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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

IRA S. NATHAN,

Plaintiffs,

v.

SERGE MATTA, et al.,

Defendants.

Lead Case No. 16CV32458

**ORDER DENYING DEFENDANTS’
MOTIONS TO DISMISS**

Hon. Jerry B. Hodson

WHEREAS, on August 4, 2017, the Court held a hearing regarding (1) Defendants
Matta, Abraham, Fulgoni, Fradin, Henderson, Katz, Korn and Lewis’ Motion to Dismiss (the
“Director Defendants’ Motion to Dismiss”); (2) Defendant Melvin Wesley III’s Motion to
Dismiss (“Wesley’s Motion to Dismiss”);¹ and (3) Defendant Ernst & Young LLP’s Motion to
Dismiss (the “EY Motion to Dismiss” and, collectively with the Director Defendants’ Motion to
Dismiss and Wesley’s Motion to Dismiss, the “Motions to Dismiss”) and having read and
considered all of the papers and the arguments of the parties and good cause being shown,

IT IS NOW HEREBY ORDERED as follows:

1. The Director Defendants’ Motion to Dismiss for lack of personal jurisdiction is
DENIED.
2. The Individual Defendants’ Motion to Dismiss pursuant to ORCP 21 A(3) is
DENIED.

¹ The Director Defendants and Wesley are, collectively, the “Individual Defendants.”

1 3. All Defendants' Motions to Dismiss for failure to allege a false statement of
2 material fact under *Omnicare, Inc. v. Laborers Dist. Council Const. Indus.*
3 *Pension Fund*, 135 S. Ct. 1318 (2015) are DENIED.

4 4. EY's Motion to Dismiss based on a purported failure to allege certification under
5 Section 11 of the Securities Act of 1933 is DENIED.

6 5. EY's Motion to Dismiss based on negative loss causation is DENIED.

Signed: 8/30/2017 03:32 PM

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Circuit Court Judge
Circuit Court Judge Jerry B. Hodson

12 SUBMITTED BY:

13 DAVIS WRIGHT TREMAINE LLP

14 Stephen M. Rummage, admitted Pro Hac Vice
15 steверummage@dwt.com
16 Tim Cunningham, OSB #100906
17 timcunningham@dwt.com
18 John F. McGrory, Jr., OSB #813115
19 johnmcgrory@dwt.com

20 LATHAM & WATKINS LLP

21 Peter A. Wald, admitted Pro Hac Vice in Nathan
22 peter.wald@lw.com
23 Kevin M. McDonough, admitted Pro Hac Vice in Nathan
24 kevin.mcdonough@lw.com

25 Attorneys for Defendant Ernst & Young LLP

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a copy of the foregoing **ORDER DENYING**
3 **DEFENDANTS' MOTIONS TO DISMISS** on:

4 Timothy S. DeJong
5 Nadia H. Dahab
6 Steve D. Larson
7 Stoll Stoll Berne Lokting & Schlachter PC
8 209 SW Oak St., 5th Flr.
9 Portland, OR 97204
10 Email: tdejong@stollbern.com;
11 ndahab@stollberne.com;
12 slarson@stollberne.com

13 Attorneys for Plaintiff

14 Jason M. Leviton
15 Joel A. Fleming
16 Bradley J. Vettrai
17 Jeffrey R. Gray
18 Block & Leviton LLP
19 155 Federal St., Ste. 400
20 Boston, MA 02110
21 Email: jason@blockesq.com
22 joel@blockesq.com

23 Attorneys for Plaintiff

24 Nidhi Yadava
25 Robert C. Micheletto
26 Jones Day
27 250 Vesey St., 30th Flr.
28 New York, NY 10281
29 Email: nyadava@jonesday.com
30 rmicheletto@jonesday.com

31 Attorneys for Defendants Serge Matta,
32 Magid M. Abraham, Gian M. Fulgoni, Russell
33 Fradin, William J. Henderson, William Katz,
34 Ronald J. Korn, Joan Lewis

Craig J. Springer
David M. Sborz
Peter B. Andrews
Andrews & Springer LLC
3801 Kennett Pike, Bldg. C, Ste. 305
Wilmington, DE 19807
Email: cspringer@andrewsspringer.com;
dsborz@andrewsspringer.com;
pandrews@andrewsspringer.com

Attorneys for Plaintiff

Stephen A. Swedlow
John M. Robinson
Michelle Schmit
Quinn Emanuel Urquhart & Sullivan LLP
500 SW Madison St., Ste. 2450
Chicago, IL 60661
Email: stephenswedlow@quinnemanuel.com;
johnrobinson@quinnemanuel.com
michelleschmit@quinnemanuel.com

Attorneys for Defendants Serge Matta,
Magid M. Abraham, Gian M. Fulgoni, Russell
Fradin, William J. Henderson, William Katz,
Ronald J. Korn, Joan Lewis

B. Scott Whipple
Whipple & Duyck, PC
1500 SW 1st Ave., Ste. 1170
Portland, OR 97201
Email: swhipple@whippleduyck.com

Attorneys for Defendants Serge Matta,
Magid M. Abraham, Gian M. Fulgoni, Russell
Fradin, William J. Henderson, William Katz,
Ronald J. Korn, Joan Lewis

1 Jennifer Quinn-Barabanov
2 Steptoe & Johnson LLP
3 1330 Connecticut Ave., NW
4 Washington, DC 20036
5 Email: jquinnba@steptoe.com

Casey N. Nokes
Cable Huston LLP
1001 SW 5th Ave., Ste. 2000
Portland, OR 97204
Email: cnokes@cablehuston.com

6 Attorneys for Defendants Serge Matta,
7 Magid M. Abraham, Gian M. Fulgoni, Russell
8 Fradin, William J. Henderson, William Katz,
9 Ronald J. Korn, Joan Lewis

Attorneys for Defendant Melvin Wesley III

6 Douglas B. Paul
7 Michael P. Kelly
8 Yuri S. Fuchs
9 Hogan Lovells US LLP
10 555 13th St. NW
11 Washington, DC 20004
12 Email: douglas.paul@hoganlovells.com;
13 michael.kelly@hoganlovells.com;
14 yuri.fuchs@hoganlovells.com

Attorneys for Defendant Melvin Wesley III

12 by emailing a copy thereof to said attorneys at their last-known email addresses as
13 set forth above.

14 by mailing a copy thereof in a sealed, first-class postage prepaid envelope,
15 addressed to said attorney's last-known address and deposited in the U.S. mail at Portland,
16 Oregon on the date set forth below.

Dated this 25th day of August, 2017.

17 DAVIS WRIGHT TREMAINE LLP

18
19 By: s/ Tim Cunningham
20 Stephen M. Rummage, admitted *Pro Hac Vice in*
21 *Nathan*
22 Tim Cunningham, OSB #100906
23 John F. McGrory, Jr., OSB #813115

Attorneys for Defendant Ernst & Young LLP

CERTIFICATE OF READINESS – UTCR 5.100

This proposed order or judgment is ready for judicial signature because:

- 1. Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party’s signature on the document being submitted.
- 2. Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.
- 3. I have served a copy of this order or judgment on all parties entitled to service and:
 - a. No objection has been served on me.
 - b. I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
 - c. After conferring about objections, Plaintiffs agreed to independently file their proposed order.
- 4. The relief sought is against an opposing party who has been found in default.
- 5. An order of default is being requested with this proposed judgment.
- 6. Service is not required pursuant to subsection (3) of this rule, or by statute, rule or otherwise.
- 7. This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims’ Assistance Section as required by subsection (4) of this rule.

Dated this 25th day of August, 2017.

DAVIS WRIGHT TREMAINE LLP

By: s/ Tim Cunningham
 Stephen M. Rummage, admitted *Pro Hac Vice in Nathan*
 Tim Cunningham, OSB #100906
 John F. McGrory, Jr., OSB #813115

Of Attorneys for Defendant Ernst & Young LLP