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# Ozy Media YouTube Exec Impersonation Suit Axed, For Now

By **Gina Kim**

Law360 (June 14, 2022, 4:53 PM EDT) -- A California federal judge axed, for now, a securities suit filed by an Ozy Media investor accusing the company of hiding that it was under government investigation after one of its founders impersonated a YouTube executive to solicit investments, finding that the suit didn't identify any rules broken by the impersonation.

In an 11-page order tossing Beverly Hills-based LifeLine Legacy Holdings LLC's securities complaint against the embattled digital media company Ozy Media and its chief operating officer Samir Rao and CEO Carlos Watson, U.S. District Judge Beth Labson Freeman said that LifeLine didn't adequately allege how the nondisclosure of the government probes or Rao's impersonation of a YouTube executive during a conference call with Goldman Sachs violated any statute, rule or regulation.

LifeLine had alleged in its suit that it agreed to buy about \$2 million in Ozy shares in February 2021, and \$250,000 in shares three months later. Both securities purchase agreements represented that "to the company's knowledge, the company is not in violation of any federal or state statute, rule or regulation applicable to the company," which is the crux of LifeLine's claims against Ozy Media. That representation is the basis for LifeLine's allegations that Ozy and its executives omitted material information in the purchase agreements.

"LifeLine does not explain how this statement was rendered false or misleading by Defendants' failure to disclose the Rao impersonation and resulting government investigation," Judge Labson Freeman wrote in Monday's order. "LifeLine does not identify any statute, rule, or regulation that was violated by Rao's impersonation of a YouTube executive. Nor has LifeLine tied the alleged failure to disclose government investigations to the alleged representation and warranty."

In tossing the suit, Judge Labson Freeman held LifeLine can amend its claims to the extent they are premised on LifeLine's theory that the purported omissions rendered the representations in the securities purchase agreements as false and misleading. But the judge did not allow leave to amend LifeLine's claims to the extent they are based on oral representations made by Ozy Media or an alleged fiduciary duty.

LifeLine had to connect the alleged omission of the government probes to the specific statement that was allegedly false or misleading because of the nondisclosure for LifeLine's claim to be actionable, Judge Labson Freeman said.

Monday's dismissal order is the latest in a securities suit LifeLine Legacy Holdings **initiated in California federal court last October**, which came in the wake of reports from The New York Times that co-founder Rao pretended to be a YouTube executive during a conference call with Goldman Sachs to solicit investments. The company initially announced it would cease operations, but Watson said on NBC's "Today" that the company would reopen.

Ozy and Rao violated federal and state securities laws by failing to disclose the impersonation and that it prompted government investigations when soliciting investments from LifeLine, according to the suit. LifeLine said it agreed to invest in Ozy because of assurances about the company's robust financial performance, investments by high profile institutional investors, Ozy's programming viewership and honest company management.

LifeLine theorized in its suit that Watson knew about the impersonation as of Feb. 2, 2021, before the

securities purchase agreements were signed and yet failed to disclose to LifeLine about the impersonation and resulting government probes.

But in her order Monday, Judge Labson Freeman found that LifeLine failed to plead scienter in Ozy Media's nondisclosure of the impersonation and government probes.

LifeLine's complaint doesn't allege Watson knew Rao's actions violated a statute, rule or regulation, Judge Labson Freeman wrote. Knowing about government probes isn't equivalent to knowing that a statute or rule was broken, Judge Labson Freeman added.

LifeLine also fails to allege it relied on Ozy Media's representations in the purchase agreements when it decided to invest in the company, or that it suffered economic loss due to the alleged material omissions, Judge Labson Freeman said.

The judge also dismissed without prejudice LifeLine's state law claims under California Corporations Code section 25401 and fraud by concealment under California common law.

"Defendants argue that because these state law claims merely repackage LifeLine's federal securities claims, dismissal of the federal securities claims warrants dismissal of the state law claims as well," the order states. "Defendants' argument is supported by decisions from district courts within the Ninth Circuit."

But the judge gave LifeLine a chance to amend its federal and state law claims to the extent that its claims are based on the theory that the alleged omissions rendered false and misleading representations in the purchase agreements.

Counsel and representatives for LifeLine Legacy and Ozy Media said Tuesday that they had no comment on the judge's order.

LifeLine Legacy is represented by Gregory M. Bordo, Christopher J. Petersen and Craig N. Haring of Blank Rome LLP.

Ozy Media is represented by Kevin J. O'Brien, Alexander Shapiro and Stephen R. Halpin III of Ford O'Brien Landy LLP, and William J. Edelman and Patrick R. Delahunty of Delahunty & Edelman LLP.

Samir Rao is represented by August P. Gugelmann and Edward W. Swanson of Swanson & McNamara LLP, and Miles F. Ehrlich and Amy E. Craig of Ramsey & Ehrlich LLP.

Carlos Watson is represented by Hartley M.K. West of Dechert LLP.

The case is LifeLine Legacy Holdings LLC v. Ozy Media et al., case number 5:21-cv-07751, in the U.S. District Court for the Northern District of California.

--Additional reporting by Sarah Jarvis. Editing by Alex Hubbard.

*Update: The story has been updated to include details about the leave to amend granted to LifeLine.*