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May 27, 2011

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Re: *In re Lawson Software, Inc. Shareholder Litigation*
Consolidated C.A. No. 6443-VCN
Date Submitted: May 24, 2011

Dear Counsel:

Lead Plaintiffs Steamfitters Local #449 Retirement Security Fund and Sanjay Israni (the "Plaintiffs") have moved to certify this matter as a class action under Court of Chancery Rule 23 in order to pursue claims challenging the acquisition of Lawson Software, Inc. (the "Company") by Defendant GGC Software Holdings, Inc. through an all-cash buyout of the Company's outstanding shares. The challenge

is based on a host of alleged breaches of fiduciary duty, including a failure to maximize shareholder value, acquiescence in unreasonable deal protection measures, and a failure to disclose material information essential to allowing the Company's shareholders to cast an informed vote regarding the proposed transaction. Apparently, no date has been set for shareholder approval.

In considering a motion for class certification, the Court employs a two-step analysis.¹ First, under Court of Chancery Rule 23(a), class certification requires a showing of: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation.² Second, if those four criteria are satisfied, the Court considers whether at least one of the standards of Court of Chancery Rule 23(b) has been established.³ The party seeking class certification "has the burden of satisfying the Court it has met the requirements of Rule 23."⁴

¹ *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1224 (Del. 1991).

² *CME Group, Inc. v. Chicago Bd. Options Exch., Inc.*, 2009 WL 1547510, at *4 (Del. Ch. June 3, 2009).

³ *Id.* at *5.

⁴ *Dieter v. Prime Computer, Inc.*, 681 A.2d 1068, 1071 (Del. Ch. 1996).

Because “[t]he distinctions between the subsections of Rule 23(b) are not well defined, and the categories are not mutually exclusive,”⁵ Delaware courts have traditionally viewed “actions challenging the propriety of director conduct in carrying out corporate transactions [as] properly certifiable under both subdivisions (b)(1) and (b)(2).”⁶ Under either, “certification of a mandatory (i.e., non-opt-out) class is appropriate,”⁷ and “decisions are *res judicata* as to the entire class.”⁸

Unlike certification under Rule 23(b)(3)—which requires “that class members be given actual notice and the right to opt out”—notice to absent class members and opt-out rights are at the Court’s discretion for a class certified under Rule 23(b)(2).⁹

⁵ *In re Countrywide Corp. S’holders Litig.*, 2009 WL 846019, at *11 (Del. Ch. Mar. 31, 2009) (internal citations and quotations omitted).

⁶ *In re Cox Radio, Inc. S’holders Litig.*, 2010 WL 1806616, at *8 (Del. Ch. May 6, 2010).

⁷ *CME Group, Inc.*, 2009 WL 1547510, at *5; *see also Hynson v. Drummond Coal Co., Inc.*, 601 A.2d 570, 575 (Del. Ch. 1991) (“In my opinion, the device of a properly administered class action may be employed, without affording opt-out rights, to bind all absent shareholder/plaintiffs to a final judgment in an action seeking to vindicate rights attaching to corporate stock, whether those rights are sought to be protected by injunction or compensated by an award of money.”). In this action, the Plaintiffs “seek to enjoin, preliminarily and permanently, the Proposed Transaction, and, in the event [it] is consummated, recover damages as a result of the violations of law alleged herein.” Am. Compl. ¶ 13. Thus, the Plaintiffs predominantly request equitable relief, not money damages.

⁸ *Dieter*, 681 A.2d at 1073.

⁹ *Nottingham P’rs v. Dana*, 564 A.2d 1089, 1097-98 (Del. 1989); *see also* Ct. Ch. R. 23(d)(2); *Marie Raymond Revocable Trust v. MAT Five LLC*, 980 A.2d 388, 401 (Del. Ch. 2008) (“If a class action is certified pursuant to Rule 23(b)(3), the class members must be given the best notice

Nevertheless, if “monetary relief is sought and is made available in a Rule 23(b)(2) class action, some form of notice of the pending action or judgment is no longer discretionary but is required at some stage in the proceedings.”¹⁰ Thus, although “traditional notions of fair play and substantial justice are fully satisfied by giving notice and an opportunity to be heard where the class action mechanism is used to bind all absent stockholders to a final judgment in an action arising out of the decision of a board of directors to authorize a merger agreement,”¹¹ it is within the Court’s discretion to determine whether absent class members must receive notification of class certification. Because of time constraints, the substance of the claims, and the nature of the relief sought, the Court concludes here that notice of the class certification process need not be given to absent members of the proposed class.

practicable under the circumstances, the opportunity to be heard and, in addition, the right to opt out.”).

¹⁰ *Nottingham P’rs*, 564 A.2d at 1099-1100 (internal quotation and alternations omitted). Where a portion of the relief sought in a Rule 23(b)(2) class action is money damages, the Supreme Court has observed that due process requires notification only, not a right to opt out of the class. *Id.* at 1101.

¹¹ *In re Wm. Wrigley Jr. Co. S’holders Litig.*, 2009 WL 154380, at *1 (Del. Ch. Jan. 22, 2009).

The Court now turns to a consideration of the requirements of Court of Chancery Rule 23(a). First, the numerosity requirement is satisfied by recognizing that the Company's common stock is owned by thousands of shareholders. Joinder is impracticable. Second, the Complaint alleges breaches of fiduciary duty that implicate the interests of all members of the proposed class of shareholders. Thus, there are "questions of law [and fact]," common to the class. Third, the claims brought by the Plaintiffs are typical of the claims that the class members would be expected to assert if they were participating in this litigation and the defenses that the Plaintiffs will encounter are the same as those that would confront members of the class as well. All claims grow out of the same events and courses of conduct and the same legal theories would apply. As one regularly finds in challenges to the conduct of fiduciaries in the merger context, the typicality requirement is satisfied here. Finally, the class plaintiffs are without conflict and are adequate representatives. They have chosen attorneys who are experienced and competent to pursue claims of this nature. Thus, the adequacy of representation requirement is also satisfied.

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Similarly, the requirements of Court of Chancery Rules 23(b)(1) and 23(b)(2) are satisfied because of the risks of varying adjudications if these claims were not treated together and because the relief that would be afforded would be equitable in nature and would benefit the entire class on an equal basis if the Plaintiffs should prevail. Moreover, considerations of efficient class management strongly militate in favor of resolving claims of this nature on a class basis.

For the foregoing reasons, the Plaintiffs' motion for certification of the class described in their moving papers will be granted.

An implementing order will be entered.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K