

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TRULIA, INC. : Civil Action
STOCKHOLDER LITIGATION : No. 10020-CB

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Chancery Courtroom No. 12A
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Wednesday, September 16, 2015
10:05 a.m.

- - -

BEFORE: HON. ANDRE G. BOUCHARD, Chancellor.

- - -

SETTLEMENT HEARING

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0523

1 APPEARANCES:

2 BRIAN D. LONG, ESQ.
3 Rigrodsky & Long, P.A.
4 for Plaintiffs

4 RUDOLF KOCH, ESQ.
5 Richards, Layton & Finger, P.A.
6 -and-

7 MICHAEL T. JONES, ESQ.
8 of the California Bar
9 Goodwin Procter LLP
10 for Defendants Trulia, Inc., Pete Flint, Robert
11 Moles, Theresia Gouw, Greg Waldorf, Sami
12 Inkinen, Erik Bardman, and Steve Hafner

9 KEVIN M. COEN, ESQ.
10 Morris, Nichols, Arsht & Tunnell LLP
11 for Defendants Zillow, Inc. and Zebra Holdco,
12 Inc.

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1 MR. KOCH: Good morning, Your Honor.

2 THE COURT: Good morning, Mr. Koch.

3 MR. KOCH: I just rise to make one
4 brief introduction. I have with me today my
5 co-counsel, Mr. Michael Jones from Goodwin Procter.

6 MR. JONES: Good morning, Your Honor.

7 MR. KOCH: And we represent the Trulia
8 defendants.

9 THE COURT: Good morning.

10 Mr. Long.

11 MR. LONG: Good morning, Your Honor.
12 May it please the Court, Brian Long from Rigrodsky &
13 Long on behalf of plaintiffs. This is the time that
14 the Court has set down for the consideration of the
15 proposed settlement of Civil Action No. 10020, In re
16 Trulia Stockholder Litigation. Notice of the proposed
17 settlement was disseminated pursuant to the Court's
18 June 12, 2015, scheduling order. Beginning on or
19 around July 17, 2015, almost 13,000 copies of the
20 notice were mailed. Mailing of the notice was
21 attested to by an affidavit submitted on August 28,
22 2015, by Markham Sherwood of Kurtzman Carson
23 Consultants. To date, plaintiffs' counsel are unaware
24 of any objections to the settlement, class

1 certification, or to the requested award for the
2 attorneys' fees and expenses.

3 I'd also note for the record that I
4 canvassed the well before the hearing, as well as the
5 courtroom, and that no one here today is to object.
6 In fact, my colleagues from Andrews & Springer
7 actually represent one of the plaintiffs in the case.

8 THE COURT: I'm sorry. Could you
9 repeat the last part of what you said?

10 MR. LONG: Sure.

11 THE COURT: About Mr. Andrews. I'm
12 not sure what --

13 MR. LONG: Yeah. My colleagues, they
14 represent one of the plaintiffs in one of the later
15 consolidated actions.

16 THE COURT: All right.

17 MR. LONG: So turning to the
18 challenged transaction, this was a deal that was
19 announced on July 28, 2014. It's a stock deal through
20 which, eventually, Zillow would acquire Trulia
21 pursuant to the merger agreement. The exchange ratio
22 was .444 shares of the holding company common stock.
23 It equated to approximately 33 percent equity for the
24 holders of Trulia, and the remaining 67 percent would

1 go to the stockholders of Zillow.

2 We've been in front of Your Honor
3 several times over the past few weeks: Open Table, TW
4 Telecom, World Energy. Before I go through sort of
5 the background of the litigation, I guess I would
6 harken this one much closer to World Energy than to
7 the others. I know Your Honor's expressed some
8 concerns about what you called self-expediting
9 matters. This, candidly, there was no hearing on a
10 motion for expedited discovery.

11 THE COURT: Well, in fact, wasn't the
12 stipulated schedule entered the same day as the motion
13 for expedition was filed?

14 MR. LONG: No. The stipulated
15 schedule was entered the same day that the
16 consolidation order was filed.

17 THE COURT: Okay.

18 MR. LONG: I think we filed the motion
19 for expedited discovery back -- I think it was
20 September 24th.

21 THE COURT: Okay.

22 MR. LONG: And it actually was the
23 subject of a lot of negotiation.

24 THE COURT: All right.

1 MR. LONG: And so we didn't submit the
2 scheduling order until a couple of things had gotten
3 worked out, consolidation being one of them. And
4 then, once we were able to lock down everything and go
5 through all the negotiations with respect to the
6 documents, the search terms, the e-mails, everything
7 that we had to do in that part, then, you know, we had
8 an agreement and we went forward.

9 THE COURT: What was the date, again,
10 of the MOU?

11 MR. LONG: The date of the MOU was --
12 I want to say November 19th.

13 THE COURT: Why did it take so long
14 for us to get to this point? This deal happened over
15 a year ago.

16 MR. LONG: Sure. Well, a couple of
17 reasons. The transaction closed -- didn't close --
18 let me just get that right. So the MOU was November
19 19. The stockholder vote actually wasn't until
20 several weeks later, in December. And so in that
21 regard, normally -- it's unusual, at least in my
22 experience, to wrap up the confirmatory discovery
23 before the deal closes.

24 Here, it was a large transaction,

1 \$3.5 billion. It was a strategic transaction. And so
2 there was a very -- as I understand, a rigorous
3 antitrust clearance process. So we didn't get the --
4 you know, the MOU was before Thanksgiving. We didn't
5 really pick up until after the beginning of the new
6 year, in terms of scheduling confirmatory discovery.

7 Scheduled confirmatory discovery. I
8 think the confirmatory deposition, Mr. Waldorf, was
9 sometime in the mid-February range. And I think it
10 wasn't until after that that they got the necessary
11 clearance from the FTC to close the deal. So it took
12 three or four months, I think, from that point to
13 negotiate the terms of the stipulation and settlement.

14 Again, nothing was easy in this one.
15 The negotiations over the fee dragged things out, to
16 be candid. And then I think this one -- you know, we
17 submitted it, I want to say, in July. And it was --
18 we're 90 days. I think part of this also has to do
19 with Your Honor's schedule, making sure that we had
20 the requisite amount of time for notice. We are
21 mindful of trying to keep things moving forward.
22 Sometimes things are out of our control. Sometimes
23 things slip through, candidly.

24 So we were able to negotiate the scope

1 of expedited discovery. As I said, it wasn't a huge
2 production of documents, a little more than a bankers'
3 box, but it was core documents, core presentations,
4 bankers' books, e-mails from several custodians, you
5 know, and a wrangle back and forth over search terms.
6 And we took two adversarial depositions.

7 We didn't make a settlement demand
8 until after we had completed the depositions. We made
9 the demand. We had discussions with the defendants
10 about the scope of our demand. You know, we asked for
11 several things. It became clear after a while the
12 only thing we were going to be able to do, in terms of
13 settlement, was going to be the disclosures. Doesn't
14 mean we didn't ask for more. We weren't -- we didn't
15 think we were heading towards a settlement that we
16 wanted, and so we had to file our opening PI brief.
17 And I think we filed that -- I think we filed that on
18 or around November 4.

19 THE COURT: So remind me what you put
20 at issue in your opening PI brief.

21 MR. LONG: Sure.

22 THE COURT: Other than disclosures.

23 MR. LONG: Well, I mean, obviously,
24 there was a detailed recitation of the facts we

1 expressed --

2 THE COURT: I meant like a legal
3 theory for relief.

4 MR. LONG: The sole focus of the PI
5 brief was three discrete disclosure issues --

6 THE COURT: The same ones that were
7 the basis of settlement, or different ones?

8 MR. LONG: The same ones, and then
9 there was an additional one I'd like to talk about as
10 well.

11 THE COURT: Okay.

12 MR. LONG: So we basically got
13 everything we asked for in the PI brief plus one other
14 one that I think is also material, in light of the
15 circumstances. So, you know, against that backdrop,
16 we'd also served subpoenas, deposition notices. Sort
17 of came at this as we were going to have to litigate
18 this aggressively. We were able to work things out.

19 Now, I'm not going to speak for my
20 colleagues. I'd like to think that when they read the
21 brief in support of the motion for expedited
22 discovery, they perceived some risk, at least as to
23 the relief we were requesting in that motion. I'd
24 also like to think that when they read the PI brief we

1 filed, they were concerned about some level of risk
2 about the disclosure-based injunctive relief.

3 So that takes us, then, through to the
4 stipulation of settlement. It did take a little bit
5 longer than we'd like to get that done, but we were
6 able to do that, submit papers, and then we're here
7 today for consideration of the proposed settlement.

8 With respect to class certification,
9 our arguments are in our papers. There were
10 approximately, I'm going to say, 37.78 million shares
11 of Trulia common stock outstanding. I think all of
12 the prerequisites of Rule 23(a) and (b) are met here.

13 I'd also respectfully submit that the
14 settlement that we're proposing to Your Honor today is
15 fair, reasonable, and adequate. We did go to some
16 length in our papers to try to set forth the give
17 versus the get here. Again, this is a disclosure-only
18 settlement. I mean, there were risks that we faced.
19 They're detailed in the brief. This was a
20 stock-for-stock transaction. There would have been a
21 strong argument by the defendants that Revlon didn't
22 apply. We had arguments, we had our theories. It was
23 a single-bidder process.

24 THE COURT: What was your theory that

1 Revlon would apply in this deal?

2 MR. LONG: Well, I mean, in the end, I
3 don't have a theory that Revlon would apply. I mean,
4 we've taken a look at everything. It was a
5 single-bidder process. There was no presigning market
6 check. The board tried to include -- the
7 transaction included the board trying to include a
8 go-shop in the merger agreement. Eventually, after
9 consideration, consultation with their advisors, and
10 including their lawyers, they decided to take the bird
11 in the hand.

12 THE COURT: Right. What was the
13 percent of the deal that was in the breakup fee?

14 MR. LONG: 2.75 percent. There was a
15 \$69 million breakup fee.

16 THE COURT: How is it -- what's the
17 denominator in that calculation?

18 MR. LONG: I think it's the 37.78
19 million shares.

20 THE COURT: No. I mean, I know what
21 the fee was, but what was, basically, the implied
22 market value that was applied to Trulia to determine
23 the percentage of the breakup fee? If you know.

24 MR. LONG: Yeah. I don't want to

1 speculate. I think it was, you know, the value at the
2 time of closing, in terms of the market price of
3 Zillow stock. But I'll be candid. Standing here
4 today, I just can't remember, for the life of me.

5 THE COURT: I'd be surprised if it's
6 closing value. Usually those are calibrated at the
7 time the deal is done, but all right.

8 MR. LONG: All right. So we turn to
9 the disclosures. There are just a few discrete
10 disclosures that we got here.

11 THE COURT: Start with your best one.

12 MR. LONG: Sure. I have two best
13 ones. The one that I like the best is the disclosure
14 of the additional synergy numbers. So --

15 THE COURT: All right.

16 MR. LONG: So originally, in the S-4
17 originally, there was a disclosure to the effect that,
18 you know, they were looking at \$100 million in
19 synergies. All right? Through discovery, we
20 discerned that, in fact, the board of Trulia thought
21 that \$175 million in synergies was achievable. Now,
22 this is significant, for a couple of reasons. First
23 and foremost, you take the 37.78 million shares,
24 that's another \$1.98 a share in synergies. Now, I'm

1 not suggesting -- I'm not suggesting that that's
2 another \$2 a share that could, you know, have gone to
3 the shareholders of Trulia, but this is information
4 that wasn't disclosed.

5 I mean, there was another \$1.98 in
6 value, potentially, to the buyer. And perhaps there
7 was something more that the board could have pushed
8 for in terms of additional consideration.

9 THE COURT: Well, okay. You're going
10 to have to explain that a little bit more for me. But
11 on page 123 of the Definitive, there is a little
12 chart, even though it's only two lines, that says
13 "Trulia Management Estimated Synergies." And there
14 are numbers from 2014 estimated to 2024 estimated,
15 including 175 million in 2016.

16 Now, if I understand the disclosures
17 that were made correctly, that was in the Definitive
18 long before you came along; is that right?

19 MR. LONG: That might be. I'm
20 embarrassed, I might just be mistaken. My
21 recollection was that this wasn't disclosed.
22 But there's another reason why it's material.

23 THE COURT: All right. Well, tell me
24 the other reason.

1 MR. LONG: Sure. JPMorgan used the
2 \$175 million synergy in one of its analyses, all
3 right? They did a value-creation analysis.

4 THE COURT: Right.

5 MR. LONG: And there was no disclosure
6 originally about, you know, the level of synergies
7 that were used in the two respective analyses.

8 THE COURT: Well, but they did, for
9 example -- let me find that part. So if I look at
10 page 130 of the Definitive, which is the
11 value-creation analysis that was done based on an
12 intrinsic-value approach --

13 MR. LONG: Right. The intrinsic-value
14 approach.

15 THE COURT: Now, I get your point that
16 when you get to subpart 3 of what I guess is the
17 second sentence, it doesn't say some specific synergy
18 value for any particular year. But it does say that
19 when they did this analysis, that they present-valued
20 Trulia's management-expected after-tax synergies;
21 right? Minus certain costs. And those synergies are
22 the table I just referred to on page 123; right? So
23 that's in there.

24 MR. LONG: Well, the fact of the

1 matter is, in the market-based approach they used --

2 THE COURT: We'll get to the
3 market-based approach. But isn't it telling you where
4 the synergies are coming from in the intrinsic-value
5 approach?

6 MR. LONG: One could conclude that,
7 yes.

8 THE COURT: Now, let's go to the
9 market approach for a second. Would you agree with me
10 that even JPMorgan, in the disclosures concerning
11 JPMorgan's analysis, put less emphasis or less
12 importance on the market approach? And I say that
13 because it all appears under the heading "Other
14 Information." My reading of it -- and if you disagree
15 with me, you can tell me -- is that the "other
16 information" is things that were less significant to
17 JPMorgan than the things that came before that part.

18 MR. LONG: I think that's a fair
19 reading as well.

20 THE COURT: All right.

21 MR. LONG: I think what's obfuscated
22 is the fact that if you look at them side by side --
23 if you have them side by side, if they'd have used the
24 \$100 million synergy number, the value-creation -- it

1 would have only been 16 percent under --

2 THE COURT: I'm sorry. Could you just
3 repeat that? I didn't hear it.

4 MR. LONG: Yeah. No, no. I'm going
5 to go through my calculation. I don't know that it
6 matters. You know, using the \$100 million synergies
7 number, you would be looking at value creation in the
8 realm of 16 percent.

9 THE COURT: All right. Could you just
10 explain to me the 16 percent you're referring to
11 again.

12 MR. LONG: Sure. You look at --
13 looking on page 130, there's a reference at the bottom
14 of the paragraph to the effect that the implied pro
15 forma accretion in economic equity value to the
16 holders of Trulia common stock is 28 percent.

17 THE COURT: Right. Okay. That's the
18 bottom line. Right.

19 MR. LONG: Sure. That's the bottom
20 line. That's using the \$175 million synergy number.

21 THE COURT: Right.

22 MR. LONG: So they don't -- you know,
23 it's not clear -- it wasn't clear to me, at least,
24 wasn't clear to our expert, at least -- that they were

1 using the \$175 million synergy number. It wasn't
2 clear that JPMorgan had used the \$175 million synergy
3 number here. So if they had, you'd only be looking at
4 value creation on the level of 16 percent.

5 THE COURT: And I'm just not following
6 how you've got to 16 percent.

7 MR. LONG: Well, first, I mean, it's
8 reflected in the board book on page 741, I think.

9 THE COURT: That, I don't have. Can
10 you just explain to me the math?

11 MR. LONG: Sure.

12 THE COURT: I just didn't understand
13 it.

14 MR. LONG: No, no. I think I can.
15 We're looking at -- this is how I did it. It's very
16 simple.

17 THE COURT: Okay.

18 MR. LONG: You have \$100 million of
19 synergies, versus 175.

20 THE COURT: Right. That's for a
21 particular year.

22 MR. LONG: Sure. Sure. These are the
23 assumptions --

24 THE COURT: And some multiple is

1 applied and all that. Right.

2 MR. LONG: So 100 over 175 is 4/7ths.

3 THE COURT: Right.

4 MR. LONG: 28 times 4/7ths is 16.

5 THE COURT: Okay.

6 MR. LONG: So, I mean, in that regard,
7 again, is it misleading? Is it obfuscatory? Is it a
8 fair summary? I think the additional information
9 makes the summary far more fair.

10 THE COURT: Okay.

11 MR. LONG: So the second disclosure --

12 THE COURT: The second best one?

13 MR. LONG: Yeah. Yes, sir.

14 THE COURT: Giving new meaning to the
15 use of the superlative. It's okay, Mr. Long.

16 MR. LONG: The second disclosure we
17 would like to highlight as beneficial is the one that
18 relates to the selected precedent transaction
19 analysis.

20 THE COURT: Okay.

21 MR. LONG: Now, I know that in the
22 past, Your Honor has not necessarily espoused a
23 predilection for the value of the benefit of the
24 disclosure of multiples. I think -- and I'm going to

1 hope to persuade you -- that this situation is
2 slightly different, for a couple of reasons.

3 In the initial disclosure, there was a
4 list of 32 transactions.

5 THE COURT: Right.

6 MR. LONG: All right? And it began
7 based upon publicly available information. So with
8 respect to the additional disclosure that we got, we
9 got disclosure of all the multiples. All right? So
10 when you saw the multiples for these -- you know, this
11 robust body of precedent transactions they looked at,
12 all of a sudden you realize you saw that 15 of 32 of
13 these transactions didn't have any information that
14 they were able to use. Wasn't available. All right?

15 And perhaps even more important is the
16 fact that one of the 16 transactions was a public
17 transaction for which they had information. And this
18 was the first time that you learned, A, that the
19 implied EBITDA multiple for that transaction -- the
20 implied multiple for that transaction was over 100 and
21 that, B, they determined to discard it, not use it, as
22 not meaningful.

23 THE COURT: Which one was that?

24 MR. LONG: It was the ExactTarget,

1 Inc. acquisition by Salesforce.com.

2 THE COURT: Am I correct about the
3 following -- hint: I think I am, so you're going to
4 have to tell me I'm wrong, if I'm wrong -- that each
5 of these individual multiples you're talking about
6 were derived based on publicly available information?

7 MR. LONG: Except for the ones when
8 there was no publicly available information.

9 THE COURT: Okay. Fine. But the
10 point is, if somebody wanted to figure out, if
11 somebody really cared about what the multiple was of
12 any particular one of these potential comparable
13 transactions -- or arguably comparable transactions,
14 because there's lots of disclosures about all the
15 judgment that goes into determining whether something
16 has any true comparability -- they can go out and
17 figure that out; right?

18 MR. LONG: I suppose if they're so
19 inclined they can.

20 THE COURT: Yeah. I mean, the proxy
21 statement even says explicitly that these multiples
22 were derived from publicly available estimates; right?

23 MR. LONG: I think there can be an
24 argument with respect to that statement, though, that

1 that doesn't paint the whole picture. Because, you
2 know, 15 of them, there was no publicly available
3 information.

4 THE COURT: Here's the issue that's on
5 my mind whenever I'm confronted with this argument:
6 It must be like Financial Advisor Malpractice 101,
7 under the plaintiffs bar theory, because almost every
8 one of these settlements, somebody walks in and says,
9 "Oh, we got the individual multiples." So that must
10 tell me you basically think every financial advisor in
11 America is committing malpractice -- or the lawyers --
12 when they disclose these summaries. Because they're
13 never there. And the reason, I surmise, is because
14 what matters is the judgment of the financial advisor,
15 and that is what's here.

16 So riddle me that. Tell me why I'm
17 wrong.

18 MR. LONG: Well, as you mentioned, it
19 took a while to get from the time the disclosures were
20 made until we're here today.

21 THE COURT: Right.

22 MR. LONG: All right? And so,
23 candidly, at the time we got the disclosures -- you
24 know, and there are cases we cite, I believe it's

1 Celera and Turberg v. ArcSight. We were operating
2 under the notion that these are material. You know,
3 and there was some case law to support that. I
4 understand Your Honor drilling down. I understand the
5 notion of these being publicly available. But here,
6 some of the information wasn't publicly available.
7 Here -- I mean, at the time, you know, consulting with
8 our financial advisor, he's telling us this is
9 material. And we're looking at the case law as we
10 knew it then, and this was material.

11 I mean, if it's not material, it's not
12 material now, but we thought it was. We thought it
13 created a benefit. We thought it was, you know, very
14 helpful, very positive, in terms of providing a fair
15 summary of the bankers' analysis. You know, we've
16 taken discovery. We've consulted with our expert. We
17 did a balance.

18 And so balancing what we're getting --
19 which we thought was material at the time and think is
20 material now -- versus what we were giving up, which
21 we really didn't determine to be a whole lot when it
22 really came down to it, we thought it was fair. We
23 thought it was beneficial. We thought it would be
24 sufficient, under the Court's precedents, to support

1 settlement.

2 And so that was the rubric we were
3 working under. And that same argument applies, I
4 guess, for better or for worse, with respect to the
5 comparable companies. Now, I don't -- you know, I
6 like the fact that 15 of the 32 precedent
7 transactions --

8 THE COURT: Right.

9 MR. LONG: I like that. I think
10 that's better.

11 You know, we have arguments in our
12 brief, and I don't have to belabor them, about why a
13 disclosure of the comparable companies was material
14 for a couple of reasons and, B, why those comps were
15 elucidating in terms of, you know, looking at the
16 multiples, the implied exit multiples that they
17 disclosed with respect to the discounted cash flow
18 analysis and allowing the shareholders to see that
19 perhaps those exit multiples that they used might be
20 skewed downwards slightly, or to some extent, based
21 upon the comps.

22 THE COURT: Why don't you discuss with
23 me your fourth disclosure.

24 MR. LONG: I'm sorry?

1 THE COURT: The fourth disclosure. I
2 think it was the implied multiples on the terminal
3 values.

4 MR. LONG: Sure. So the banker,
5 JPMorgan, performed a discounted cash flow analysis,
6 and they used the perpetuity growth model.

7 THE COURT: Right.

8 MR. LONG: So perpetuity growth rates,
9 discount rates, were all disclosed. And in the book,
10 page 751 -- or Bates page 751 -- they also did a
11 cross-check with the implied exit multiples.

12 THE COURT: Right.

13 MR. LONG: So a couple of things.
14 There's an argument that we make in our papers that,
15 given the relative growth rates of Trulia and Zillow,
16 that, A, it was unusual for very similar implied exit
17 multiples to be applied to those two companies.

18 THE COURT: And why is that?

19 MR. LONG: Well, based on the I/B/E/S
20 estimates, Trulia's projected growth was about 148
21 percent.

22 THE COURT: And this is as of when?

23 MR. LONG: Well, this is as of -- this
24 is as of in the bankers' book. May --

1 THE COURT: Well, no. I'm sure the
2 bankers' book has some temporal context for that
3 assertion. Growth rate as of the time of the deal?
4 As of when, for what period of time?

5 MR. LONG: I think that was July 27,
6 2014.

7 THE COURT: Okay. So 148 percent over
8 what period of time?

9 MR. LONG: I'd have to look. I think
10 it's over the five-year period, but I have to confirm
11 that.

12 THE COURT: So the Definitive
13 disclosed that when they did this model, they DCF'd
14 Trulia and Zillow separately; right?

15 MR. LONG: They did, yes.

16 THE COURT: And they used a perpetual
17 growth rate model in doing their DCF?

18 MR. LONG: With a --

19 THE COURT: Right. And they disclosed
20 that the range of growth rates they used for both
21 models was 2 1/2 to 3 1/2 percent; right?

22 MR. LONG: Uh-huh.

23 THE COURT: Why would I be surprised
24 that the implied multiples to EBITDA would be similar?

1 MR. LONG: I don't know that you
2 would. I don't know that you would.

3 THE COURT: Okay. So what's the point
4 of this information, the additional information,
5 having any social utility?

6 MR. LONG: Sure. The other point in
7 that regard would be that based on the disclosure of
8 the EBITDA multiples that were observed for the
9 comparable companies, those ranges seemed low to us.

10 THE COURT: They were what?

11 MR. LONG: Those ranges, the ranges
12 that they used for Trulia and Zillow, seemed low,
13 based upon the comps. And obviously, if they used a
14 higher range of implied exit multiples, the implied
15 range of value with DCF would be higher.

16 THE COURT: What was the discrete
17 period in the model? Do you know?

18 MR. LONG: It was through, I want to
19 say, 2019.

20 THE COURT: Oh. I thought it was even
21 longer than that. The projections go to like 2028 or
22 something, don't they?

23 MR. LONG: I'll take your word for it.

24 THE COURT: Well, I don't know this

1 for a fact, because I haven't cross-referenced the
2 bankers' book. But the projections, I think, that are
3 disclosed in here, if we look at page 122, and I think
4 it's on 123, the Trulia projections, one's a June
5 2014, the other is a July 2014 projection, run through
6 2028. And the projection for Zillow runs through 2028
7 as well.

8 Now, I don't know what they did in the
9 bankers' book, so I'm speculating here a little bit.
10 And that's why I asked the question, like, what was
11 the discrete period versus -- you know, from what
12 point in time was the terminal value calculated. You
13 don't know offhand?

14 MR. LONG: I don't. I apologize.

15 THE COURT: Well, it's pointless for
16 me to ask then. Okay.

17 MR. LONG: Sorry.

18 THE COURT: So let me ask you a
19 different question, which is one that has been on my
20 mind for some time. What is the standard I am
21 supposed to apply to these disclosures, in this sense:
22 You're familiar, I'm sure, with Chrysler vs. Dann.
23 I'm sure you're familiar with the Cox Communication
24 discussion by Vice Chancellor Strine. And the

1 question on my mind is, for this all to make sense and
2 to be fair, there has to be a benefit conferred.

3 And what I want to know is, in
4 deciding when there's a benefit, can there only be a
5 benefit, for example, when something you, as a result
6 of the settlement you're bringing forward, added to
7 the mix of information is material, in the traditional
8 sense of materiality under the securities laws? Or is
9 it something different than that? And if so, what is
10 it?

11 MR. LONG: Well, it's a difficult
12 question that you pose. I'm going to try to answer
13 it. My sort of gut reaction, the first thing that
14 popped into my head, is the fact that the Court's got
15 several tasks it has to do today: certify the class,
16 consider the reasonableness of the settlement, and
17 other things. And the settlement has to -- the test
18 is whether the settlement is fair, reasonable, and
19 adequate. I mean, so I think, you know, the
20 disclosures need to provide a benefit.

21 THE COURT: Right. Let's assume I'm
22 on the same page with you up to that point. So now I
23 have to, in terms of determining what's a benefit --

24 MR. LONG: Sure. I think it's a lot

1 more art than science.

2 THE COURT: Okay.

3 MR. LONG: And, you know, material --
4 I mean, an example, with respect -- and I'm going to
5 try to do my best to recollect. I was looking through
6 the Turberg v. ArcSight transcript yesterday. You
7 know, what's required under the law, Delaware law, I
8 think is a fair summary. So on one hand, one could
9 argue, you know, by not including some of this
10 information -- and again, we were working, at the time
11 we negotiated this, you know, we were working under
12 the understanding that these multiples were something
13 that needed to be disclosed.

14 You know, we argue it's not a fair
15 summary. It's not a fair summary. I think that's a
16 violation of law. I think that's arguably something
17 you can win a discrete, limited-in-time disclosure
18 injunction on.

19 THE COURT: And see, that's the thing.
20 I mean, this is the question that's going to linger on
21 my mind a bit, which is if I were at the PI stage, you
22 would agree with me, wouldn't you, that you wouldn't
23 get a PI to stop a deal -- a very serious thing --
24 unless material information was not disclosed or there

1 was a misleading disclosure that you corrected; right?

2 MR. LONG: I think -- yeah. That's
3 fair.

4 THE COURT: Right. It would have to
5 be material. I mean, it would have to really matter.
6 Now we're at the end stage. Is it the same standard,
7 or is it a different one?

8 MR. LONG: Well, I don't want to be
9 glib, but obviously it would be a lot better if we
10 could say they're material. I mean, you know, some
11 disclosures are better than others, to be sure.
12 You're the final arbiter of what's material and what's
13 not material. Again, we think that if -- I guess I
14 could answer Your Honor one way and say if there's not
15 a fair summary, something material, arguably, is
16 missing.

17 THE COURT: Okay. Let me ask you a
18 different question that relates to the other side of
19 the ledger. You went through your brief, efforts to
20 try to show how tailored the release was. I looked at
21 the release. It's still very broad, and very broad in
22 one very material respect.

23 MR. LONG: The unknown claims.

24 THE COURT: It includes unknown

1 claims. Why should those be in there?

2 MR. LONG: Well, I don't want to --
3 why should those be in there? I mean, there's a
4 couple of answers, I guess. I mean, again, at the
5 time we negotiated the release -- and I don't want you
6 to think I'm copping out here. I truly don't. But, I
7 mean, we entered into a contract. At the time, that
8 release, you know, was not necessarily anything of
9 great controversy, based on what had been approved
10 time and again.

11 And so did we look carefully at the
12 release language? Of course we did.

13 THE COURT: Yeah.

14 MR. LONG: Did we have changes to the
15 release language? Of course we did. But this Section
16 1542 of the California Code, this "unknown claims," I
17 mean, that's been around longer than I've been doing
18 this.

19 THE COURT: Yeah, I know. It's easy
20 to go back to "it's standard," and I'm not faulting
21 you for that. I would be hard-pressed to disagree
22 that it's in almost every one of these I see, if not
23 every one. But then again, when I started practicing,
24 very few people sued on every deal, and we never dealt

1 with the kind of volume of this stuff that we see
2 nowadays. And it just can't be that this is socially
3 useful.

4 MR. LONG: With respect to the unknown
5 claims, I mean, candidly, you know, since all of this
6 has been happening, since some of the closer scrutiny,
7 we have been in discussions -- I don't want to say
8 constant, but it's pretty frequent discussions --

9 THE COURT: Right.

10 MR. LONG: -- with counsel from all
11 over; defendants counsel from Delaware, plaintiffs
12 counsel from Delaware, counsel from out of state. And
13 there is some movement, but there's a real hesitancy,
14 a real reluctance on the part of defendants' counsel,
15 to give this up just on their own volition.

16 I mean, you know, I get the sense --
17 and I could be wrong -- but until a member of the
18 Court of Chancery says, "You can't do this anymore.
19 I'm not going to approve your settlement because you
20 have unknown claims," or you take some extraordinary
21 step and say, "I'm going to approve your settlement
22 but I'm going to modify the release this way. I'm
23 going to take out this. I'm going to" --

24 THE COURT: I don't have the power to

1 modify the release. I have a binary decision. I
2 approve or disprove the settlement.

3 MR. LONG: Right. And I would argue,
4 if I were them, that if you try to change the release,
5 they have the right to walk away from the settlement.
6 So that would be that, in and of itself.

7 THE COURT: All right.

8 MR. LONG: So, I mean, would I love to
9 get more narrow releases all the time? Sure. Am I
10 trying to do it? I am. Am I successful every time?
11 No. But, you know, as the body of jurisprudence
12 continues to evolve, it's organic. It's constantly
13 changing. It's constantly growing. You know, we're
14 mindful of everything. We're mindful of trying to do
15 the best job that we can.

16 I mean, like I said, when we did what
17 we did, we thought that was very standard. And so we
18 were very comfortable in doing that.

19 THE COURT: All right.

20 MR. LONG: And I'm sorry that it's --
21 that's my best answer, I think.

22 THE COURT: Okay.

23 MR. LONG: So settlement, you know, we
24 still submit, respectfully, that it's fair,

1 reasonable, and adequate. Obviously, Your Honor has
2 some trouble with it. I apologize that I wasn't able
3 to do a better job explaining some of those things
4 today. I think I actually overprepared, just for this
5 scenario. You know, we'd ask you to approve the
6 settlement.

7 We have made a request for an award of
8 attorneys' fees, and I'm not going to belabor it.
9 Your Honor is familiar with the --

10 THE COURT: I've read the papers on
11 it.

12 MR. LONG: Yeah. I think, again, it
13 was arm's length. I mean, again, at the time, we
14 thought it was below market. The metrics are in the
15 brief. So thank you very much.

16 THE COURT: All right. Thank you,
17 Mr. Long.

18 Defense counsel, do you have anything
19 you want to add? I do have a couple of questions for
20 you, so --

21 MR. KOCH: Sure, Your Honor. I'm
22 happy to take the Court's questions, but also I'm
23 happy to add a few things in response to the questions
24 that the Court had for Mr. Long.

1 THE COURT: Sure. Go ahead.

2 MR. KOCH: So the first question the
3 Court asked is it tasks us to consider whether the
4 settlement is fair, reasonable, and adequate, and if
5 that's something different from a materiality standard
6 that would be sufficient to get a preliminary
7 injunction, for example. And I do think, Your Honor,
8 that it is a difference standard. Whether something
9 is material as it alters the total mix would be asking
10 a question of whether this is something that justifies
11 extraordinary relief of a preliminary injunction,
12 where you're actually going to, you know, take the
13 step of enjoining the deal.

14 And I think the standard of whether
15 something is fair, reasonable, and adequate is more
16 akin to a traditional standard on, you know, is the
17 class getting something in return for what they're
18 giving? In this case a release. And if so, are they
19 getting something that's fair or are they just sort of
20 laying down? And you have to look at that, I think,
21 in the context not just of the disclosures themselves,
22 but of the actual case and how it's been litigated.

23 And if you were to go back to some of
24 the things that Mr. Long said here, you know, this is

1 a situation where, I can tell you, there was almost
2 three weeks between where he first pitched -- you
3 know, asked for expedition and when we actually did
4 agree to expedition. It was actually a very
5 hard-fought negotiation, Your Honor. And I understand
6 in some cases they're not, but in this case it was.

7 He did insist on taking three
8 depositions, which he ultimately got. One,
9 admittedly, was confirmatory. But these were, you
10 know, three serious depositions he took. We did give
11 him e-mails. We did give him core documents as well.
12 If you look at the complaint -- I looked at this while
13 Mr. Long was at the podium -- the amended complaint,
14 pages 14 through 29 do get into the process. And the
15 process was a focus, as well, in some of these
16 depositions, Your Honor.

17 This is a situation where Mr. Long
18 also filed a preliminary injunction brief. So in the
19 context of that, where it turns out there really are
20 not good, supported process claims, but where Mr. Long
21 did kick the tires and where we did have a true
22 arm's-length, hard-fought negotiation, in that
23 context, and given the types of disclosures we've got
24 in this case, I think it's very fair to say that, even

1 if the Court were inclined to find that they weren't
2 material to meet the total-mix standard, that they're
3 still fair, adequate, and reasonable.

4 That said, you know, it's a little
5 awkward for defense counsel to be taking this
6 position, but I do say that they are material, for the
7 reasons that Mr. Long stated.

8 THE COURT: So you would agree that if
9 he had pressed his preliminary injunction, I should
10 have enjoined the deal?

11 MR. KOCH: I think there is -- there
12 was a risk, Your Honor. And that risk is one of the
13 reasons that we decided to settle, certainly. I would
14 have argued, obviously, in the preliminary injunction
15 setting that you should not have enjoined the deal,
16 and that's why I said it's awkward to be in the
17 position of defense counsel --

18 THE COURT: Right.

19 MR. KOCH: -- supporting the
20 materiality of the disclosures.

21 THE COURT: Right.

22 MR. KOCH: So in all fairness, I
23 suspect that --

24 THE COURT: Let me sort of recalibrate

1 what you've been discussing. So to be fair, there has
2 to be a benefit. It can't be a big zero on the
3 plaintiffs' side.

4 MR. KOCH: Right.

5 THE COURT: There's got to be
6 something. There's got to be a benefit.

7 MR. KOCH: Correct.

8 THE COURT: So then the question, to
9 me, is, packed into finding what a benefit is, what is
10 the operative standard? Is it materiality or is it
11 something less? You don't have to take a position on
12 the spot, because I'll just preview I'm going to want
13 more briefing from you on this issue before I decide
14 this motion. That's where I'm at right now,
15 because --

16 MR. KOCH: Sure.

17 THE COURT: -- I just don't have
18 confidence in what the answer to that question is. So
19 anyway, I'll spare you, because that is something I do
20 want more briefing on.

21 MR. KOCH: No, I appreciate that.

22 THE COURT: I'll just say that.

23 MR. KOCH: I appreciate that, Your
24 Honor. We're happy to provide supplemental briefing.

1 I think that is an important question and, obviously,
2 it's better to have thorough, well-thought-out
3 briefing than for me to pontificate.

4 THE COURT: Yeah.

5 MR. KOCH: One other thing, just for
6 Your Honor, on the unknown claims. In this situation
7 they are tethered pretty tightly to the deal itself.
8 So it's not just whether there's any unknown claims
9 whatsoever, you know, relating to anything. It's
10 unknown claims relating to the issues that were in the
11 litigation where Mr. Long was able to take discovery.
12 So that would give me some comfort. But obviously, if
13 that's something Your Honor wanted supplemental
14 briefing on, we can do that as well.

15 THE COURT: I had two issues with
16 that, and that's the other one. I'm sorry. I didn't
17 mean to speak over you. And it's difficult for me.
18 Because, look, I understand. I used to write these
19 things and negotiate these things from both sides.
20 And anybody on that side of the courtroom wants the
21 broadest release in the universe possible, and that
22 includes anything unknown.

23 MR. KOCH: Sure.

24 THE COURT: I'm just trying to

1 understand why that makes sense in this context.
2 Especially when the ante is, like, down in the weeds
3 here. I mean, it's not like you guys are agreeing to
4 pay another \$2 per share -- it's not even a cash
5 deal -- or to adjust the exchange ratio in a way
6 that's fairer to Trulia stockholders, or anything like
7 that.

8 MR. KOCH: Right.

9 THE COURT: We're talking about the
10 underbelly of settlements.

11 All right. I'll spare you, Mr. Koch,
12 because I am going to want some briefing on this.

13 MR. KOCH: And we appreciate the
14 opportunity.

15 THE COURT: All right.

16 I don't think -- did you have anything
17 else you wanted to add, Mr. Long?

18 MR. LONG: I don't know if it would be
19 helpful.

20 THE COURT: All right.

21 MR. LONG: The only other point I
22 would make with respect to unknown claims is the fact
23 that we did disseminate -- defense disseminated --
24 almost 13,000 copies of the notice, and not one

1 stockholder wrote a letter, called --

2 THE COURT: What rational stockholder
3 would take the time to do anything here?

4 MR. LONG: Well, no, no. And I think
5 there's an answer to that question, and I think it's
6 one that has claims that we didn't know about. And in
7 the past, in my experience, we have had situations in
8 other courts and other cases where perhaps there was a
9 securities fraud case that may have, arguably, some
10 tangential relation to the deal.

11 THE COURT: Yeah. I mean, the one
12 that's coming to mind to me -- and I could be wrong
13 about this, because I was just trying to do this from
14 memory in speaking about this with my clerks -- is the
15 MCA Matsushita case.

16 MR. LONG: Uh-huh.

17 THE COURT: You know, I could have
18 these facts wrong, full disclosure, but my vague
19 recollection is that there was a settlement, probably
20 not dissimilar to this one, that was approved by the
21 Court with a very broad release. There was a very --
22 looked really good -- my firm had some involvement in
23 it, so that's a disclosure, so maybe I'm biased on
24 this -- a discriminatory tender offer claim to be

1 litigated that was ultimately barred by virtue of the
2 release that was entered. And at the time, that
3 wasn't even a glimmer in anybody's eye, but it ended
4 up knocking out what potentially could have been a
5 very valuable claim.

6 Now, I could be wrong. Maybe it was
7 known at the time and I could be wrong about that.
8 But that did cross my mind.

9 MR. LONG: I had a case in
10 Philadelphia County involving an acquisition of
11 Sovereign Bank by Santander, and there were related --
12 this is arguably --

13 THE COURT: Right.

14 MR. LONG: And as sure as the day is
15 long, they came in and argued. You know, and once
16 they were to effect a concession from the defendants
17 that the scope of the release, in fact, didn't cover
18 those claims, that went away.

19 THE COURT: Okay.

20 MR. LONG: So it's -- it has happened.

21 THE COURT: All right.

22 So as I've already told everybody, I'm
23 going to take this under advisement. I'm not
24 comfortable yet with approving the settlement on the

1 spot or making a call on it, but I want additional
2 briefing. And it's really on two issues that I think
3 are important that I get your positions on in a
4 thoughtful way before I rule.

5 One issue -- and I'm going to do my
6 best to articulate it to make this as precise as
7 possible -- is in a disclosure-only settlement, which
8 is what we have here, what standard do I have to apply
9 in considering the supplemental disclosures? And what
10 I mean by that is I understand all the law that
11 settlements have to be fair, reasonable, adequate, and
12 that evaluates the give and the get. And I understand
13 all the law that says there has to be a benefit
14 conferred.

15 But in determining the benefit, is the
16 standard that the supplemental disclosure must be
17 deemed material in the traditional securities law
18 sense of what materiality means, to alter the total
19 mix of information, or is it something different? And
20 if it's something different -- i.e., helpful
21 information, or marginally useful information --
22 whatever that standard may be, what is the standard?
23 That's one issue.

24 The second issue on my mind, I'm going

1 to have a harder time articulating how to look at it.
2 What's troubling me is the inclusion in the release,
3 in particular in this circumstance, of unknown claims.
4 And I expect I'll hear from you it's common,
5 traditional, always happens. Okay, fine. I'll cede
6 that territory. But does it make sense? And if so,
7 why does it make sense that the Court would be
8 endorsing releases with unknown claims included in
9 them?

10 Here, three depositions were taken,
11 two in an adversarial posture, one in a post-MOU
12 posture. Okay. Maybe the tires were kicked on
13 whether the sales process was any good or not.
14 Additional things -- and you have a record, and people
15 can say those are things that legitimately should be
16 released -- but why go beyond where the tires have
17 been kicked into this unknown realm, especially if the
18 consideration on the other side -- assuming for the
19 sake of argument it's not a zero -- is marginal?

20 That's the other question on my mind.
21 I'm not sure I can articulate it better than that. If
22 you have questions, I'll be glad to try to answer
23 them, but those are the two issues on my mind.

24 This obviously wasn't presented to me

1 in any rush, so I'm not in any rush to get the
2 submissions. If you can give me something from each
3 side in 30 days, I'd appreciate it. And then I'm
4 going to take it under advisement.

5 All right? Thank you, Counsel.

6 (Court adjourned at 10:53 a.m.)

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CERTIFICATE

I, JULIANNE LaBADIA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify the foregoing pages numbered 3 through 45, contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Wilmington this 16th day of September, 2015.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public