EXHIBIT 22

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE HEWLETT-PACKARD COMPANY SHAREHOLDER DERIVATIVE LITIGATION	MASTER DOCKET NO. C-12-6003 CRB (EDL)
THIS DOCUMENT RELATES TO: ALL ACTIONS	**SUPPLEMENTAL OBJECTIONS OF HARRIET STEINBERG AND A.J. COPELAND TO THE PROPOSED SETTLEMENT** **[PUBLIC VERSION]**

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Harriet Steinberg ("Steinberg") and A.J. Copeland ("Copeland", collectively with Steinberg, the "Objectors"), by their undersigned attorneys, pursuant to this Court's June 30, 2015 Order (Docket No. 374), respectfully submit these joint supplemental objections based upon, *inter alia*, the recent deposition testimony of Robert Bennett ("Bennett") which took place on July 7, 2015. *See* Transcript of Deposition Testimony of Robert Bennett ("Tr.") attached as Exhibit 54 to the Supplemental Declaration of Jeffrey S. Abraham ("Abraham Supp. Decl.").

RELEVANT SUPPLEMENTAL PROCEDURAL HISTORY

On June 17, 2015, Magistrate Judge Laporte ordered Hewlett-Packard Company ("HP" or the "Company") to produce a member of the Demand Review Committee ("DRC" or the "Committee") to be deposed by June 29, 2015. Dkt. No. 364. HP agreed to produce Robert Bennett ("Bennett"), a member of the DRC, for a deposition on July 7, 2015 in Colorado. Dkt. No. 374.[1] Bennett had only joined the Board on July 18, 2013, six months after the DRC had first been formed. DRC Resolution at 10; §II.A.2.b (Dkt. No. 211-1). In producing Bennett, HP declined a request by Richard D. Greenfield, counsel for Copeland, to produce Ralph Whitworth, who was the most prominent member of the DRC, for a deposition, and the member who invited Bennett to join the DRC following the resignation of defendant Thompson due to a serious conflict of interest. Supplemental Declaration of Richard D. Greenfield ("Greenfield Supp. Decl.") ¶2; Tr. 8:16-18.

Additionally, on the evening of July 2, 2015, HP made a supplemental document production consisting, *inter alia*, of materials presented to the DRC by Robbins Geller. This production came on the eve of the Federal Independence Day weekend, the observation of which began on July 3, 2015. This final production followed earlier last-minute productions only days before the due date of the Objections. Greenfield Supp. Decl. ¶3. Objections to the Proposed Settlement were due on July 6, 2015, which was the next business day. Dkt. No. 374.

[1] The deposition took place at the location Bennett designated, the Inverness Golf Resort in Englewood, outside of Denver, Colorado. *See* Tr. at 4

ARGUMENT

I. BENNETT'S TESTIMONY FAILS TO DISPEL THE REASONABLE DOUBT RELATING TO WHETHER THE BOARD CONDUCTED AN INDEPENDENT INVESTIGATION OF THE POTENTIAL CLAIMS

It is a well-settled principle of Delaware law that:

> It is not correct that a demand concedes independence "conclusively" and *in futuro* for all purposes relevant to the demand. . . . [Instead,] [f]ailure of an otherwise independent-appearing board or committee to act independently is a failure to carry out its fiduciary duties in good faith or to conduct a reasonable investigation. Such failure could constitute wrongful refusal.

Scattered Corp. v. Chi. Stock Exch., Inc., 701 A.2d 70, 74-75 (Del. 1997) (quoted in *La. Mun. Police Emples. Ret. Sys. v. Morgan Stanley & Co.*, 2011 Del. Ch. LEXIS 42 (Del. Ch. Mar. 4, 2011)). Here, a reasonable doubt exists whether the investigation of the Potential Claims was independent at the Committee level, the Board level or even with respect to the retention of counsel.

A. A Reasonable Doubt Exists Whether the Committee was Independent

A majority of the DRC suffered from conflicts of interests. There were originally three members of the Committee: Gary Reiner ("Reiner"); Ralph Whitworth ("Whitworth"); and G. Kennedy Thompson ("Thompson"). DRC Resolution at 10; §II.A.2.a. Defendant Reiner had been a member of the Board who served on the Board's Technology Committee at the time of the Acquisition. *Id*. at 23; §XII.A.9. Defendant Thompson also had been a member of the Board at the time of the Acquisition, serving on the Finance and Investment Committee ("FIC"). *Id.* at §XII.A.8. Bennett himself questioned whether a member of the Board at the time of the Acquisition, such as Reiner, should have been on the Committee. Tr. at 33:25-34:5. Thus, at a minimum, two out of three members of the Committee as originally constituted, *i.e.*, defendants Reiner and Thompson, lacked independence or were not disinterested because they were subjects of the investigation into potential personal liability relating to HP's losses in the Acquisition. *See, e.g., In re Oracle Corp. Derivative Litig.*, 824 A.2d 917, 938 (Del. Ch. 2003) ("the question of independence turns on whether a director is, *for any substantial reason,* incapable of making a

decision with only the best interests of the corporation in mind.") (citation omitted) (emphasis in original).[2]

This lack of independence by a majority of the Committee did not improve with Bennett being recruited to join the DRC. Tr. at 8:9-9:10. Apparently because of a conflict, he "recused himself from consideration of any claim against Perella [Weinberg]." DRC Resolution at 22; §XII.A.2. However, whether Perella Weinberg has any potential liability is inherently bound up in the issue of whether HP's directors and officers breached their fiduciary duties in connection with the Acquisition. DRC Resolution at 55; §XIX.C.2.j. Thus, replacing defendant Thompson with Bennett still left a majority of the Committee either not independent or not disinterested, which is sufficient to cause the entire Committee to be deemed lacking in independence.

In addition, whether Whitworth was or is truly independent remains unexplored inasmuch as he was said to be unable to testify and has resigned from the HP Board. Thus, as the Committee acknowledges, under Delaware law, one area of inquiry relevant to determining whether a person is independent and disinterested is whether there exists:

> [a]ny financial, business, social, public service, or philanthropic relationships that Committee Members and Board Members might have with each other or with any controlling shareholder, defendant, potential defendant . . . or relevant officer . . . or counsel of the Company . . . or with any other person who might have an inherent interest in the outcome of the Committee's findings.

DRC Resolution at 21;§XI.A.1. *See also In re Oracle*, 824 A.2d at 938, *supra*. However, the Committee (or its counsel) failed to explore that issue (or did not like the results of its exploration and shielded those facts from scrutiny) as it relates to Whitworth, instead focusing entirely on the investments of the Relational Investors LLC, which he manages. DRC Resolution at 22; §XII.A.3.

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[2] This is particularly true where, as here, defendant Thompson was effectively forced to resign from the Board because of his involvement in the Acquisition. *See, e.g.,* Adam Jeffrey, *Expect 'Some Evolution' to HP's Board: Director* (CNBC Mar, 20, 2013) (attached as Exhibit 57 to the Abraham Supp. Decl.)

B. A Reasonable Doubt Exists Whether the Board was Independent

The same lack of independence exists with respect to those members of the Board who considered the Committee's evaluation of the Potential Claims including those the allegations contained in the operative complaint in this action, the complaints filed by Objector Copeland and Steinberg and the pre-suit demand letters sent to HP's Board by Objector Copeland. Defendants Raymond Lane ("Lane"), Ann Livermore ("Livermore") and Margaret Whitman ("Whitman") voluntarily recused themselves from the Board's resolution respecting the Potential Claims. DRC Resolution at 22; §XII.A.1. However, defendants Lane, Livermore and Whitman do not constitute the universe of HP directors who were members of the Board at the time of the Acquisition and continued to serve on the Board when a decision was made with respect to the shareholder demands and whether to pursue the Potential Claims. Instead, Board members with potential liability based upon their service on the Board, the Technology Committee and the FIC at the time of the Acquisition took part in the deliberations over the merits of the Potential Claims.[3]

[redacted]

C. A Reasonable Doubt Exists as to the Independence of Committee Counsel

Lack of independence also impacts Proskauer, which served as primary counsel to the Board, supposedly reporting exclusively to the Committee, in analyzing the potential claims against HP's officers and directors. DRC Resolution at 13; §IV.A.1. As the Committee's resolution makes clear, Proskauer did not evaluate claims against HP's professional advisers

[3] At the time the Autonomy transaction was approved the Board included: Lane, Apotheker, P. Marc Andreessen, Lawrence Babbio, Jr., Sari Baldauf, Shumeet, Rajiv Gupta, John Hammergren, Livermore, Reiner, Patricia Russo, Dominique Senequier, Thompson and Whitman. *See* HP_DER3_00009014 (Abraham Supp. Decl. Ex. 52)

including Barclays and Perella Weinberg.[4] *Id.* Presumably this was because of the conflict created by Proskauer's ongoing representation of those entities in different matters. *See, e.g.,* Abraham Supp. Decl. at Ex. 55 (Proskauer lawyers having ongoing professional relationships with, at least, Barclays and likely relationships with Perella Weinberg). Such a partial recusal, however, cannot insulate Proskauer from being conflicted because the potential liability of Barclays and Perella Weinberg is inherently intertwined, in part, with the liability of HP's officers and directors for any breach of fiduciary duty. DRC Resolution at 53 and 55; §§XIX.C.1.e and C.2.j. This failure to retain fully independent counsel reaches "the level of gross negligence and is incompatible with a board's fiduciary duty to inform itself of all material information prior to making a business decision." *Stepak v. Addison*, 20 F.3d 398, 405 (11th Cir. 1994) (quotations omitted).

In addition, Proskauer was not retained separately by the Committee. Instead, Proskauer was *retained by the Company* to assist the Committee in evaluating the Potential Claims. DRC Resolution at 13; §IV.A.1. Proskauer's precise relationship with HP, the Committee and HP's directors who were defendants in the Potential Claims is unknown because the Company has refused to produce a copy of Proskauer's retention agreement and Mr. Copeland's motion to depose a lawyer from Proskauer was denied. *See* Wachtell Ltr. Dated Apr. 29, 2015 (Abraham Supp. Decl. Ex. 51). In addition, it is noteworthy that Marc Wolinsky, an attorney from Wachtell, represented Bennett at his deposition despite also *de facto* representing the Individual Defendants' interests in this lawsuit and in the negotiation of the proposed settlement. This demonstrates that the precise lines in the representation between Proskauer and Wachtell (which also served as *de facto* counsel to the individual defendants) were often blurred. [5]

[4] The laws firms Brown Rudnick LLP and Choate Hall & Stewart LLP undertook separate investigations of those advisors. DRC Resolution at 54; §XIX.C.1.j.

[5] Additionally, Bennett testified that Proskauer was paid "tens of millions" of dollars by the Company for its role in the investigation and counsel to the DRC, and he would not be surprised if the amount were $30 million. Tr. 14:8.

II. BENNETT'S TESTIMONY FURTHER DEMONSTRATES A LACK OF GOOD FAITH AND DUE CARE IN HP'S INVESTIGATION OF THE POTENTIAL CLAIMS

A decision to deny a shareholder demand must be "consistent with [the] duty of care to act on an informed basis." *Ironworkers Dist. Council v. Andreotti*, C.A. No. 9714-VCG, 2015 Del. Ch. LEXIS 135, at *83 & n.240 (Del. Ch. May 8, 2015) (citing cases). Here, the Committee was charged by the Board resolution of January 17, 2013 to "investigate, review, and evaluate" the Potential Claims. DRC Resolution at 9; §II.A.1.b. The Committee, however, appears to have completely abdicated its duty to act on an informed basis, ceding the entire investigation and evaluation and decision-making to Committee counsel, particularly the Proskauer firm.

Indeed, Bennett's testimony reveals a rather shocking lack of recall about what the Committee considered and actually did, as well as what the investigation entailed, particularly since it occurred in the relatively recent past. This includes:

- a lack of knowledge about available insurance coverage for the potential claims (Tr. at 120:19-20);
- vagueness with respect to the significant issue of the scope of the releases provided, having no recollection whether the Proposed Settlement released any claims based upon acquisitions other than Autonomy (Tr. at 122:19-123:5);
- being unable to recall any specifics as to what, if anything, the Committee learned during the course of its investigation regarding the July, 2011 presentation that defendant Apotheker made to the HP Board regarding the Autonomy acquisition (Tr. at 67:13-68:9);
- having no recollection that HP's CFO Lesjak, had raised concerns about Autonomy's accounting practices well-before the transaction was consummated (Tr. at 74:17-75:16); and
- having no idea how long of a time period was provided by HP to conduct its due diligence of Autonomy or thus, by definition, whether that period was reasonable and appropriate for such an expensive and important acquisition. Tr. at 80:11-13.

Instead, as Bennett testified, *all* the investigating and evaluating was done by Committee counsel. Tr. at 14:16-25; 15:25-16:7.[6] Thus, the many interviews conducted by Committee (DRC Resolution at 16; §IV.E.3) were conducted by Committee counsel without any meaningful involvement of the DRC members. Tr: at 27:23-24. Indeed, Bennett appears to have no knowledge about the contents of those interviews. Tr. at 28:23-29:5. However, the members of the Committee, even if not attending the interview of witnesses, would be reasonably expected to have reviewed summaries of those interviews before reaching any conclusions with respect to potential liability. *See, e.g., In re KLA-Tencor Corp. S'holder Deriv. Litig.*, 2008 U.S. Dist. LEXIS 111402, at *6 (N.D. Cal. Aug. 13, 2008) (special litigation committee reviewed notes of the interviews conducted by committee counsel).

This "devil may care" attitude may suit a man who only made himself available for a deposition at a golf resort in Colorado. However, it falls far short of the fiduciary duty of care to be informed of all relevant facts prior to making any decision or recommendation which each of the members of the Committee possessed. *Ironworkers Dist. Council v. Andreotti*, *supra.*

III. BENNETT'S TESTIMONY FAILS TO DEMONSTRATE THAT THE POTENTIAL CLAIMS LACK MERIT

As Bennett testified, one of the cornerstones of the contention that the Proposed Settlement is fair to HP is that the Potential Claims lack merit. *E.g.,* Tr. at 88-89. However, if anything, Bennett's testimony, instead, demonstrates a failure to be properly informed with respect to both governing principles of law and the relevant facts relating to the merits of the Potential Claims.

First, Bennett testified that the exculpatory provision was the basis for "our finding of no wrongdoing there's *very little* probability of success." Tr. at 96:23-97:2 (emphasis added). However, this finding lacks any meaning with respect to defendants Apotheker and Robison who, as *officers* of the Company, may not rely on the exculpatory provisions of 8 *Del. C.*

[6] Proskauer is believed to have been paid $30 million or more for the work it performed, but Bennett could not recall a specific amount. Tr. at 14:3-15.

§102(b)(7). *See* Steinberg's Objection (Docket No. 384) at 27 (citing *Gantler v. Stephens*, 965 A.2d 695, 709, n.37 (Del. 2009)).[7]

Second, Bennett's testimony demonstrates that the evaluation of the Potential Claims against members of the Board and its committees (*i.e.*, the FIC and the Technology Committee) failed to evaluate whether the individual Board members had consciously disregarded their duties in approving the Acquisition. *See generally* Steinberg's Obj. at pp.20-24. To the extent Bennett simply forgot to address those issues, it is noteworthy that a re-direct of him by HP's counsel, which included leading questions, did not seek to clean up or provide for any elaboration of Bennett's testimony on this issue. *See* Tr. at 213:18-215:11.

Third, Bennett was unable to identify who made the decision not to pursue additional due diligence in response to KPMG's stated and extremely serious concerns about the fruits of due diligence. Tr. at 70:25-71:10. Yet, Bennett claims -- in what appears to be a heavily coached piece of testimony[8] -- that the decision to do so constituted an act of purported "business judgment" on the part of the unnamed HP officer or director who purportedly made that decision. Tr. at 71:20-74:5. However, the record is clear that defendants Apotheker and Robison (and, apparently, the members of the Board as well) failed to review the KPMG Report. Steinberg Obj. at 19 (citing HP_DER3_00012877 (Abraham Decl. Ex. 1, Dkt. No. 380-3)). Copeland Obj. at 9. Not being informed of relevant and material facts necessarily precludes application of the business judgment rule. Steinberg Obj. at 19 and 24 (citing *Brehm v. Eisner (In re Walt Disney Co. Deriv. Litig.)*, 746 A.2d 244, 264 (Del. 2006) and *MCG Capital Corp. v. Maginn*, C.A. No. 4521-CC, 2010 Del. Ch. LEXIS 87, at 79 n.129 (Del. Ch. May 5, 2010)). *See also Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985).

Fourth, Bennett relies heavily on the August 17, 2011 conference call which HP had with Deloitte UK. Tr. at 82:11-13. *See* HP_DER3_00012877 (Abraham Decl. Ex. 1). However, the contention that a one-hour conference call could cure the failure to obtain and review Deloitte

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[7] Even the so-called exculpatory provisions of Delaware law and HP's corporate charter are not absolute. *See* Steinberg Obj. at 20-21.

[8] See Tr. at 21:15-20 (meeting with counsel prior to deposition)

UK's workpapers or review internal Autonomy documents is ludicrous. KPMG never opined that the conference call was an adequate substitute for the review of Deloitte UK's workpapers or other documents. Nor could they do so given the significant differences with respect to the reporting of revenues from software sales under IFRS accounting and the prevalence of "red flags" and investor skepticism surrounding Autonomy's financial reports. Steinberg Obj. at 4-6; Copeland Obj. 10-12. Not that anything KPMG said actually mattered because defendants Apotheker, Robison and the entire Board were apparently blithely unaware of the contents of the KPMG Report.

Also, Bennett's contention ignores the extreme haste and the lack of interest of defendants Apotheker, Robison and the Board members surrounding that event. The phone-call-substitute-for-real-due diligence between KPMG and Deloitte UK (which failed to provide the answers KPMG required) was held on August 17, 2011 (at approximately 12:00 a.m. PST) with the Board meeting the very next morning, August 18, 2011, at 8:30a.m., to approve the $11 billion Acquisition. *See* HP_DER3_00013623 (Abraham Decl. Ex. 1, Dkt. No. 380-3); and HP_DER3_00009014 (Abraham Supp. Decl. Ex. 52). The relevant minutes of the Board do not even reference the conference call with Deloitte UK. *See* HP_DER3_00009014-16. However, even had the results of the Deloitte UK call been considered, the extreme haste surrounding those developments also demonstrates a failure to properly exercise an informed business decision. *See, e.g., Smith v. Van Gorkom*, 488 A.2d at 874 (approving a corporate transaction on two hours' consideration without the exigency of a crisis or emergency constitutes gross negligence). Testimony of the witnesses interviewed could not have played a part in the DRC's ultimate decisions because there appears to have been no transcripts or recordings of the interviews for the DRC member to review. Tr. 19:13-20:14.

Fifth, Bennett does not recall seeing the slide deck discussing Project "Aggie" and HP's conclusions in August 2010 why the Company should not proceed with any acquisition of Autonomy. Tr. at 159:17, 162:25-163:13. The specific reasons Project Aggie provided for not proceeding were:

- Overpaying for business which may stagnate . . .
  - Core search business under attack (Open Source, Microsoft, Google)
  - To fuel standalone future growth requires continuation of acquisition strategy and timeline (war chest of $758M)
  - Operating margins already at industry high (40-50%) – removes lever for bottom-line growth
- Likely difficult to integrate—requires conservative integration strategy and timeline
  - Business units operate as separate entities – less than ideal portfolio, GTM and RTM synergies
  - Customer dissatisfaction – unresponsive account support; arrogant sales force; etc.
  - Company culture mismatch – top-down controlled; engineering driven elite culture; etc.
  - Indirect software sales and support model – scalable model but orthogonal to HP's direct motion
  - Highly complex pricing and portfolio – no single rep can adequately represent portfolio
  - HP lacks service skills/capacity to scale breadth of portfolio – significant investment required

HP_DER3_000012728 (Abraham Decl. Ex. 1, Dkt. No. 380-3). The Project Aggie analysis appears to be tied to the opposition which Lesjak expressed to the Acquisition in forceful terms a year later at the Board's August 17, 2011 meeting to vote on going forward with the Acquisition. Steinberg Obj. at 9. Yet, Bennett seems blithely unaware of the underlying facts relating to Project Aggie. Tr. at 159:4-20.

IV. BENNETT'S TESTIMONY CONFIRMS THAT HP CONTINUES TO SHIELD THE RESULTS OF THE INVESTIGATION FROM SCRUTINY

Bennett only participated in the DRC's interview of defendant Apotheker. Tr. at 16:2-12; 145:21-25. The interview was conducted by Ralph Ferrara of Proskauer and lasted two to three hours. Tr. at 17:24-18:7. The DRC relied on counsel to conduct the interviews of witnesses and Bennett never read any transcripts of the interviews. Tr. at 27:21-24. In fact, there appear to have been no such transcripts or even recordings of the interviews. Tr. 19:13-20:14. If the DRC was truly considering whether HP would possibly pursue its claims against the Individual Defendants and others, Objectors are left to wonder why the DRC and Proskauer would not want a permanent record of what was said if the claims being investigated were ultimately pursued. The same is true of the entire investigation which was conducted almost entirely by counsel for the Committee. Tr. at 154:21-25. Bennett was unable to reach a legal

conclusion with respect to potential liability (Tr. at 56:1-7) apparently relying on Committee counsel to make those determinations.

Customarily committee counsel prepares a report for the committee's review containing conclusions about the merits of potential claims. *See, e.g., La. Mun. Ret. Sys. v. Morgan Stanley & Co.,* 2011 Del. Ch. LEXIS 42, at *22-23 (citing *Grimes v. DCS Communications Corp.*, 724 A.2d 561, 567 (Del. Ch. 1998)); Abraham Supp. Decl. at Ex. 56 (attaching copy of committee counsel report for J&J shareholder derivative action case). Here, it appears that the evaluation of the Potential Claims performed by Committee counsel is contained in the approximately 1,300 page Presentation. However, the Presentation is rife with wholesale redactions shielding evaluation of the Potential Claims from scrutiny including the following key redactions:

- [redacted] Disclosures" are almost entirely redacted with only two pages (HP_DER3_00013096-097) produced in an unreacted form while the remaining 16 pages (HP_DER3_00013092-095; and 00013098-00013110) are completely redacted;
- the Presentation section dealing with Barclay's potential liability contains 60 completely redacted pages (HP_DER3_00013530-44; 13548-96);
- the Presentation section discussing Parella Weinberg totals 9 pages (HP_DER3_00012808-12816) of which 7 pages, or almost 90% is redacted;
- the "UK Overlay" portion of the Presentation which, aside from a cover page, totals 10 pages (HP_DER3_ 00012818-12827) of which 3 pages, or 30%, are completely redacted;
- the portion of the Presentation titled "Data Room" is redacted in its entirety (HP_DER3_00012847-00012848);
- "Consideration of MAC" (material adverse change) totals 9 pages (HP_DER3_00012966-12974), of which 7 pages (HP_DER3_00012968-00012974), or more than 75%, have been redacted;
- the "Indemnification and Advancement" section of the Presentation totals 20 pages (HP_DER3_00013799-00013818) of which 16 pages or 80% (13799-13801, 13803-13804,13806-13807, 13810-13818) have been redacted; and
- the "Directors' and Officers' Liability Insurance Policies" section of the Presentation runs 11 pages (HP_DER3_00013821-00013831) of which 5 pages (HP_DER3_00013824, 13825, 13829-13831) are redacted.

See Abraham Supp. Decl. Ex. 53.

This assumes that the Presentation contains the totality of Committee counsel's evaluation of the potential claims. A review of the Presentation demonstrates, however, that there are many snippets of information without any analysis. *See, e.g.*, HP_DER3_00012728 (Abraham Decl. Ex. 1.2, Dkt. No 380-3) (clip of presentation concerning Project Aggie without any analysis as to what had changed since 2010, that lead the Board to pursue a previously rejected transaction with Autonomy). Thus, there exists a distinct possibility, if not a high degree of likelihood, that there is a whole treasure trove of documents containing the DRC's (i.e. counsel's) evaluation of the Potential Claims, which remain shielded from any scrutiny even in a redacted format.

V. BENNETT'S TESTIMONY CONFIRMS THAT THE SETTLING PLAINTIFFS MUST DEMONSTRATE THE FAIRNESS OF THE PROPOSED SETTLEMENT BY CLEAR AND CONVINCING EVIDENCE

Bennett testified that he considered one of the provisions of the settlement agreement was the payment of attorneys' fees to Settling Plaintiffs' counsel. Tr. at 111:7-14. The subject of the fees to be paid by the company to Settling Plaintiffs' counsel was discussed in the second quarter of 2014 before all the terms of the Proposed Settlement had been worked out. Tr. at 106:8-25. HP's counsel blocked Bennett from responding to a question as to whether the payment of attorneys' fees was a condition of the Proposed Settlement. Tr. at 112:2-19.[9] The reasonable inference is that negotiations over the terms of the settlement were entangled with negotiation of attorneys' fees, requiring the Settling Plaintiffs (and HP) to demonstrate that the Proposed Settlement is fair and reasonable by clear and convincing evidence. *See* Steinberg Obj. at Point I (citing *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106, 1126 n.30 (7th Cir. 1979).

[9] In response to a leading question and after a break to consult with HP's counsel, who represented Mr. Bennett at the deposition, Bennett was able to "recall" that the Proposed Settlement terms had ostensibly been finalized prior to the fee negotiations. Tr. at 213:24-214:9. Bennett acknowledged that his memory had been "refreshed" by counsel during a break. Tr. at 216:17-25. As such, this revisionist history testimony is entitled to zero credibility.

VI. HP'S BELATED DOCUMENT PRODUCTION DEMONSTRATES THE INADEQUACY OF SETTLING PLAINTIFF'S PROFFER IN SUPPORT OF THE PROPOSED SETTLEMENT

HP's eleventh-hour document production further highlights the failure of the Settling Plaintiffs to carry their burden of proof in demonstrating to the Court the precise reasons why the Proposed Settlement is, in fact, fair and reasonable to HP. Among those belatedly-produced documents are Robbins Geller's views on the merits of the shareholder derivative actions and the Individual Defendants' likely liability, as well as applicable precedent for dismissal of shareholder derivative actions. *See* HP_DER3_00015188-00015224 (Abraham Supp. Decl. Ex. . Among other things, the Robbins Geller presentation outlines the "numerous warnings that Autonomy was a fraud" (HP_DER3_00015200) and some of the misrepresentation about Autonomy by HP officers and directors. HP_DER3_00015201. This presentation expressed Robbins Geller's view, confirmed by its non-adversarial "confirmatory discovery" that at least some of the individual defendants "face a substantial likelihood of liability" because, among other things, they:

- Lied to HP about the benefits of the Autonomy deal
- Failed to adequately investigate red flags regarding Autonomy's operations, including, inter alia: (1) the "revolutionary" IDOL 10/Autonomy Vertica Product; (2) the use of acquisitions to boost short-term revenues and conceal declining growth rates; (3) inflation of IDOL and OEM revenue by including software license revenue.
- Failed to do a thorough review of Autonomy's books and records
- Failed to discovery critical documents missing form obvious places
- Failed to fully investigate whistleblowers
- Failed to engage auditor to assist with due diligence; instead deferred to Deloitte, who was receiving very significant non-audit commissions (£4.4 million) from Autonomy

See HP_DER3_00015202.

In contrast to this well-informed analysis of the likely liability of HP's officers and directors, the Settling Plaintiffs have only placed before the Court a conclusory statement of

generalized risk factors present in almost every shareholder derivative litigation and have made absolutely no effort to make any evidentiary record upon which this Court could base any findings of fact with respect to the merits of the claims to be released. *See* Settling Pl. Memo. (Dkt. No. 365) at 12-14. Settling Plaintiffs' conclusory analysis and boiler-plate generalizations provided to the Court are plainly inadequate.

CONCLUSION

Therefore, for the reasons set forth above and in the prior submissions made with this Court by Ms. Steinberg and Mr. Copeland, this Court should decline to approve the Proposed Settlement.

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