

→ NEXT
← PREVIOUS

Reply Memorandum of Points and Authorities in Support of Motion to Appoint UFCW Local 56 Retail Meat Pension Fund, Robert D. Sawyer, Local 144 Nursing Home Pension Fund and Drifton Finance Corp. As Lead Plaintiff and for Approval of Lead Plaintiff's Choice of Counsel

Source: Milberg Weiss
Date: 06/05/01 Time: 10:55 AM

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
WILLIAM S. LERACH (68581)
MARK SOLOMON (151949)
DOUGLAS R. BRITTON (188769)
600 West Broadway, Suite 1800
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

[Proposed] Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LOCAL 144 NURSING HOME	)	No. C-01-0988-MJJ
PENSION FUND, On Behalf of)	
Itself and All Others Similarly Situated,	)	<u>CLASS ACTION</u>
)	
Plaintiff,	)	REPLY MEMORANDUM OF POINTS
	)	AND AUTHORITIES IN SUPPORT
vs.	)	OF MOTION TO APPOINT UFCW
	)	LOCAL 56 RETAIL MEAT PENSION
ORACLE CORPORATION, et al.,	)	FUND, ROBERT D. SAWYER, LOCAL
	)	144 NURSING HOME PENSION FUND
Defendants.	)	AND DRIFTON FINANCE CORP. AS
_____	)	LEAD PLAINTIFF AND FOR APPROVAL
	)	OF LEAD PLAINTIFF'S CHOICE OF
	)	COUNSEL

DATE: June 19, 2001
TIME: 9:30 a.m.
COURTROOM: The Honorable
Martin J. Jenkins

TABLE OF CONTENTS

I. INTRODUCTION

II. ARGUMENT

III. CONCLUSION

I. INTRODUCTION

The Oracle Investors⁽¹⁾ submit this reply brief in support of their motion for appointment as lead plaintiff and approval of their choice of counsel, and in reply to the Opposition of the Jose Group to Appoint UFCW Local 56 Retail Meat Pension Fund, Robert Sawyer, Local 144 Nursing Home Pension Fund and Drifton Finance Corp. as Lead Plaintiffs Pursuant to Section 21D of the Securities Exchange Act of 1934 and Approving Their Choice of Counsel ("Jose Group's Opposition").

The Jose Group's Opposition fails to address any arguments advanced by the Oracle Investors' Opposition to the Motion of the Jose Group to be Appointed Lead Plaintiff. Instead, they argue that, because Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg Weiss") also represents a plaintiff shareholder of Oracle Corporation in a derivative action, *Pierce v. Ellison, et al.*, Case No. C-01-20304-PVT (N.D. Cal. , filed March 12, 2001) ("*Pierce* action"), a conflict exists precluding Milberg Weiss from representing the class of present and former Oracle investors in the federal class action. While in reality such a conflict never existed (*see infra*), Milberg Weiss has now withdrawn as counsel from the *Pierce* action and, accordingly, the Jose Group has now withdrawn both its motion seeking lead plaintiff appointment and also its opposition to the motion of the Oracle Investors. In light of these facts, any conflict issue that may ever have existed has been mooted; the motion of the Oracle Investors is unopposed, and therefore; the Oracle Investors should be appointed lead plaintiff and their choice of counsel, Milberg Weiss, be approved.

II. ARGUMENT

There is no longer any opposition or competing motion to the motion of the Oracle Investors for appointment as lead plaintiff. And in light of the charge (now withdrawn) that a conflict existed, counsel for the Oracle Investors has filed a Notice of Withdrawal of Counsel in the *Pierce* action, thereby mooting any argument of conflict by the Jose Group. But in any event, the Jose Group never proffered any evidence that an actual conflict ever existed. Rather, they made the blanket assertions that the Oracle Investors and the plaintiff in the derivative action are adverse parties because (1) they represent purchasers and holders of Oracle stock; and (2) they seek recovery from the same defendant. They further hypothesized that a settlement for a single sum would create a conflict. However, courts have consistently held that, where multiple types of claims are asserted against defendants arising out of the same nucleus of facts, concerns about speculative or remote conflict are insufficient to prevent the appointment of lead plaintiffs under the Private Securities Litigation Reform Act of 1995. *In re Reliance Acceptance Group Sec. Litig.*, No. SA-98-CA-0044OG, 1998 WL 388260, at *5 (W.D. Tex. June 29, 1998) (conflicts which are "purely hypothetical and speculative" do not rebut the presumption of adequacy at the lead plaintiff appointment stage); *Borenstein v. Finova Group*, No. CIV-00-619-PHX-SMM, 2000 U.S. Dist. LEXIS 14732, at *26-*28 (D. Ariz. Aug. 28, 2000) (holding that one group could represent both purchaser and holder claimants, noting that lead plaintiffs held both types of claims and thus would be antagonistic to neither). Nevertheless, plaintiffs have withdrawn as

plaintiffs' counsel in the *Pierce* action.

Therefore, because the Oracle Investors undisputably have the largest financial loss, they are entitled to the statutory presumption that they are the most adequate plaintiff. Similarly, because the Oracle Investors include sophisticated institutional entities and substantial stock market investors who have chosen experienced and sophisticated counsel to pursue the claims of the class, their choice of Milberg Weiss as lead counsel should also be approved.⁽²⁾

III. CONCLUSION

For the foregoing reasons, the Oracle Investors respectfully request that the Court enter an Order consolidating the actions and granting their motion to appoint Local 56 Retail Meat Pension Fund, Robert D. Sawyer, Local 144 Nursing Home Pension Fund and Drifton Finance Corp. as lead plaintiff and approve their selection of Milberg Weiss as lead counsel.

DATED: June 5, 2001

Respectfully submitted,

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
WILLIAM S. LERACH
MARK SOLOMON
DOUGLAS R. BRITTON

MARK SOLOMON

600 West Broadway, Suite 1800
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

[Proposed] Lead Counsel for Plaintiffs

DECLARATION OF SERVICE BY FACSIMILE AND MAIL PURSUANT TO NORTHERN DISTRICT LOCAL RULE 23-2(c)(2)

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Francisco, over the age of 18 years, and not a party to or interested in the within

action; that declarant's business address is 100 Pine Street, 26th Floor, San Francisco, California 94111.

2. That on June 5, 2001, declarant served the REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPOINT UFCW LOCAL 56 RETAIL MEAT PENSION FUND, ROBERT D. SAWYER, LOCAL 144 NURSING HOME PENSION FUND AND DRIFTON FINANCE CORP. AS LEAD PLAINTIFF AND FOR APPROVAL OF LEAD PLAINTIFF'S CHOICE OF COUNSEL AND OPPOSITION TO THE MOTION OF THE JOSE GROUP by facsimile and by depositing a true copy thereof in a United States mailbox at San Francisco, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List and that this document was forwarded to the following designated Internet site at:

<http://securities.milberg.com>

3. That there is a regular communication by facsimile and by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of May, 2001, at San Francisco, California.

DEBORAH R. DASH

1. Collectively, the "Oracle Investors" are UFCW Local 56 Retail Meat Pension Fund, Robert D. Sawyer, Local 144 Nursing Home Pension Fund and Drifton Finance Corp.
2. The Oracle Investors are prepared to submit for *in camera* review, at the June 19, 2001 hearing, declarations that address their choice of counsel and the negotiated fee.