



GRANTED WITH MODIFICATIONS

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Transaction ID: 575107
Case No. 10467-VCP



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MELVIN LAX, Individually and on)
Behalf of All Others Similarly Situated,)

Plaintiff,)

v.)

C.A. No. 10467-VCP)

ACTUATE CORPORATION,)
NICOLAS C. NIERENBERG, PETER)
I. CITTADINI, KENNETH E.)
MARSHALL, RAYMOND. L.)
OCAMPO JR., ARTHUR C.)
PATTERSON, STEVEN D.)
WHITEMAN, TIMOTHY B.)
YEATON, ASTEROID)
ACQUISITION CORP., and)
OPENTEXT CORPORATION,)

Defendants.)

[PROPOSED] SCHEDULING ORDER

Plaintiff Melvin Lax (“Plaintiff”), by Andrews & Springer, LLC and Milberg, LLP, (Plaintiff’s Counsel”), and defendants Nicholas C. Nierenberg, Peter I. Cittadini, Kenneth E. Marshall, Raymond L. Ocampo Jr., Arthur C. Patterson, Steven D. Whiteman and Timothy B. Yeaton (collectively, the “Individual Defendants”), defendant Actuate Corporation (“Actuate”, together with the Individual Defendants, the “Actuate Defendants”), and defendants OpenText Corporation (“OpenText”) and Asteroid Acquisition Corporation (“Asteroid,” and together with OpenText, the “OpenText Defendants”) (collectively with the Actuate

Defendants, the “Defendants” and together with Plaintiff, the “Parties”) having applied pursuant to Court of Chancery Rule 23 for an order approving the proposed settlement of the above-captioned class action (the “Action”) and determining certain matters in connection with the proposed settlement of the Action (the “Settlement”) and for dismissal of the Action with prejudice, in accordance with the terms and conditions of the Stipulation and Agreement of Compromise, Settlement and Release entered into by the Parties and dated June __, 2015 (the “Stipulation”);

NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with the Court and the Exhibits annexed thereto, and after due deliberation,

IT IS HEREBY ORDERED this _____ day of _____, 2015,

that:

1. Except for the terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Scheduling Order. The Court has jurisdiction over the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each member of the Class.

2. For purposes of the proposed Settlement only, and preliminarily for purposes of this Scheduling Order, the Action shall be maintained and proceed as a class action pursuant to Court of Chancery Rules 23(a) and 23(b)(1, 2) on behalf of a class (the “Class”) consisting of any and all persons who held shares of stock

of Actuate (excluding any Defendants in the Action and their immediate family members, any entity controlled by any of the Defendants, and any successors in interest thereto) at any time during the period from and including December 5, 2014 through January 16, 2015. If Final Approval of the proposed Settlement is not granted by the Court, this preliminary certification of the Action as a class action shall be automatically vacated.

3. For purposes of the proposed Settlement only, and preliminarily for purposes of this Scheduling Order, Plaintiff Melvin Lax is appointed and certified as the Class representative, and his counsel, Milberg LLP and Andrews & Springer LLC, are appointed and certified as Class Counsel, pursuant to Court of Chancery Rule 23. If Final Approval of the proposed Settlement is not granted by the Court, the preliminary appointment and certification of Plaintiff as Class representative and his counsel as Class counsel shall be automatically vacated.

4. The Court preliminarily approves the Stipulation and Settlement set forth therein, subject to further consideration at the Settlement Hearing described below.

5. A hearing (the "Settlement Hearing") shall be held on _____, 2015 at ___:___ .m., in the Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801 to:

a. determine whether the provisional certification of the Class herein should be made final and whether the Plaintiff and his counsel have adequately represented the Class;

b. determine whether the Settlement should be approved by the Court as fair, reasonable, adequate, and in the best interests of the Class;

c. determine whether an Order and Final Judgment (the “Final Judgment”) should be entered pursuant to the Stipulation;

d. rule on Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses;

e. consider any objections to the proposed Settlement or Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses; and

f. rule on such other matters as the Court may deem appropriate.

6. The Court reserves the right to adjourn the Settlement Hearing or any related matter arising out of or connected with the Settlement, including the consideration of the application for attorneys’ fees and expenses, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, and retains jurisdiction over the Action, the Parties and all Class members to consider further applications arising out of or connected with the proposed Settlement.

7. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties to the Stipulation and without further notice to the Class, and retains jurisdiction over the Action, the Parties and all Class members to consider further applications arising out of or connected with the proposed Settlement.

8. Within thirty (30) calendar days after the date of entry of this Scheduling Order, Actuate or its successor entity shall cause a notice of the Settlement Hearing in substantially the form annexed as Exhibit C to the Stipulation (the "Notice") to be mailed to all shareholders of record that are members of the Class at their last known address appearing in the stock transfer records maintained by or on behalf of Actuate. All shareholders of record in the Class who were not also the beneficial owners of the shares of Actuate common stock held by them of record shall be requested to forward the Notice to such beneficial owners of those shares. Actuate or its successor entity shall use reasonable efforts to give notice to such beneficial owners by making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners.

9. The form and method of notice as provided in the Stipulation and implemented hereby is the best notice practicable and constitutes due and sufficient notice of the Settlement Hearing to all persons entitled to receive such a

notice. Counsel for Actuate or its successor entity shall at least ten (10) business days prior to the Settlement Hearing described herein, file with the Court an appropriate affidavit confirming the mailing of the Notice in accordance with the requirement set forth herein.

10. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement should be approved, Plaintiff, and all members of the Class, are barred and enjoined from commencing or prosecuting any action asserting any Settled Claims, either directly, representatively, derivatively, or in any other capacity, against Defendants or any of the Released Persons.

11. Any member of the Class who objects to the Settlement, the Final Judgment to be entered in the Action, and/or Plaintiff's Counsel's application for attorneys' fees, or who otherwise wishes to be heard, may appear in person or by such member's attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless not later than fourteen (14) calendar days prior to the Settlement Hearing such person files with the Court and serves upon counsel listed below: (a) a written

notice of intention to appear; (b) a statement of such person's objections to any matters before the Court; and (c) the grounds for such objections and the reasons that such person desires to appear and be heard, documentation evidencing membership in the Class as well as all documents or writings such person desires the Court to consider. Such filings shall be served upon the following counsel:

Peter B. Andrews
Craig J. Springer
ANDREWS & SPRINGER, LLC
3801 Kennett Pike
Building C, Suite 305
Wilmington, Delaware 19807

Counsel for Plaintiff Melvin Lax

Tamika Montgomery-Reeves
**WILSON SONSINI GOODRICH & ROSATI
P.C.**
222 Delaware Avenue, Suite 800
Wilmington, Delaware 19801

*Counsel for Defendants Actuate Corporation,
Nicolas C. Nierenberg, Peter I. Cittadini, Kenneth E.
Marshall, Raymond L. Ocampo, Jr., Arthur C.
Patterson, Steven D. Whiteman, and Timothy B.
Yeaton*

Matthew E. Fischer
POTTER ANDERSON & CORROON LLP
1313 N. Market Street, Sixth Floor
P.O. Box 951
Wilmington, Delaware 19801

*Counsel for Defendants OpenText Corporation and
Asteroid Acquisition Corporation*

and must also be contemporaneously filed with the Register in Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801.

12. Unless the Court otherwise directs, no person shall be entitled to object to the approval of the Settlement, any judgment entered thereon, the adequacy of the representation of the Class by Plaintiff and Plaintiff's Counsel, any award of attorneys' fees, or otherwise be heard, except by serving and filing a written objection and supporting papers and documents as described in paragraph 11. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding.

13. Plaintiff's Counsel shall file and serve their opening brief in support of the Settlement and their application for attorneys' fees and expenses no later than twenty-eight (28) calendar days prior to the Settlement Hearing. Any objections to the application for attorneys' fees and expenses shall be filed and served no later than fourteen (14) calendar days prior to the Settlement Hearing. Plaintiff's Counsel shall file and serve their reply brief in support of the Settlement and their application for attorneys' fees and expenses no later than seven (7) calendar days prior to the Settlement Hearing. If any objections to the Settlement or Plaintiff's fee application are received or filed, Plaintiff and/or

Defendants may file and serve a response to those objections no later than five (5) calendar days prior to the Settlement Hearing.

14. The Stipulation shall be null and void and of no force and effect if (a) the Stipulation is terminated pursuant to its terms or is not approved in all material respects by the Court; (b) the Final Judgment entered pursuant to the Stipulation is reversed, vacated, or modified in any material respect by this Court or any other court; unless counsel for each of the Parties, within ten (10) business days from receipt of such ruling or event, agrees in writing with counsel for the other Parties to proceed with the Stipulation and the Settlement, including only with such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree; or (c) Final Approval of the Settlement otherwise fails to occur. Neither a modification nor a reversal on appeal of the amount of fees, costs, and expenses awarded by the Court to Plaintiff's Counsel shall be deemed a material modification of the Judgment or the Stipulation. In any such event, the Stipulation shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the Action or to entitle any Party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement; provided, however, that Actuate or its successor shall be responsible for paying the costs of providing the notice of the Settlement to the Class regardless of whether the Settlement is approved.

15. In the event that the Settlement is rendered null and void for any reason, (a) all of the Parties to the Stipulation shall be deemed to have reverted to their respective litigation status immediately prior to the execution of the memorandum of understanding executed on January 9, 2015 (the “MOU”), and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, (b) all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way, and (c) the statements made in connection with the negotiations of the MOU or the Stipulation shall not be deemed to prejudice in any way the positions of the Parties with respect to the Action, or to constitute an admission of fact of wrongdoing by any Party, shall not be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Action, and neither the existence of the MOU or the Stipulation nor their contents nor any statements made in connection with their negotiation nor any settlement communications shall be admissible in evidence or referred to for any purpose in the Action, or in any other litigation or judicial proceeding.

16. The Court may, for good cause, extend any of the deadlines set forth in this Scheduling Order without further notice to Class members.

Vice Chancellor Parsons

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Donald F Parsons

File & Serve

Transaction ID: 57489985

Current Date: Jul 20, 2015

Case Number: 10467-VCP

Case Name: CONF ORD ON DISC Melvin Lax vs Actuate Corp

Court Authorizer: Parsons, Donald F

Court Authorizer

Comments:

The foregoing [Proposed] Scheduling Order is hereby GRANTED subject to the following modifications:

The Settlement Hearing referenced in paragraph 5 on page 3 shall be held on October 5, 2015 at 2:00 p.m.

/s/ Judge Parsons, Donald F