UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 25-4863 PA (JPRx)	Date	July 18, 2025
Title	Key West Police Officers and Firefighters Retirement Plan v. Greenberg, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: **IN CHAMBERS — COURT ORDER**

Before the Court is a Motion for Preliminary Inunction, filed by plaintiff Key West Police Officers and Firefighters Retirement Plan ("Plaintiff"). (Docket No. 28 ("Motion").) The Motion is fully briefed. (See Docket No. 30 ("Opp'n"); Docket No. 31 ("Reply).) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for July 21, 2025, at 1:30 p.m., has been vacated, and the matter taken off calendar.

I. Background

This is a federal securities action arising out of a going-private merger between defendant Skechers, U.S.A., Inc. ("Skechers" or the "Company") and private equity firm 3G Capital, along with certain of its affiliates (collectively "3G") (the "Merger"). (See Compl. ¶¶ 1–2.) Skechers is a Delaware corporation with two classes of authorized common stock: Class A Common Stock and Class B Common Stock; the Class A Common Stock is registered under Section 12 of the Securities and Exchange Act (the "Act") on the New York Stock Exchange. (See id. ¶¶ 10, 21.) Plaintiff owns shares of the Company's Class A Common Stock. (Id. ¶ 9.)

Defendant Robert Greenberg is the founder of Skechers and serves as Chairman of its board of directors ("Board") and as its Chief Executive Officer. (Id. ¶ 11.) Defendant Michael Greenberg serves as a director and as President of Skechers. (Id. ¶ 12.) Robert and Michael Greenberg (jointly the "Greenbergs"), together with other members of the Greenberg family, own 100% of the Company Class B Common Stock and a portion of the Company's Class A Common Stock. (See id. ¶ 14.) As a result of their ownership of more than a majority of the Company's outstanding stockholder voting power, the Greenbergs control all matters that require stockholder approval. (See id.)

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On May 4, 2025, Skechers executed a Merger Agreement with 3G whereby 3G will acquire Skechers for $9.4 billion. (Id. ¶ 2.) Skechers announced the Merger the following day. (See id. ¶ 19 & Ex. D ("May 5, 2020 Press Release").) Upon the Merger's close, the Company's Class A Common Stock will be de-registered and de-listed. (Id. ¶ 21.) The Merger Agreement provides Skechers stockholders with two consideration options: (i) a full cash consideration option of $63 per share in cash, or (ii) a mixed consideration option of $57 per share in cash plus one unit of the new LLC (an "LLC Unit") that will own the privately-held Skechers. (See id. ¶¶ 2, 20.) The Merger Agreement provides that Skechers stockholders must choose a consideration option (the "Consideration Election") five business days before the closing date of the Merger, and that any share that does not make a Consideration Election will be automatically paid the full cash consideration option. (See id. ¶¶ 3, 20.) The Greenbergs have elected the mixed consideration option and thus will retain some of their equity ownership in Skechers after the Merger closes. (See id. ¶ 23 & Ex. H ("Support Agreement").) Additionally, Skechers announced that Robert and Michael Greenberg, along with the "rest of the current management team" will continue to lead the Company after the Merger. (See id. ¶ 23 & Ex. D.)

In its May 5, 2025 Press Release, Skechers announced that the parties to the Merger would file a registration statement on a Form S-4 that contains the Company's preliminary information statement and prospectus, and that once the information statement becomes effective, the Company expects to mail a definitive information statement to its stockholders. (Id. ¶ 21 & Ex. D.) On June 10, 2025, Skechers filed the Form S-4 with the SEC. (See Docket No. 28-2, Declaration of Eric Zagar, ¶ 4; Docket No. 30-1, Declaration of Blair Connelly ("Connelly Decl."), ¶ 1.)[1/] The Form S-4 contains both Skechers' Information Statement and 3G's prospectus for the offer of equity consideration. It also includes information about the background of the merger negotiations (detailing 3G's approach, the lack of other bidders, and the Board's deliberations); the formation of a committee of independent directors to negotiate and approve or disapprove the deal; the fact that Skechers obtained a fairness opinion from its financial advisor Greenhill & Co; that the Board (by unanimous vote of the independent committee) determined the merger and both consideration options to be fair to Skechers stockholders; the Greenbergs' Support Agreement and rollover commitments; and financial data, projections, and risk factors to inform stockholders' decision-making. (See Connelly Decl., Ex. 1.) As of June 30, 2025, the SEC's review process is not yet complete and a closing date for the Merger has not been set. (See Docket No. 30-2, Declaration of John Vandemore, ¶ 6.)

[1/] According to Defendants, the Form S-4 is also available on the Company's website. (See Opp'n at pg. 1.)

Plaintiff asserts that the Merger is subject to Section 13(e) of the Act, 15 U.S.C. § 78m(e), and Rule 13e-3, 17 C.F.R. § 240.13e-e, and that pursuant to Section 13(e) and Rule 13e-3, Defendants are required to file with the SEC and disseminate to Skechers stockholders a valid Schedule 13E-3 containing the information specified in Rule 13e-3. (See Compl. ¶ 4.) Plaintiff alleges that without a valid Schedule 13E-3 disclosure, Plaintiff and other Skechers stockholders will be forced to make their Consideration Election without access to full and accurate information concerning the Merger. (See id. ¶ 26.) The Complaint asserts one claim for violation of Section 13(e) and Rule 13e-3. (See id. ¶¶ 27–32.)

Plaintiff initiated this action on May 29, 2025. On June 3, 2025, Plaintiff filed a motion for preliminary injunction, along with an ex parte application for an order to shorten time on the motion for preliminary injunction. (Docket Nos. 11, 12.) On June 5, 2025, the Court issued an Order denying Plaintiff's ex parte application and striking the motion for preliminary injunction based on Plaintiff's failure to comply with Local Rule 6-1. (Docket No. 18.) Plaintiff filed this Motion on June 23, 2025.

Plaintiff's Motion seeks to enjoin the Consideration Election deadline and the closing of the Merger until Defendants file with the SEC and disseminate to Skechers stockholders a valid Schedule 13E-3. (See Mot. at pg. 18.) According to Plaintiff, Defendants "have not made, and do not intend to make, the filings and disclosures required by Rule 13e-3" and instead" intend to force Plaintiff (and other Skechers stockholders) to make a Consideration Election, and to close the Merger, without filing and disseminating to Skechers stockholders a valid Schedule 13E-3. (Mot. at pg. 5; Compl. ¶¶ 25–26.) According to Defendants, the Company believes a Schedule 13E-3 is not required in connection with the Merger. (See Opp'n at pg. 5.) However, Defendant explains that the SEC, as part of its review process, may issue comments on the proposed documents, including any questions it might have about whether the transaction requires the filing of a Schedule 13E-3; Defendants represent that if the SEC concludes that a Schedule 13E-3 is required, Defendants will file a Schedule 13E-3 and include this in the joint Information Statement/prospectus, which Defendants will mail to stockholders in compliance with Rule 13e-3. (See id.)

II. Legal Standard

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Resources Defense Council, 555 U.S. 7, 20 (2008). The Ninth Circuit employs a "sliding scale" approach to preliminary injunctions as part of this four-element test. Alliance for

the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134–35 (9th Cir. 2011). Under this "sliding scale," a preliminary injunction may issue "when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor," as long as the other two Winter factors have also been met. Id. (citation omitted). "[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997).

III. Analysis

To be entitled to a preliminary injunction, Plaintiff must demonstrate a likelihood that, absent the injunction, it will be irreparably harmed by Defendants' alleged unlawful conduct. See Winter, 555 U.S. at 21–22; see also Alliance for the Wild Rockies, 632 F.3d at 1135 ("To the extent prior cases applying the 'serious questions' test have held that a preliminary injunction may issue where the plaintiff shows only that serious questions going to the merits were raised and that the balance of hardships tips sharply in the plaintiff's favor . . . they are superseded by Winter, which requires the plaintiff to make a showing on all four prongs."). Under no circumstance may Plaintiff obtain a preliminary injunction unless it can show that irreparable harm is not only possible, but likely to result in the absence of the injunction. See Winter, 555 U.S. at 22 ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."); see also Groupion, LLC v. Groupon, Inc., 826 F. Supp. 2d 1156, 1167 (N.D. Cal. 2011) (citing Winter, 555 U.S. at 20) (explaining that moving party must demonstrate that alleged harm "is real, imminent and significant, not just speculative or potential").

Here, based on the record before the Court, Plaintiff has failed to demonstrate a likelihood of irreparable harm. First, Plaintiff fails to sufficiently identify the alleged harm it will suffer if denied preliminary injunctive relief. Plaintiff argues that without the disclosures required in a Schedule 13E-3, Plaintiff does not have "full and accurate information" concerning the Merger, and that being forced to make a Consideration Election without said information will cause it irreparable harm. (See Mot. at pgs. 16–17.)[2/] Plaintiff highlights three categories of

[2/] While Plaintiff also asserts that other Skechers stockholders will suffer the same irreparable harm, nothing in the Complaint suggests that Plaintiff seeks to assert its claim on behalf of a class, and no other Skechers stockholders are named as plaintiffs in this action.

information that must be disclosed in a Schedule 13E-3, Items 7, 8, and 9, which require disclosure of "information on the purposes, alternatives, and effects of the going-private transaction"; "information regarding the fairness of the going-private transaction"; and "disclosure of reports, opinions, appraisals, and negotiations related to the transaction . . . ." (Mot. at pg. 16; see 17 C.F.R. §§ 229.1013–229.1015.) Apart from identifying these broad categories of information, however, Plaintiff offers no examples of information that it needs but has not already been provided. In particular, while Plaintiff complains that Skecher's Form S-4 "contains summaries, conclusory statements, and partial disclosures" in connection with Items 7, 8, and 9 and that Plaintiff "requires more complete information" as to each of these categories (Reply at pgs. 7–8), Plaintiff fails to point to any concrete examples of information not included in the Form S-4 that would be material to Plaintiff's Consideration Election.[3/] Moreover, Plaintiff makes no attempt to explain how the unspecified additional information it seeks would affect its Consideration Election. Absent any such details, Plaintiff has not alleged anything beyond a technical disclosure violation and thus fails to show that it is likely to suffer harm as a result of Defendants' alleged disclosure violation. See, e.g., Carlson v. Triangle Cap. Corp., No. 5:18-CV-332-FL, 2018 WL 3546232, at *9 (E.D.N.C. July 23, 2018) (finding plaintiff failed to show likelihood of irreparable harm based on alleged omitted disclosures prior to proxy vote on sale of company's assets, noting "[c]onspicuously absent from the record is an affidavit by Plaintiff explaining how the alleged omitted disclosures would inform his vote").

Second, Plaintiff fails to show that any alleged harm it might suffer from Defendants' alleged disclosure violation constitutes irreparable harm. As an initial matter, although Plaintiff argues that it will suffer irreparable harm if forced to make a Consideration Election without "full and accurate information" about the Merger, there is no per se rule that "denying stockholders their right to cast an informed vote constitutes irreparable harm." Masters v. Avanir Pharm., Inc., 996 F. Supp. 2d 872, 885 (C.D. Cal. 2014). Importantly, moreover, there is no voting decision at issue in this case; the Merger was approved based on the Greenbergs'

Plaintiff may not seek injunctive relief based on alleged harm to non-parties.

[3/] Indeed, because Skecher's Form S-4–which spans several hundred pages–appears to provide a significant amount of detail about the Merger, including information that would be responsive to Items 7, 8, and 9 in a Schedule 13E-3, it is unclear what "more complete information" Plaintiff seeks. (See generally Connelly Decl. Ex. 1 (describing Merger background and negotiations and Board's actions leading up to the execution of the deal, attaching fairness opinion from Skecher's financial advisor).)

majority shareholder status, and now Plaintiff is merely deciding between a cash-out or rollover option as compensation for its shares. Thus, this is not a scenario where the Court would be left to "unscramble the eggs" if preliminary injunctive relief were withheld and Plaintiff were to ultimately prevail on the merits of its claim. Masters, 996 F. Supp. 2d at 885 (quoting Deborah G. Mallow IRA SEP Inv. Plan v. McClendon, No. CIV 12-436-M, 2012 WL 2036748, at *3 (W.D.Okla. June 6, 2012)) (concluding that vote on executive compensation was not a "complex business transaction[]" that could not be unwound later); cf. Masimo Corp. v. Politan Cap. Mgmt. LP, No. 8:24-CV-01568-JVS-JDE, 2024 WL 4800692, at *27 (C.D. Cal. Sept. 11, 2024) (finding likelihood of irreparable harm where shareholders were allegedly deprived of material information in upcoming vote for one-third of board seats, noting that vote was "akin to other major corporate transactions, such as mergers or tenders offers, that would be difficult to reverse if they are not enjoined from happening in the first place"). Further, even if Plaintiff were ultimately able to show that it was deprived of material information in connection with its Compensation Election decision, Plaintiff has not shown that such injury could not be remedied by an award of damages. Plaintiffs who have adequate remedies of law, such as money damages, are precluded from seeking injunctive relief. See Rondeau v. Mosinee Paper Corp., 422 U.S. 49, 60, 95 S.Ct. 2069, 45 L.Ed.2d 12 (1975) (finding injunctive relief not necessary to protect interests of shareholders who allegedly sold shares at depressed price or who would not have invested had they received required disclosures, explaining that the former had adequate remedy by way of an action for damages and that the latter did not face more than a remote possibility of damage).

Finally, even if Plaintiff could demonstrate a risk of irreparable harm, the record before the Court fails to establish, at this time, that such harm is imminent. As Defendant explains, the Consideration Election deadline is based on the Merger closing date, which has not been set because the SEC's review process is not yet complete. (See Opp'n at pg. 2 n.2.) Moreover, it is at least possible that the SEC could determine, as part of its review process, that Defendants must make additional disclosures in compliance with Rule 13e-3. See U.S. Sec. & Exch. Comm'n, Filing Review Process, https://www.sec.gov/about/divisions-offices/division-corporation-finance/filing-review-process-corp-fin (last visited July 17, 2025) ("Through the comment process, the staff may request that a company . . . provide additional disclosure in a document on file with the SEC, or provide additional or different disclosure in a future filing with the SEC."). Defendants represent that if this occurs, they will comply with Rule 13e-3's

disclosure requirements, at which point Plaintiff will have obtained the relief it seeks in this action. (See Opp'n at pg. 5.) Absent a showing of real and imminent harm, Plaintiff is not entitled to a preliminary injunction. See Groupion, LLC, 826 F. Supp. 2d at 1167.

In sum, Plaintiff has failed to carry its burden in establishing that it will likely suffer irreparable harm in the absence of preliminary relief. Because Plaintiff has failed to satisfy this element of the Winter test, the Court does not reach the remaining elements for obtaining a preliminary injunction. See Winter, 555 U.S. at 20; see also Tech. & Intellectual Prop. Strategies Grp., PC v. Fthenakis, No. C 11–2373 MEJ, 2012 WL 159585, at *4 n.6 (N.D. Cal. Jan. 17, 2012) ("Because Plaintiff has not established one of the required elements for obtaining a preliminary injunction (irreparable harm), the Court does not address the remaining elements.")

Conclusion

For all of the foregoing reasons, Plaintiff's Motion for Preliminary Injunction is denied without prejudice.

IT IS SO ORDERED.