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Attorneys for Plaintiff Gordon Bright

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GORDON BRIGHT, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

YUME, INC., MITCHELL HABIB, ADRIEL
LARES, ELIAS NADER, CHRISTOPHER
PAISLEY, ERIC SINGER, JOHN MUTCH,
BRIAN KELLEY, and STEPHEN
DOMENIK,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

1 Plaintiff, Gordon Bright (“Plaintiff”), by and through his attorneys, alleges the following on
2 information and belief, except as to the allegations specifically pertaining to Plaintiff, which are
3 based on personal knowledge.

4 NATURE OF THE ACTION

5 1. This action stems from a proposed transaction announced on September 4, 2017 (the
6 “Proposed Transaction” or “Merger”), pursuant to which YuMe, Inc. (“YuMe” or the “Company”)
7 will be acquired by RhythmOne plc (“Parent”) through Parent’s wholly owned subsidiaries,
8 Redwood Merger Sub I, Inc. and Redwood Merger Sub II, Inc. (collectively, “Merger Subs”) (Parent
9 and Merger Subs are collectively referred to herein as “RhythmOne”).

10 2. On September 4, 2017, YuMe’s Board of Directors (the “Board” or the “Individual
11 Defendants”) caused the Company to enter into an agreement and plan of merger and reorganization
12 (the “Merger Agreement”) with RhythmOne. Pursuant to the terms of the Merger Agreement,
13 RhythmOne has commenced a tender offer (the “Tender Offer”) to purchase all of the outstanding
14 shares of YuMe common stock for \$1.70 per share in cash (the “Cash Consideration”) and 0.7325
15 ordinary shares of RhythmOne (the “Share Consideration”), which gives effect to a 10-for-1 share
16 consolidation of RhythmOne shares implemented on September 25, 2017 (the Cash Consideration
17 and the Share Consideration are collectively referred to herein as the “Offer Price”). The Offer Price
18 represents an implied value of \$5.20 per YuMe share as of the day of the announcement (based on
19 the closing stock price of RhythmOne as of January 5, 2018, the implied value of the Offer Price is
20 \$4.64 per share). The Tender Offer commenced on January 4, 2018, and is set to expire “one minute
21 following 11:59 P.M. Pacific time on February 1, 2018.” (Solicitation Statement, defined
22 immediately below, at paragraph 4.)

23 3. The success of the Tender Offer is conditioned on RhythmOne receiving the tender of
24 a majority of YuMe’s outstanding shares of common stock, approximately 29% of which are already
25 locked up pursuant to tender and support agreements executed between RhythmOne and each of
26 YuMe’s directors and executive officers, as well as certain significant stockholders of the Company,
27 including AVI Partners, LLC and VIEX Capital Advisors LLC.
28

1 herein. As a result, YuMe’s stockholders lack material information necessary to allow them to make
2 an informed decision concerning whether to tender their shares.

3 22. In particular, the Solicitation Statement contains materially incomplete and/or
4 misleading information concerning, *inter alia*: (i) the valuation analyses performed by YuMe’s
5 financial advisor, Deutsche Bank Securities Inc. (“Deutsche Bank”), in support of its fairness
6 opinion, including certain of the projections upon which Deutsche Bank relied; and (ii) potential
7 conflicts of interest.

8 ***Material Omissions Concerning Deutsche Bank’s Valuation Analyses***

9 23. The financial advisor’s opinion of financial fairness for a proposed transaction is one
10 of the most important process-based underpinnings of a board’s recommendation of a transaction to
11 its stockholders. Thus, it is imperative for stockholders to be able to understand what factors might
12 influence a financial advisor’s analytical efforts.

13 24. The Solicitation Statement provides that in rendering its fairness opinion, Deutsche
14 Bank “reviewed” and “used in its analysis” certain financial forecasts for RhythmOne that were
15 prepared by RhythmOne’s management (the “RhythmOne Projections”). Solicitation Statement at
16 pages 34-35. However, the Solicitation Statement fails to disclose any portion of the RhythmOne
17 Projections.

18 25. Such disclosure is critical to YuMe’s shareholders, as approximately two-thirds of the
19 Offer Price is comprised of RhythmOne stock (defined above as the “Share Consideration”). Absent
20 such information, it is impossible for YuMe shareholders to properly consider the value of the Share
21 Consideration and thus to determine whether or not to tender their shares.

22 26. In addition, the omission of such information renders the Solicitation Statement’s
23 discussion (at page 39) of Deutsche Bank’s discounted cash flow (“DCF”) analysis of RhythmOne—
24 which expressly relied upon “estimates of the future unlevered free cash flows of RhythmOne for the
25 calendar years 2017 through 2021”—materially misleading.¹

26
27 ¹ According to the Solicitation Statement, this analysis was “not considered part of [Deutsche
28 Bank’s] financial analysis with respect to its opinion but [was] referenced for informational
purposes” and “noted for the YuMe board of directors.” Solicitation Statement at page 39.
However, the Solicitation Statement does not disclose why this analysis (as well as certain other

1 27. With respect to Deutsche Bank's *Discounted Cash Flow Analysis* of YuMe, the
2 Solicitation Statement (at pages 38-39) fails to disclose: (i) certain of the inputs and assumptions
3 underlying the discount rate range of 12.0%-15.8%; (ii) certain of the assumptions underlying the
4 perpetuity growth rate range of 3.0% to 5.0%; (iii) the terminal values Deutsche Bank used in its
5 analysis; (iv) the yearly net operating losses ("NOLs") that Deutsche Bank incorporated into its
6 analysis; and (v) whether the analysis accounted for any synergies that are expected to result from
7 the Proposed Transaction, and, if so, the value of those synergies.

8 28. With respect to Deutsche Bank's DCF analysis of RhythmOne, the Solicitation
9 Statement (at page 39) fails to disclose: (i) certain of the inputs and assumptions underlying the
10 discount rate range of 12.0%-15.8%; (ii) certain of the assumptions underlying the perpetuity growth
11 rate range of 3.0% to 5.0%; (iii) the terminal values Deutsche Bank used in its analysis; (iv) whether
12 Deutsche Bank incorporated RhythmOne's \$44.2 million in NOLs into its analysis; and (v) whether
13 the analysis accounted for any synergies that are expected to result from the Proposed Transaction,
14 and, if so, the value of those synergies.

15 29. The foregoing information would be material to YuMe shareholders in deciding
16 whether to tender their shares, as the lack of disclosure of the inputs that were used by Deutsche
17 Bank in its DCF analyses prevents shareholders from considering whether such inputs, or the ranges
18 of implied values derived therefrom, are anomalous.

19 30. With respect to Deutsche Bank's *Selected Public Companies Analysis*, the
20 Solicitation Statement (at pages 36-37) provides that Deutsche Bank evaluated eight comparable
21 companies (other than YuMe and RhythmOne) and calculated relevant multiples for each. However,
22 the Solicitation Statement fails to disclose the individual multiples for three of the eight companies
23 because they were either negative or above 15.0x. Similarly, the Solicitation Statement (at page 38)
24 omits the individual multiples that Deutsche Bank observed for two of the nine transactions it
25 reviewed in its *Selected Transactions Analysis*, as such multiples were negative or above 15.0x.

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analyses discussed therein) was not considered part of Deutsche Bank's financial analysis, or why,
given this fact, it was included in the Solicitation Statement at all or shown to the Board.

1 31. With respect to Deutsche Bank’s stock price targets analysis for RhythmOne shares,
2 the Solicitation Statement (at page 39) fails to disclose the individual price targets set by each of the
3 equity research analysts that Deutsche Bank relied upon in its analysis, as well as the identity of
4 those analysts.

5 32. The omitted information discussed in the preceding two paragraphs would be material
6 to YuMe shareholders in deciding whether to tender their shares, as the real informative value of the
7 financial advisor’s work is not in its conclusion, but in the valuation analyses that buttresses that
8 result. When a financial advisor’s endorsement of the fairness of a transaction is touted to
9 shareholders, the valuation methods used to arrive at that opinion, as well as the key inputs thereto
10 must also be fairly disclosed.

11 ***Material Omissions Concerning Potential Conflicts of Interest***

12 33. The Solicitation Statement fails to disclose material information regarding potential
13 conflicts of interest involving YuMe’s Board and management that may have tainted the sales
14 process. Specifically, the Solicitation Statement fails to disclose whether, *prior to the execution of*
15 *the Merger Agreement*, RhythmOne or the Company discussed, negotiated the terms of, or reached
16 any agreements concerning, the potential future employment of, or the making of retention
17 agreements/payments to, YuMe’s executive officers, directors, or management.

18 34. For example, the Solicitation Statement provides that: (a) Defendants Singer and
19 Mutch are expected to be appointed to the RhythmOne board of directors following the
20 consummation of the Merger; (b) YuMe employees who continue as employees of RhythmOne
21 following the consummation of the Merger will receive base salaries, bonuses, incentive
22 opportunities, employee benefits, and severance benefits that are equivalent to those they received
23 while employed at YuMe; and (c) “certain current executive officers” of YuMe, other than YuMe’s
24 current Chief Executive Officer (“CEO”) and President, Paul Porrini, are expected to continue as
25 executive officers of RhythmOne following the consummation of the Merger, and such individuals
26 can enter into new employment agreements or incentive compensation arrangements with
27 RhythmOne or YuMe prior to such consummation (none of which have “been concluded” to date).
28 Solicitation Statement at pages 12-13.

1 intimate knowledge of the false statements contained in the Solicitation Statement filed with the
2 SEC, they had the power to influence and control and did influence and control, directly or
3 indirectly, the decision making of the Company, including the content and dissemination of the
4 various statements which Plaintiff contends are false and misleading.

5 64. Each of the Individual Defendants were provided with or had unlimited access to
6 copies of the Solicitation Statement and other statements alleged by Plaintiff to be misleading prior
7 to and/or shortly after these statements were issued and had the ability to prevent the issuance of the
8 statements or cause the statements to be corrected.

9 65. In particular, each of the Individual Defendants had direct and supervisory
10 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had
11 the power to control or influence the particular transactions giving rise to the securities violations
12 alleged herein, and exercised the same. The Solicitation Statement contains the unanimous
13 recommendation of each of the Individual Defendants to approve the Proposed Transaction. They
14 were thus directly connected with and involved in the making of the Solicitation Statement.

15 66. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of
16 the Exchange Act.

17 67. As set forth above, the Individual Defendants had the ability to exercise control over
18 and did control a person or persons who have each violated Sections 14(d) and 14(e) of the
19 Exchange Act, and Rule 14d-9, by their acts and omissions as alleged herein. By virtue of their
20 positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the
21 Exchange Act.

22 68. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be
23 irreparably harmed. Plaintiff and the Class have no adequate remedy at law.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment and relief as follows:

26 A. Ordering that this action may be maintained as a class action and certifying Plaintiff
27 as the Class representative and Plaintiff's counsel as Class counsel;

28 B. Preliminarily and permanently enjoining Defendants and all persons acting in concert

1 with them from proceeding with, consummating, or closing the Tender Offer and/or Proposed
2 Transaction;

3 C. In the event Defendants consummate the Proposed Transaction, directing Defendants
4 to account to Plaintiff and the Class for their damages sustained because of the wrongs complained
5 of herein;

6 D. Awarding Plaintiff the costs of this action, including reasonable allowance for
7 Plaintiff's attorneys' and experts' fees; and

8 E. Granting such other and further relief as this Court may deem just and proper.

9 **JURY DEMAND**

10 Plaintiff demands a trial by jury.

11 DATED: January 10, 2018

GLANCY PRONGAY & MURRAY LLP

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13 By: *s/ Lionel Z. Glancy* _____

Lionel Z. Glancy

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24 *Attorneys for Plaintiff*

PLAINTIFF CERTIFICATION
UNDER THE FEDERAL SECURITIES LAWS

I, Gordon Bright, hereby state:

1. I have reviewed the complaint against YuMe, Inc. ("YuMe") and certain of its directors and officers. I have authorized the filing of a complaint and lead plaintiff motion on my behalf.

2. I am willing to serve as a representative party on behalf of the Class, including providing testimony at deposition and trial, if necessary.

3. I currently own 1,000 YuMe shares, which I bought on the following dates and for the following per share prices:

Date	# of shares purchased	# of shares sold	Price per share
2/4/2014	1,000	0	\$6.90

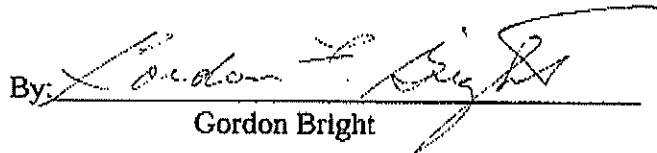
4. I did not purchase these securities at the direction of counsel, or in order to participate in any private action arising under the federal securities laws.

5. During the three-year period preceding the date of signing this certification, I have not sought to serve, and have not served, as a representative on behalf of a class in any private action arising under the federal securities laws.

6. I will not accept any payment for serving as a representative party on behalf of the Class except to receive a pro rata share of any recovery, or as ordered or approved by the Court, including the award to a representative party of reasonable costs and expenses, including lost wages relating to the representation of the Class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of January, 2018

By: 
Gordon Bright

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: YuMe Deprived Stockholders of Necessary Info Concerning Merger Proposal](#)
