was cognizant that its strong results did not guarantee improved (or sustained) results in future quarters." (Op. 32). *See Brzoska v. Olson,* 668 A.2d 1355, 1365 (Del. 1995) (more than "mere speculation" is required to defeat summary judgment).

Equally critical, the fourth quarter results were not "dramatically changed circumstances." (Pl. Br. 7). Answers' fourth quarter 2010 results were no better than the fourth quarter 2009 results. (B717). While revenue may have increased slightly by 3.5%, adjusted EBITDA in fact declined by 15.6%. (*Id.*). "The Company was continuing to experience declining RPMs," a measurement of monetization of user page views. (A640). In the long term, the Company was treading water — and at the mercy of Google and other internet giants like Facebook. (A640-41; *see also* Op. 31: plaintiffs' arguments from the fourth quarter results "fail to create a material issue of fact regarding the Board's bad faith because the Board had plausible business concerns about the stability and future success of the Company.")

Indeed, Answers analyzed the Company's fourth quarter "outperformance" (Pl. Br. 33) and ultimately concluded that it would likely be temporary. At the December 23, 2010 Board meeting, the directors were cautioned that there was "no assurance we will see continued strength as seen in Q4," and "[p]ast experience

leads us to expect negative Google surprises in 2011." (A551). Management's views were echoed by Ms. Shelffo of UBS, who testified that "[t]he outperformance was almost entirely related to an algorithm change that Google had made, that management very much expected to be a temporary phenomena." (A1015). Ms. Shelffo also noted that this blip indeed turned out to be temporary. (A1016). Mr. Beasley testified that he considered whether in light of the positive fourth quarter results Answers should remain independent, and concluded it should not. (A942). As the Court of Chancery found, the Board's response to the fourth quarter results were "efforts which, whether imperfect or not, did not exhibit a conscious disregard for its duties." (Op. 32).

Plaintiffs also overlook that Answers extracted from AFCV substantial additional consideration on account of the fourth quarter results. *See supra* page 9. AFCV raised its offer by at least an additional 25 cents per share — consideration totaling more than $3 million. (Op. 32: "Plaintiffs' arguments also ignore the fact that the Fourth Quarter Results were provided to AFCV and that the bidder did in fact increase its offer price.") If one takes into account liabilities that AFCV uncovered after making its $10.25 offer — equating to 84 cents per share (Op. 17 n.69) — the Board used the fourth quarter results to extract from AFCV a total of $1.09 per share (25 cents plus 84 cents). *See Lyondell*, 970 A.2d at 241 (no bad faith; CEO had "negotiated the price up from $40 to $48 per share.").

It is also worthy of emphasis that UBS was well aware of the fourth quarter results yet advised the Board that "it was not likely that the Company would receive a topping bid" if a wider market check were conducted. (A641). *See Lyondell*, 970 A.2d at 239, 244 (no breach of duty of loyalty; among other things, "the directors solicited and followed the advice of their financial . . . advisor[]," who "explained why it believed no other entity would top" the lone offer Lyondell had received). *Cf. Polk v. Good*, 507 A.2d 531, 537 (Del. 1986) (in the *Unocal* context, "the presence of [a majority of] outside directors . . . coupled with the advice rendered by the investment banker and legal counsel, constitute a *prima facie* showing of good faith and reasonable investigation").

Finally, the market was well aware of the fourth quarter results, yet no new bidder emerged. Answers released the results in mid-March. (B717). The fourth quarter results were taken into account in developing Answers' 2011 projections set out in Answers' February 2011 Proxy Statement, anticipating increases in EBITDA and revenue compared to 2010. (A150, A1151). Yet between the release of both the fourth quarter results and proxy on one hand, and the shareholder vote in mid-April on the other, not a single viable bidder stepped forward. The absence of any viable topping bid severely undermines plaintiffs' case, given that such a bid needed to be just 40 cents per share higher. (Op. 20 n.86; *id.* at 33: "Plaintiffs' arguments also ignore that the Company released the updated financials to the

public in March after the transaction was signed and again failed to generate a good faith topping bid."). *See Lyondell*, 970 A.2d at 241 (dismissing duty of loyalty claim in part because "no other acquiror expressed interest" in the months between the merger announcement and the stockholder vote).

* * *

Faced with this clear record, plaintiffs mis-focus on a handful of emails written by UBS' Ms. Shelffo recounting her conversations with Summit Partners. (Pl. Br. 10). These emails cannot undo the avalanche of record evidence attesting to the independent directors' attempt to obtain the highest price for Answers' stockholders. As is plain from the context of the documents and as Ms. Shelffo herself testified, these emails were part of a "negotiating position" aimed at pushing AFCV to offer a higher price. (A1015; *See also* B33; B99). And in fact, as plaintiffs admit (Pl. Br. 23), Ms. Shelffo's negotiating tactic worked. AFCV thereafter raised its offer to $10.50 a share in response to pressure from Answers. (A578, A1150, A1243, B712). Reviewing this undisputed record, the Court of Chancery properly found that these emails did not create an issue of fact. "Evidence based upon a few isolated quotes stating the deal was accelerated or reflecting one director's belief, or perhaps mere bargaining position, of the Company's value does not state a claim for bad faith in this context." (Op. 33).

Against this backdrop, there was nothing "extreme" about the independent

Board's determination "to pursue the proverbial bird in the hand over the one in the bush," a decision "within the purview of a disinterested Board." (Op. 33; A759, A1262). *McGowan v. Ferro*, 859 A.2d 1012, 1031-32 (Del. Ch. 2004) (where director defendants proffered several reasons for extension of Merger Agreement including advice of financial advisor and the appeal of a "bird in the hand," plaintiffs failed to raise a genuine issue of material fact on the issue of bad faith), *aff'd*, 873 A.2d 1099 (Del. 2005). Put another way, plaintiffs may disagree with the way the Board weighed and then used the fourth quarter results as leverage during the negotiations, but even if the Board's actions were deficient in some way, that does not come remotely close to the showing required to sustain a duty of loyalty claim – that the directors "knowingly and completely failed to undertake their responsibilities." *Lyondell*, 970 A.2d at 243-44.

4. Plaintiffs Have Not Raised a Disputed Factual Issue Concerning Answers' Market Check.

Plaintiffs contend that the Board conducted an "inadequate" market check. (Pl. Br. 11). As the court below concluded, this allegation cannot forestall summary judgment. The directors uniformly testified that they believed the Company was properly shopped for sale, and that there was no other company who was interested in paying more than AFCV. (A1085; A1129; B42-43; B108). There is no contrary evidence in the record.

Plaintiffs did not dispute — and do not dispute on this appeal — that the

Answers' Board through its financial advisor UBS approached ten potential acquirers all considered promising and made three presentations, yet no one other than AFCV made a bona fide offer. (A146; A739-40; B28). Plaintiffs have criticized the length of the market check and parties solicited. Yet as the Vice Chancellor noted, these criticisms do not establish a breach of the duty of loyalty: "[E]ven this limited market check does not constitute a complete abandonment of fiduciary duty and thus is sufficient to survive a bad faith abandonment of duty claim." (Op. 30). As this Court has held, there is no requirement that directors conduct a market check of any particular length if they have a reliable basis for believing that the price offered is the best possible. *Lyondell*, 970 A.2d at 243 n.28, 244 (granting summary judgment, even though "[w]e assume . . . that [the directors] did not even consider conducting a market check before agreeing to the merger"). Notably, UBS opined that a more extensive market check would not elicit a higher bid, and the Board did not breach its duty of loyalty by relying on this advice. *Id*. at 244.

Plaintiffs likewise cannot create an issue of fact from a single email from UBS's Ms. Shelffo stating that AFCV "pushed again the idea that we should do a quick market check in the next two weeks and then sign up a deal." (A395). In that same email, Ms. Shelffo rejected AFCV's suggestion: "I told [AFCV] the board was not comfortable with that approach satisfying their fiduciary duty and that our

UBS recommendation to complete a real market check would be to do something in the new year." (A395; *see also* B109 (Board followed UBS' advice and rejected AFCV's suggestion that Answers conduct a quick market check)). The Board never told UBS to stop the market check (A1265; B110), which the directors testified continued until the date the parties signed the Merger Agreement six weeks later. (A1022-23; A1072; A1236; B28; B603).

Plaintiffs also complain that after the fourth quarter had concluded, Answers provided updated results only to AFCV and not to the three potential bidders. (Pl. Br. 14, 16-17). Plaintiffs omit a critical detail: after Answers' presentations in December in which Answers discussed the anticipated fourth quarter numbers (B606, B659, B680), not one of the three expressed any interest in going forward. (A146; A641). Plaintiffs offer no basis for their claim that a Board must update and provide confidential information to parties who show no interest in a transaction. Indeed, the three entities presumably knew that the quarter had ended, yet the record is barren of any request they made for the information. "Delaware law does not require that a board of directors treat all bidders equally if 'shareholders' interests justified such a course.'" *Miramar Firefighters Pension Fund v. Above Net, Inc.*, 2013 WL 4033905, at *7 (Del. Ch. July 31, 2013). *A*

fortiori, there is no requirement that the Board treat uninterested, non-bidders the same as bidders.[5]

Likewise, the Board's decision to focus only on strategic buyers is within the discretion of the Board, and not a breach of the duty of loyalty. Neither the Board nor UBS believed that a financial buyer would pay more than a strategic buyer. (A741; A1003). *See Miramar Firefighters Pension Fund*, 2013 WL 4033905, at *7 n.62 ("the Board's initial decision to pursue only financial buyers is not conduct that is 'so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any ground other than bad faith'") (citation omitted).

5. Plaintiffs Have Not Raised a Disputed Factual Issue Concerning the Board's Consideration of Strategic Alternatives.

Plaintiffs contend that the Board failed to consider possible strategic alternatives to the Merger, including the possibility of buying back stock. (Pl. Br. 21). The court below found no support for that claim in the record.

Quite obviously, the alternative to merging with AFCV is not merging with AFCV and remaining a stand-alone company. The Board rejected AFCV's first four offers, thereby determining that remaining a stand-alone company exceeded the value of those initial offers. (*E.g.*, A145). The Court of Chancery properly

[5] Plaintiffs mis-cite testimony from the Company's CFO that he "could not recall whether potential buyers were provided with verbal updates regarding Q4 outperformance." (Pl. Br. 12 n.5 (citing A1340)). He testified that "I'm sure we did it." (A1340-41).

found that the Board also considered strategic alternatives during Board meetings in March 2010, April 2010, May 2010, and August 2010 and determined that it was in the best interests of the Company and its stockholders "to explore strategic alternatives such that it would be fully informed." (Op. 4 n.16; *see also* A142, A144, A291-92, A322, B514-17). At the February 2, 2011 Board meeting, the Board engaged in robust discussion of the pros and cons of the Merger or whether the Company should remain independent. (A151-54; A640-41). The Board also considered and rejected other alternatives, including a dividend (B42) and a stock buy-back. (A322; A389; A1242-43). And contrary to plaintiffs' unsupported allegations (Pl. Br. 6, 21), UBS explicitly gave advice on these issues. (A1008).

Even were plaintiffs correct that the Board had failed to consider strategic alternatives, that would not defeat summary judgment as to plaintiffs' duty of loyalty claim. *Lyondell*, 970 A.2d at 240 ("failure to inform one's self of available material facts, without more," does not constitute bad faith) (citation omitted). *See also Wayne County Emp. Ret. Sys. v. Corti*, 2009 WL 2219260, at *15 (Del. Ch. July 24, 2009) ("Plaintiffs' assertion that the Director Defendants fail[ed] to 'probe[] for alternatives' does not state a claim for breach of the duty of loyalty.") (citation omitted), *aff'd,* 996 A.2d 795 (Del. 2010).

6. Plaintiffs Have Not Raised a Disputed Factual Issue Concerning the Board's Assessment of the Threat Posed by Google.

Plaintiffs contend that the court below incorrectly applied the business judgment rule to the Board's assessment of the threat of market competition. (Pl. Br. 2). The Answers' Board was entitled to the "presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984). Even had a minority of allegedly conflicted directors acted in their own interest, that would "not deprive the board of the business judgment rule's presumption of loyalty" when, as here, a disinterested majority voted in favor of the transaction. *McMillan v. Intercargo Corp.*, 768 A.2d 492, 504 n.54 (Del. Ch. 2000).

Plaintiffs have not explained how the Board's consideration of the threat from Google was anything other than the product of reasonable business judgment. (Op. 37). Plaintiffs do not dispute that Answers was dependent on Google and that as the court below noted, Answers "lived and died by Google's decisions." (Op. 2, 31; A1252). Plaintiffs merely express their belief that the Board's fears were unfounded and improperly suggest that the Court should substitute its judgment for that of the Board. (Pl. Br. 23-24). Plaintiffs also ignore that the new threat from Google was not merely the unpredictability of changes to Google's algorithms, but

also that Google — as well as Facebook — were entering the Q&A space. (A641, A1087, A1140-46, A1285, B42-43). *See Barkan, Inc.,* 567 A.2d at 1286 ("If no breach of duty is found, the board's actions are entitled to the protections of the business judgment rule.").

Under these circumstances, the Court of Chancery correctly concluded that the "Board was entitled to make a determination that selling the Company was in the best interest of the shareholders without a judicial second-guessing of its decision." (Op. 32). Plaintiffs have not come remotely close to establishing disputed facts as to any duty of loyalty claim. *See Lyondell*, 970 A.2d at 244 (undisputed record "leads to only one possible conclusion," mandating summary judgment in favor of directors).

CONCLUSION

Under the standard set by this Court, to sustain their duty of loyalty claim plaintiffs must prove an "extreme set of facts," establishing that the Board's conduct was "so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any ground other than bad faith." *Lyondell*, 970 A.2d at 244; *Brinckerhoff*, 67 A.3d at 373. Based on the facts even as recited by plaintiffs — Answers negotiated a substantial premium extracted from a lone bidder in negotiations stretching out over many months, after a market check conducted by an independent banker who contacted at least ten potential bidders — the Board's actions are nowhere near the "extreme set of facts" necessary to sustain a cognizable loyalty claim. For these reasons, the Court should affirm the decision below.

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