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Case No. 7988-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PONTIAC GENERAL EMPLOYEES RETIREMENT SYSTEM, on behalf of itself and all other similarly situated shareholders of ANCESTRY.COM INC.,	)	
Plaintiff,	)	C.A. No.
v.	)	
PAUL R. BILLINGS, CHARLES M. BOESENBERG, DAVIG GOLDBERG, THOMAS LAYTON, ELIZABETH NELSON, VICTOR PARKER, MICHAEL SCHROEPFER, BENJAMIN SPERO, TIMOTHY SULLIVAN, HOWARD HOCHHAUSER, ANCESTRY.COM INC., SPECTRUM EQUITY INVESTORS V, L.P., SPECTRUM V INVESTMENT MANAGERS' FUND, L.P., SPECTRUM EQUITY INVESTORS III, L.P., SEI III ENTREPRENEURS' FUND, L.P., SPECTRUM III INVESTMENT MANAGERS' FUND, L.P., PERMIRA ADVISORS LLC, GLOBAL GENERATIONS INTERNATIONAL INC., and GLOBAL GENERATIONS MERGER SUB INC.,	)	
Defendants.	)	

BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR EXPEDITED PROCEEDINGS

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Plaintiff Pontiac General Employees Retirement System ("Plaintiff"), by and through its counsel, respectfully requests that the Court grant Plaintiff's motion for expedited proceedings in connection with Plaintiff's Motion for a Preliminary Injunction.

PRELIMINARY STATEMENT

The crux of this case can be boiled down to one simple question. Can a board of directors, consistent with its *Revlon* duties, accept an offer for the company that gives key insiders an equity stake in the new entity after that same board rejected an offer to acquire *all* shares at a *higher* per share price? Plaintiff submits that the answer is no.

In this case, the board of directors ("Board") of Ancestry.com Inc. ("Ancestry" or the "Company") did exactly that. The Board rejected a $35 per share offer for all shares as being inadequate and then, just two months later, accepted a $32 per share offer that allows Ancestry's largest (and former majority) shareholder and its two senior most executive officers to roll over a significant part of their Ancestry equity into the post-closing private entity. Specifically, on October 21, 2012, the Board approved a "going-private" transaction pursuant to which Permira Advisers will buy Ancestry for $32.00 per share (the "Proposed Transaction"). Pursuant to the Proposed Transaction, Spectrum,[1] the Company's controlling shareholder, will be able to monetize a significant portion of its remaining 31.1% stake in Ancestry while still enjoying the upside potential of the new company by rolling over a quarter of its remaining Ancestry holdings. Likewise, the

[1] The specific Spectrum funds that are the recordholders of Spectrum's Ancestry shares are: (1) Spectrum Equity Investors V, L.P.; (2) Spectrum V Investment Managers' Fund, L.P., (3) Spectrum Equity Investors III, L.P.; (4) SEI III Entrepreneurs' Fund, L.P.; and (5) Spectrum III Investment Managers' Fund, L.P. These five named defendants are collectively referred to throughout this brief as "Spectrum."

Company's CEO (Timothy Sullivan) and its CFO/COO (Howard Hochhauser) will rollover the majority of their Ancestry holdings, and will receive lucrative continued employment with the new entity to boot. Unfortunately, the public shareholders of Ancestry are the ones paying for this sweetheart deal being accorded to Spectrum, Sullivan and Hochhauser – to the tune of at least an additional $3 per share.

Spectrum, Sullivan, Hochhauser and Permira Advisers (collectively, the "Buyout Group") will undoubtedly defend this action by contending that the Board ran a valid sales process in compliance with their *Revlon* duties, and that somehow circumstances changed between their August 2012 rejection of a $35 per share offer as "inadequate" and their October 2012 acceptance of the Buyout Group's $32 per share offer. But the answer to those changed circumstances cannot be found in Ancestry's financial performance, as its third quarter 2012 results announced just this week revealed strong growth in customer subscriptions and a significant reduction in the cost of acquiring new subscribers. Nor can it be found in the Company's general prospects, as the recent acquisition of two internet companies is widely predicted to drive Ancestry's subscriptions yet higher.

Rather, the inescapable conclusion is that the Board breached its fiduciary duty and failed to achieve the highest price reasonably available for Ancestry's shareholders for the simple reason that it favored the interests of Spectrum, Sullivan and Hochhauser over the interests of the other Ancestry shareholders.

The Board compounded their breaches by agreeing to lock-up devices in the merger agreement (the "Merger Agreement") that will stifle if not outright prevent any

legitimate competing offer from seeing the light of day. Spectrum, given its substantial position in Ancestry and clear influence over the Board, breached its fiduciary duties owed to the public shareholders of Ancestry. Permira clearly induced the breaches of duty by Spectrum, Sullivan and Hochhauser by inducing them into the Proposed Transaction with the promise of participating in the new company's success.

Because Ancestry's public shareholders will be forever deprived of the chance to receive the highest price reasonably available for their shares if the Board's rejection of the $35 bid stands, Plaintiff seeks to preliminarily enjoin the consummation of the Proposed Transaction. Defendants have made it clear that they will consummate the Proposed Transaction at the earliest time possible, and predict an "early 2013" closing date. Expedition of these proceedings is therefore necessary to allow the Court to review the merits of Plaintiff's claims on as fully a developed record as is possible in the two months that remain until the anticipated closing.

STATEMENT OF RELEVANT FACTS

The facts set forth in Plaintiff's Complaint are incorporated herein by reference. A brief summary of the facts pertinent to this motion follows.

Ancestry is the world's largest online family history resource, with more than 2 million paying subscribers. Its largest shareholder, with approximately 31.1% of Ancestry's outstanding shares, is Spectrum. Spectrum's influence and control over the Company is clear, particularly with respect to the Ancestry Board. A majority of the Board is comprised of Spectrum employees, executives at Spectrum portfolio companies, and individuals with longstanding ties to Spectrum. ¶32-36. In fact, seven of the nine

directors were appointed to the Board while Ancestry was a privately held company with Spectrum as its majority shareholder and Sullivan was recruited by Spectrum to serve as Ancestry's CEO. ¶¶32, 34.

In 2012, Ancestry received a number of expressions of interest, including from such internet giants as Facebook and Google, as well as from private equity firms. In light of that interest, the Spectrum-dominated Board retained Qatalyst Partners as its financial advisor to explore a possible sale of the Company. ¶¶39-40. The sales process resulted in expressions of interest from such private equity firms as Permira, TPG, Providence Equity Partners and KKR. ¶¶40-41. According to several contemporaneous reports based on inside and knowledgeable sources, Ancestry received a bid of $35 per share. ¶42. In August 2012, the Board rejected that bid, which would have extinguished Spectrum's Ancestry holdings entirely, as "inadequate." *Id.*

After the Board rejected the $35 per share offer, Permira changed its acquisition strategy. In an effort to neutralize Spectrum's opposition to a takeover, Permira offered Spectrum the chance to cash out approximately 75% of its holdings at $32 per share and to roll-over its $100 million in remaining Ancestry shares into the new entity. ¶43. Spectrum, knowing that Ancestry was well-positioned for continued growth and increased earnings, seized on the significant upside potential on its rolled-over investment and quickly agreed. *Id*.

Sullivan and Hochhauser were likewise lured by Permira to support the Proposed Transaction with the offer to roll-over a substantial majority of their Ancestry shares into the new entity, and for continued executive employment. ¶¶44-45. The Board, beholden

to Spectrum, agreed to Permira's offer even though it was $3 less than the offer it had rejected just two months prior. ¶46. The Merger Agreement was signed on October 21, 2012, and Spectrum, Sullivan and Hochhauser formalized their respective equity roll-over deals. ¶47.

The Defendants have effectively thwarted any potential competing offers by locking up the Proposed Transaction with a host of deal protection devices in the Merger Agreement, including a "no shop" provision, matching rights and $37.8 million termination fee. ¶¶56-64. The Board also failed to secure a provision in the Merger Agreement that would have conditioned the deal's approval on the support of a majority of the Company's unaffiliated public shareholders who will not be participating in the Buyout Group (*i.e.*, Ancestry shareholders other than Spectrum, CEO Sullivan and CFO/COO Hochhauser). Rather, the transaction can be approved by a simple majority of Ancestry's outstanding shares. Given Spectrum's execution of a voting agreement in favor of the Proposed Transaction, and Sullivan's support of the Permira transaction, support from less than one-quarter of the Company's unaffiliated public shareholders will suffice to close the deal. ¶56. While the vote of the shareholders has not yet been scheduled, Defendants have made clear that they will close this transaction as soon as possible, with an anticipated closing in "early 2013."

ARGUMENT

This Court has broad discretion to grant expedited proceedings and freely does so to ensure the interests of justice are served. *Box v. Box*, 697 A.2d 395, 399 (Del. 1997) ("Delaware courts are always receptive to expediting any type of litigation in the interests

of affording justice to the parties[.]"). To obtain expedited proceedings, a plaintiff need only "articulate a sufficiently colorable claim and show a sufficient possibility of a threatened irreparable injury." *Gomi Inv., LLC v. Schimmell Holdings, Inc.*, 2006 WL 2304035, at *1 (Del. Ch. July 27, 2006). Whether a plaintiff has demonstrated a colorable threat of irreparable harm is limited to a review of the face of the pleadings; the Court "is not required or able on this application to judge the merits or even the legal sufficiency" of the pleadings. *Giammargo v. Snapple Bev. Corp.,* 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994). Plaintiff has easily met this standard.

I. PLAINTIFF STATES COLORABLE CLAIMS

When expedited proceedings are sought, a plaintiff need only show that it has pled a "colorable claim." In judging whether a plaintiff has pled colorable claims, "the Court will not pass on the ultimate likelihood of success of [the] claims." *County of York Employees Ret. Plan v. Merrill Lynch & Co., Inc.*, 2008 WL 4824053, at *8 (Del. Ch. Oct. 28, 2008). Instead, the Court must accept the allegations of the complaint as true and "ascertain whether, based on the allegations, a colorable claim or claims exist." *TCW Tech. Ltd. P'ship v. Intermedia Commc'ns., Inc.*, 2000 WL 1478537, at *2 (Del. Ch. Oct. 2, 2000). A colorable claim "is essentially a non-frivolous cause of action." *Reserves Dev. Corp. v. Wilm. Trust Co.*, 2008 WL 4951057, at *2 (Del. Ch. Nov. 7, 2008). The plaintiff need not make such a showing on all of its claims – if just one of its claims meets the standard, expedited proceedings may be granted. *TCW*, 2000 WL 1478537, at *2 (granting expedited proceedings where at least plaintiff's breach of fiduciary duty claim was colorable).

Here, Plaintiff has stated colorable claims that: (a) the Board breached its fiduciary duties to Ancestry shareholders by not seeking the highest price reasonably available in the sale of the Company; (b) Spectrum, as Ancestry's *de facto* controlling shareholder, breached its duty owed to Ancestry's public shareholders; (c) Sullivan and Hochhauser breached their fiduciary duties to Ancestry's shareholders by acting in their own self-interest rather than the best interests of the public shareholders; and (d) Permira aided and abetted the foregoing breaches of fiduciary duty.

A. THE BOARD BREACHED ITS FIDUCIARY DUTIES

Plaintiff states a colorable claim that the Ancestry Board failed to maximize shareholder value as required by *Revlon v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) ("Revlon"). Under *Revlon*, approval of a "change of control" transaction shifts a board's fiduciary duties "from the preservation of [the company] as a corporate entity to the maximization of the company's value at a sale for the stockholders' benefit." *Id.* at 182. *See also Arnold v. Soc'y for Sav. Bancorp, Inc.*, 650 A.2d 1270, 1290 (Del. 1994). There is no question that an all-cash merger is a "change of control" triggering *Revlon* duties. *See In re NYMEX S'holder Litig.*, 2009 WL 3206051, at *5 (Del. Ch. Sept. 30, 2009); *In re The Topps Co. S'holder Litig.*, 926 A.2d 58, 89 (Del. Ch. 2007).

Because their approval of the Proposed Transaction constituted a change of control, the directors' "role change[d] from defenders of the corporate bastion to auctioneers charged with getting the best price for the stockholders at a sale of the company." *Revlon*, 506 A.2d at 182. *Revlon* "ensure[s] that the directors take reasonable

steps to obtain the highest value reasonably attainable and that their actions are not compromised by impermissible considerations, such as self-interest." *In re El Paso Corp. S'holder Litig.,* 41 A.3d 432, 439 (Del.Ch. 2012). *See In re Del Monte Foods Co. S'holder Litig.*, 25 A.3d 813, 831 (Del.Ch. 2011) (evidence of self-interest, undue favoritism or similar "non-stockholder-motivated influence that calls into question the integrity of the process" can support a finding of unreasonableness.)

Here, the Board's process was anything but sound or reasonable. The Board rejected the $35 per share offer, and instead accepted a $32 per share offer that allowed Spectrum and the Company's senior most executives to roll over a significant portion of their equity rather than be cashed out like all other Ancestry shareholders. Despite legitimate expressions of interest from other suitors, the Board allowed Ancestry's conflicted, largest shareholder to steer the Board into the Proposed Transaction so that Spectrum could enjoy the post-transaction upside along with Permira.

A violation of the duty of loyalty may also be found where "there are facts suggesting that these directors consciously approved an unfair transaction, [or] the bad faith preference for some other interest than that of the company." *In re S. Peru Copper Corp. S'holder Deriv. Litig.,*, 30 A.3d 60, 87 n.72 (Del. Ch. 2011). The Ancestry Board breached its duties of due care, good faith and undivided loyalty to the public shareholders by acceding to Spectrum's demands to approve the Proposed Transaction, even though the Ancestry Board knew that Spectrum was extracting a deal that could garner it many millions of dollars at the expense of Ancestry's shareholders. Where, as here, a board is dominated by a controlling shareholder, the board may not abdicate its

obligations to the other shareholders by deferring to the judgment of the controlling shareholder and approving a transaction that favors the controlling shareholder. *See, e.g., McMullin v. Beran,* 765 A.2d 910, 919-20 (Del. 2000); *In re CompuCom Systems, Inc. Stockholders Litig.,* 2005 WL 2481325, *6 (Del. Ch. Sept. 29, 2005).

The Board has also breached its fiduciary duties by agreeing to certain lock-up provisions in the Merger Agreement. Particularly in light of the possibility that other bidders were willing to offer more than $32 per share (but did not pursue a plan to join Spectrum as a co-bidder), the Board had a duty to leave the broadest opportunity for intervening bidders to maximize value for Ancestry's public shareholders. Instead of opening the door to competitors who did not co-opt Spectrum, the Board has agreed to provisions in the Merger Agreement that all but ensure consummation of the Proposed Transaction. As a result of these deal protections, the Board has effectively eliminated its ability to comply with its *Revlon* obligations.

These issues, coupled with the others discussed above, give rise to a colorable claim that the Board breached its fiduciary duties to Ancestry's unaffiliated shareholders.

B. SPECTRUM BREACHED ITS FIDUCIARY DUTY AS A CONTROLLING SHAREHOLDER

The Complaint alleges that Spectrum exercises control over the affairs of Ancestry and sets forth factual allegations regarding the history of Spectrum's dominance and control over Ancestry and its Board. *See, e.g.*, at ¶¶ 32-36 (detailing Spectrum's history of filling the Board with hand-picked people who owe fealty to it). Spectrum is regarded by Delaware law as a controlling shareholder – a position that it has abused in breach of its fiduciary duties to the unaffiliated shareholders of Ancestry.

Under Delaware law, "a controlling shareholder exists when a stockholder: (1) owns more than 50% of the voting power of a corporation; or (2) exercises control over the business and affairs of the corporation." *In re PNB Holding Co. S'holders Litig.*, 2006 WL 2403999, at *9 (Del. Ch. Aug. 18, 2006). While Spectrum does not own more than 50% of the voting power of Ancestry, it is a controlling shareholder because it exercises control over the business and affairs of the Company not only with its 30% voting power but also close ties to at least five of the nine Ancestry Board members. *See In re Loral Space and Commc'ns Inc.*, 2008 WL 4293781, at *21 (Del Ch. Sept. 19, 2008) (where shareholder has less than a majority of the shares, he will be considered a controlling shareholder where he "possesses a combination of stock voting power and managerial authority that enables him to control the corporation, if he so wishes"); *Superior Vision Servs, Inc. v. ReliaStar Life Ins. Co.*, 2006 WL 2521426, at *4 (Del. Ch. Aug. 25, 2006) (stating that when determining whether a shareholder is a controlling shareholder, "Delaware case law has focused on control of the board"); *In re Western Nat'l Corp. S'holders Litig.*, 2000 WL 710192, at *20 (Del. Ch. May 22, 2000) (to determine whether the shareholder was a controlling shareholder, the Court inquired as to whether that shareholder "in fact exercise[d] actual control over the board of directors during the course of a particular transaction"); *Kahn v. Lynch Commc'ns Sys., Inc.*, 638 A.2d 1110 (Del. 1994) (a 43% shareholder was deemed a controlling shareholder because of its influence over the board).[2]

[2] *See also In re Tri-Star Pictures, Inc., Litig.*, 634 A.2d 319, 328 (Del. 1993) (less-than-majority shareholder who dictated the destiny of the corporation was a controlling shareholder with concomitant duties); *Cinerama, Inc. v. Technicolor, Inc.*, 1991 WL 111134 at *19 (Del. Ch. June

As a controlling shareholder of Ancestry, Spectrum owes a fiduciary duty to the public shareholders of Ancestry. *Ivanhoe Partners v. Newmont Mining Corp.*, 535 A.2d 1334, 1344 (Del. 1987); *Kahn*, 638 A.2d 1110. Plaintiff has more than sufficiently alleged a colorable claim that Spectrum breached its fiduciary duty to the public Ancestry shareholders in connection with the Proposed Transaction by securing for itself an equity position in the new company at the expense of the public shareholders. *See Gentile v. Rosette,* 906 A.2d 91, 103 (Del. 2006) (finding that "harm to the minority shareholder plaintiffs resulted from a breach of fiduciary duty owed to them by the controlling shareholder, namely, not to cause the corporation to effect a transaction that would benefit the fiduciary at the expense of the minority shareholders").

As set forth in the Complaint, Spectrum negotiated a deal with Permira that provides it with consideration that the other shareholders of Ancestry will not receive – a roll-over of 25% of its Ancestry equity into the new, private company. Spectrum traded what would have been $3 more per share in value for the public shareholders in order to secure the rollover deal for itself. Delaware law does not tolerate a controlling shareholder using its control to the detriment of public shareholders. *Oliver v. Boston Univ.*, 2000 WL 1091480, at *7 (Del. Ch. July 18, 2000) (shareholder stated breach of duty of loyalty claim against directors affiliated with controlling shareholder where merger consideration was allocated to benefit controlling shareholder to detriment of

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24, 1991), *aff'd in part, rev'd on other grounds sub nom, Cede & Co. v. Technicolor, Inc.,* 634 A.2d 345 (Del. 1993) ("when a shareholder, who achieves power through the ownership of stock, exercises that power by directing the actions of the corporation, he assumes the duties of care and loyalty of a director of the corporation").

class); *see also Lynch v. Vickers Energy Corp*., 383 A.2d 278 (Del. 1977) (majority shareholder liable for breach of duty of loyalty to minority for using its control to keep minority from having information to better value their stock in deciding whether to sell their stock to majority holder at what was later revealed to be inadequate price); *Delaware Open MRI Radiology Assocs., P.A. v. Kessler*, 898 A.2d 290 (Del. Ch. 2006) (majority shareholders breached fiduciary duty of loyalty to minority in assigning themselves work at above-market rates to be paid by corporation). Here, Plaintiff has more than adequately alleged facts that show that Spectrum has used its control and domination of Ancestry and its Board to garner a better deal from Permira for itself at the expense of the public shareholders, thus breaching its fiduciary duty.

C. SULLIVAN AND HOCHHAUSER BREACHED THEIR FIDUCIARY DUTIES

The Complaint sets forth a colorable claim that both Sullivan and Hochhauser breached their fiduciary duties as officers of Ancestry. In that capacity, they owe the public shareholders the fiduciary duties of loyalty and due care, and are obligated to act in the best interests of Ancestry's public shareholders, not their own. Rather than seeking to maximize value for Ancestry's public shareholders, Sullivan and Hochhauser abused their positions of trust by supporting a deal that provided them with the opportunity to roll-over the majority of their Ancestry equity and to obtain lucrative continued employment positions with the new, private company. Further, they endorsed the inadequate consideration offered in the Proposed Transaction because, as members of the Buyout Group, they stood to gain personally from a less than value-maximizing purchase price.

D. PERMIRA AIDED AND ABETTED BREACHES OF FIDUCIARY DUTY BY SPECTRUM, SULLIVAN AND HOCHHAUSER

Plaintiff has sufficiently alleged that Permira aided and abetted the breaches of fiduciary duty by Spectrum, Sullivan and Hochhauser. A defendant aids and abets a breach of fiduciary duty where the defendant knows of the existence of a fiduciary relationship that the fiduciary is breaching, knowingly participates in the fiduciary's breach and damages result from the breach. *See, e.g., Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del. 2001); *Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 989 (Del. Ch. 2000); *Jackson Nat'l Life Ins. v. Kennedy*, 741 A.2d 377, 386 (Del. Ch. 1999). Plaintiff has more than adequately alleged that Spectrum, Sullivan and Hochhauser breached their fiduciary duties to Ancestry's shareholders by causing the Board to approve a transaction at a lower price for the public shareholders so that they could secure equity in the new entity. Permira knowingly participated in those breaches by promising Spectrum, Sullivan and Hochhauser the unique opportunity to acquire equity in the new entity. The public shareholders of Ancestry are being harmed by being paid at least $3 per share less than could have been achieved in a fair sales process. Based on these allegations, Plaintiff has stated a colorable claim for aiding and abetting liability against Permira.

II. PLAINTIFF AND THE CLASS WILL BE IRREPARABLY HARMED ABSENT EXPEDITED PROCEEDINGS

Plaintiff has shown a sufficient threat of irreparable harm in the absence of expedited proceedings. As a general matter, "[i]njury is irreparable when a later money damage award would involve speculation" or undue "difficulty of shaping monetary

relief." *Hollinger Int'l, Inc. v. Black*, 844 A.2d 1022, 1090 (Del. Ch. 2004); *see also Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 586 (Del. Ch. 1998) (holding that injunctive relief is appropriate, even where a harm may be remedied by money damages, "when [the] damages are difficult to quantify").

Once the Proposed Transaction is consummated, the Ancestry shareholders will forever be denied their rights in this transaction to be treated fairly by their directors under the blanket of Delaware fiduciary duty law. Without a fair sales process that is truly conducted with the singular goal of achieving the highest price reasonably available, the Ancestry shareholders will never know how much more they could have received for their shares. They could have received at least $3 more per share, but perhaps an even higher price could have realized in a properly conducted sales process. This is clearly irreparable harm. *See*, *e.g.*, *Eisenberg v. Chicago Milwaukee Corp.*, 537 A.2d 1051, 1151 (Del. Ch. 1987) ("to permit a deficient offer to go forward might forever deprive the tendering shareholders of their right to be treated fairly" and "[i]n that event the harm could not easily be undone …").

Here, Ancestry's public shareholders will be forced to accept a transaction that clearly undervalues their stake in Ancestry. Once the transaction is consummated, Ancestry's shareholders will have lost the ability to have a truly value-maximizing process conducted on their behalf. Shareholders will have also lost the ability to have their Company properly shopped to determine if there is a bidder willing to pay more than Permira. This difficulty in determining a measure of rescissory damages warrants a finding of irreparable harm. *See, e.g., Sealy Mattress Co. of N.J. v. Sealy, Inc.*, 532 A.2d

1324, 1341 (Del. Ch. 1987) ("irreparable harm warranting injunctive relief is appropriate in cases where damages would be difficult to assess"); *County of York*, 2008 WL 4824053, at *7-8 (even where damages are arguably quantifiable, the court can still exercise its discretion in determining equities still favor expedition); *In re Anderson, Clayton S'holders Litig.*, 519 A.2d 669, 676 (Del. Ch. 1986) (irreparable harm found where damages would be difficult to demonstrate).

Even if the damages were susceptible to determination here for Defendants' breaches of fiduciary duty, the Supreme Court's holding in *Lyondell Chemical Co. v. Ryan*, 970 A.2d 235, 243-44 (Del. 2009) counsels that damages for breaches of the duty of care cannot be obtained after the consummation of the challenged change of control transaction. Given the *Lyondell* holding, the only way that shareholders can seek a remedy for the directors' breaches of their duty of care is to seek to enjoin the transaction. Plaintiff has, therefore, demonstrated a substantial threat of irreparable harm to it and the other Ancestry shareholders if they are not granted expedited proceedings and a chance to litigate this claim and enjoin the consummation of the Proposed Transaction.

III. THE BALANCE OF HARDSHIPS FAVOR PLAINTIFF

The balance of hardships favors the Plaintiff and Ancestry's other public shareholders. The Board's failure to fulfill its fiduciary duties in connection with the Proposed Transaction will forever deprive Ancestry shareholders of the right to obtain the best transaction reasonably available in the sale of Ancestry and the right to obtain full value for their interest in Ancestry. By contrast, Defendants will suffer no undue harm if

Plaintiff is granted expedited relief. Indeed, it is in the Company's best interest to expedite these proceedings to resolve Plaintiff's claims before the shareholder vote on the Proposed Transaction, thus avoiding the necessity of postponing the shareholder vote to resolve these claims.

IV. REQUESTED RELIEF

The Company has stated that it expects the shareholder vote on the Proposed Transaction to take place in early 2013. That could be as soon as roughly two months from the date of this filing. Plaintiff submits that a hearing on their preliminary injunction motion be held on or before December 23, 2012, due to the Defendants' stated intention of closing the transaction in "early 2013," which could be as early as January 2, 2013.[3] Expedition is necessary to allow the parties to develop a sufficient record for the Court to appropriately consider the request for injunctive relief before the vote and the consummation are to occur.

[3] Plaintiff intends to consult with Defendants regarding a proposed schedule for this matter. If Defendants will commit to Plaintiff and the Court that the transaction will not close until later in 2013, Plaintiff is willing to adjust the hearing date and scheduling accordingly.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant its Motion for Expedited Proceedings.

Dated: October 26, 2012

Respectfully submitted,

/s/ Stuart M. Grant

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