



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HERBERT CHEN and DEREK)
SHEELER, individually and on behalf)
of all others similarly situated,)
)
 Plaintiffs,) C.A. No: 5878-VCL
)
 v.)
)
ROBERT HOWARD-ANDERSON,)
STEVEN KRAUSZ, ROBERT)
ABBOTT, ROBERT BYLIN,)
THOMAS PARDUN, BRIAN STROM,)
ALBERT MOYER, and JEANNE)
SEELEY,)
)
 Defendants.)
)
)

**PLAINTIFFS’ CORRECTED MOTION
FOR LEAVE TO FURTHER AMEND THE COMPLAINT**

Pursuant to Court of Chancery Rule 15, plaintiffs move this Court for leave to further amend the complaint in this action. The grounds for this motion are as follows.

- 1. The proposed Third Amended Complaint would add as additional defendants Jefferies LLC (“Jefferies”), the financial advisor for Occam Networks, Inc. (“Occam”) during the transaction in which it merged with Calix, Inc. (the “Merger”), and Wilson, Sonsini, Goodrich & Rosati, P.C. (“Wilson

Sonsini”), Occam’s lawyers in that transaction and its former lawyers in this lawsuit. As explained below, plaintiffs seek to add Jefferies and Wilson Sonsini because they aided and abetted the individual defendants in breaching their fiduciary duties to Occam’s stockholders. The Third Amended Complaint also includes changes from the prior complaint to better focus the allegations against the existing defendants and the proposed new defendants.

2. The principal bases for seeking to add Jefferies and Wilson Sonsini as defendants are: (a) the failure to include in the proxy statement by which the individual defendants sought stockholder approval of the Merger (the “Proxy”) any information concerning the existence of 2012 projections by Occam, and (b) the inclusion in the Jefferies fairness opinion dated September 15, 2010 (the “Fairness Opinion”) of the following twenty-six italicized words: “In arriving at our opinion, we have, among other things: ... reviewed certain information furnished to us by the Company’s management, including financial forecasts *for calendar years 2010 and 2011 only, having been advised by management of the Company that it did not prepare any financial forecasts beyond such period,* and analyses, relating to the business, operations and prospects of the Company.”

3. Although those 26 italicized words are “contrary to the evidence,” plaintiffs did not know that this was so at the time of the hearing on plaintiffs’ motion to enjoin the Merger, which was held on January 24, 2011. With

one exception, no documents showing that Occam had prepared a forecast for 2012 were produced by Jefferies until mid-2014; no such documents were produced by Wilson Sonsini on behalf of their clients until late 2012.

4. Although plaintiffs attempted to obtain all the relevant documents, both Wilson Sonsini (on behalf of its clients) and Jefferies resisted a full production.

5. After the filing of plaintiffs' motion to compel and for sanctions, the hearing on which was held on September 4, 2014, Defendants, Wilson Sonsini and Jefferies began producing further relevant documents (that process continues; a critical e-mail chain was produced by Defendants on February 11, 2015 -- see paragraphs 254-257 of the proposed Third Amended Complaint, and Jefferies still has not submitted for *in camera* review or produced any documents that were the subject of the December 19, 2014 hearing). These documents, and the recent depositions of five current or former attorneys from Wilson Sonsini, have given plaintiffs sufficient information to determine that both Wilson Sonsini and Jefferies should be added as defendants, because both aided and abetted the individual defendants in misleading the Class as to several highly material facts, including the existence of Occam projections for 2012 and the related false statement in the Fairness Opinion. The facts supporting these allegations are laid out in much more detail in the proposed Third Amended

Complaint, which is attached as Exhibit 1. A redline comparing the proposed amended complaint to the prior complaint is attached as Exhibit 2.

6. As explained in Court of Chancery Rule 15(a), leave to amend a complaint “shall be freely given when justice so requires.” *Gould v. Gould*, C.A. No. 3332-VCP, 2011 WL 141168, at *7 (Del. Ch. Jan. 7, 2011) (“Courts have interpreted [Rule 15] to allow for liberal amendment in the interest of resolving cases on the merits.”); *Ross Holding & Mgmt. Co. v. Advance Realty Grp., LLC*, C.A. No. 4113-VCN, 2010 WL 3448227, at *2 (Del. Ch. Sept. 2, 2010) (“Rule 15 allows for liberal amendment in the interest of resolving cases on the merits.”); *New Castle Shopping, LLC v. Penn Mart Disc. Liquors, Ltd.*, C.A. No. 4257-VCL, 2009 WL 5197189, at *1 (Del. Ch. Oct. 27, 2009) (“Motions to amend pleadings under Rule 15 are liberally granted.”).

7. Nothing in the amended complaint will cause defendants, including the proposed new defendants, any legitimate prejudice. While this amended complaint is being filed four years after the argument on plaintiffs’ motion for a preliminary injunction, plaintiffs have been unable to bring these new claims until now because it is only recently, through the verification process, that plaintiffs have been able to obtain and understand most of the new facts set forth in the amended complaint. Existing defendants and Jefferies also are responsible for plaintiffs’ inability to bring these claims until now, because Howard-Anderson (see

paragraph 171 of the proposed Third Amended Complaint), Seeley (see *id.*, paragraphs 251 and 257), and Snyder from Jefferies (see *id.*, paragraph 175) falsely or misleadingly testified at their depositions as to the existence of, and their knowledge of, 2012 projections for Occam, and defendants perpetuated the fiction that “Occam has not prepared projections for 2012” in Defendants’ Answering Brief in Opposition to Plaintiffs’ Motion for a Preliminary Injunction (see paragraph 173).

8. Accordingly, this motion should be granted, and plaintiffs should be given leave to serve and file the Third Amended Complaint.

February 17, 2015

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General Information

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