

1 COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
2 RANDALL J. BARON (150796)
STEPHEN J. ODDO (174828)
3 DAVID T. WISSBROECKER (243867)
655 West Broadway, Suite 1900
4 San Diego, CA 92101
Telephone: 619/231-1058
5 619/231-7423 (fax)

6 THE WEISER LAW FIRM, P.C.
PATRICIA C. WEISER
7 SANDRA G. SMITH
DEBRA S. GOODMAN
8 121 N. Wayne Avenue, Suite 100
Wayne, PA 19087
9 Telephone: 610/225-2677
610/225-2678 (fax)

CHAVEZ & GERTLER LLP
MARK A. CHAVEZ (90858)
JONATHAN E. GERTLER (111531)
DAN L. GILDOR (223027)
42 Miller Avenue
Mill Valley, CA 94941
Telephone: 415/381-5599
415/381-5572 (fax)

10 Attorneys for Plaintiffs

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 RICHARD HATTAN, et al., On Behalf of)
14 Themselves and all Others Similarly Situated,)
15 Plaintiffs,)

16 vs.)

17 RESTORATION HARDWARE, INC., et al.,)
18 Defendants.)

VIA FAX

Case No. CV 075563

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

DATE: June 11, 2008

TIME: 10:30 a.m.

DEPT: B

21
22 PUBLIC/REDACTED VERSION
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	2
III. PLAINTIFFS ARE ENTITLED TO PRELIMINARY INJUNCTIVE RELIEF	11
A. The Standard for a Preliminary Injunction	11
B. Plaintiffs Have a “Reasonable Probability” of Prevailing on the Merits of Their Fiduciary Duty Claims Under Delaware Law	12
1. Defendants’ Misuse of the Standstill Agreement Violates Their Duties to Shareholders.....	12
2. The Board Breached its Fiduciary Duties by Agreeing to the Termination Fee	15
3. Defendants’ Failure to Disclose Material Information in the Proxy Violates Their Duties to Shareholders	16
C. Plaintiffs and Restoration’s Shareholders Will Suffer More Harm from the Denial of the Preliminary Injunction Than Defendants Would Suffer From Its Grant	18
D. Only a Minimal Bond is Required	19
IV. CONCLUSION.....	20

TABLE OF AUTHORITIES

		Page
1		
2		
3	CASES	
4	<i>Blanchette v. Providence & Worcester Co.</i> , 428 F. Supp. 347 (D. Del. 1977).....	16
5		
6	<i>Clements v. Rogers</i> , 790 A.2d 1222 (Del. Ch. 2001).....	17
7	<i>Edelman v. Fruehauf Corp.</i> , 798 F.2d 882 (6th Cir. 1986)	15
8		
9	<i>Eisenberg v. Chicago Milwaukee Corp.</i> , 537 A.2d 1051 (Del. Ch. 1987).....	16, 17
10	<i>Feldman v. Cutaia</i> , No. 1656-N, 2006 Del. Ch. LEXIS 70 (Del. Ch. Apr. 5, 2006)	17
11		
12	<i>Friends of Westwood, Inc. v. City of Los Angeles</i> , 191 Cal. App. 3d 259 (1987)	12
13		
14	<i>Gilmartin v. Adobe Resources Corp.</i> , No. 12467, 1992 Del. Ch. LEXIS 80 (Del. Ch. Apr. 6, 1992)	18
15		
16	<i>Hanson Trust PLC v. ML SCM Acquisition, Inc.</i> , 781 F.2d 264 (2d Cir. 1986).....	15
17	<i>Hummell v. Republic Fed. Sav. & Loan Ass'n</i> , 133 Cal. App. 3d 49 (1982)	19
18		
19	<i>In re Anderson, Clayton S'holders Litig.</i> , 519 A.2d 669 (Del. Ch. 1986).....	19
20	<i>In re Holly Farms Corp. S'holders Litig.</i> , No. 10350, 1988 Del. Ch. LEXIS 164 (Del. Ch. Dec. 30, 1988).....	15
21		
22	<i>In re MONY Group Inc. S'holder Litig.</i> , 852 A.2d 9 (Del. Ch. 2004).....	12
23		
24	<i>In re Netsmart Techs., Inc. S'holders Litig.</i> , 924 A.2d 171 (Del. Ch. 2007).....	18
25	<i>In re Pure Res., Inc., S'holders Litig.</i> , 808 A.2d 421 (Del. Ch. 2002).....	12, 18
26		
27	<i>In re Topps Co. S'holders Litig.</i> , 926 A.2d 58 (Del. Ch. 2007).....	<i>passim</i>
28		

