

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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CHANCELLOR

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Submitted: May 27, 2008
Decided: June 2, 2008

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Re: *In re Yahoo! Inc. S'holders Litig.*
Civil Action No. 3561-CC

Dear Counsel:

As the parties agree, the single question to be resolved by the Court with respect to the amended complaint and defendants' redactions thereto is this: have defendants demonstrated good cause as required by Rule 5(g) to justify the continued filing of certain portions of the amended complaint under seal?

For the reasons described briefly below, I conclude that defendants have not satisfied their burden to show good cause for the continued filing of the portions of the complaint under seal, even as measured by their most recent letter that significantly reduced the amount of information sought to be redacted.

Rule 5(g) provides that "[e]xcept as otherwise provided in this Rule 5(g), all pleading and other papers . . . shall become a part of the public record of the proceedings before this Court."¹ The Rule authorizes the sealing of documents for

¹ Ct. Ch. R. 5(g)(1).

good cause, which typically requires a demonstration that the documents contain trade secrets, third-party confidential material, or nonpublic financial information.² When a party objects to the continued sealing of a document filed under seal, Rule 5 provides a process for challenging this restriction.³ In response to plaintiffs' challenge to defendants' redactions to the amended complaint, defendants submitted supplemental briefing that attempted to show good cause for the redactions and continued filing of the complaint under seal.⁴

Despite defendants' strenuous arguments to the contrary, I am not persuaded that this case is like *Pershing Square, L.P. v. Ceridian Corp.*⁵ In *Pershing*, a books and records action under 8 *Del. C.* § 220, plaintiffs learned of confidential company information through surreptitious means. In contrast, here, the information was obtained by plaintiffs pursuant to a confidentiality order entered by this Court on March 12, 2008.⁶

I am also not convinced that this case is like *Disney v. The Walt Disney Co.*⁷ Though defendants do seek to protect from public disclosure certain communications between Yahoo!'s CFO and Yahoo!'s third-party compensation advisor, defendants do not argue that public disclosure of such communications would have a chilling effect on the deliberations of the board or other high-ranking employees. Instead, defendants object to plaintiffs' selective disclosure of excerpts of e-mails. Defendants argue that such excerpts, taken out of context, will prejudice Yahoo! in its upcoming proxy contest because such partial disclosure will create an incomplete record of the circumstances surrounding the adoption of

² See, e.g., *Romero v. Dowdell*, No. 1398-N, 2006 WL 1229090, at *2 (Del. Ch. Apr. 28, 2006); *Stone v. Ritter*, No. 1570-N, 2005 WL 2416365, at *2 (Del. Ch. Sept. 26, 2005); *One Sky Inc. v. Katz*, No. 1030-N, 2005 WL 1300767, at *1 (Del. Ch. May 12, 2005) (quoting *Fitzgerald v. Cantor*, No. 16297-NC, 2001 WL 422633 (Del. Ch. Apr. 17, 2001)); *In re Walt Disney Co. Derivative Litig.*, No. 15452-NC, 2004 WL 368938, at *1 (Del. Ch. Feb. 24, 2004).

³ Ct. Ch. R. 5(g)(6).

⁴ See *id.* ("To the extent that such person seeks to continue the restriction on public access to such document, said person shall serve and file an application . . . setting forth the grounds for such continued restriction and requested a judicial determination whether good cause exists therefore.").

⁵ 923 A.2d 810 (Del. Ch. 2007).

⁶ During the May 20, 2008 hearing, defendants explicitly conceded that the process advocated by plaintiffs for resolution of this dispute was appropriate. Hr'g Tr. 52–53 (May 20, 2008). The Court therefore decides this issue solely under the good cause standard of Rule 5(g) without any reference to or consideration of the confidentiality order.


⁷ No. 234-N, 2005 WL 1538336 (Del. Ch. June 20, 2005).

the Yahoo! severance plans. Though I am cognizant of defendants' concerns about plaintiffs' use of information obtained in the course of discovery and plaintiffs' apparent mischaracterizations of certain information, the proper remedy is for defendants to release the full text of any communications they believe have been taken out of context or selectively quoted to the public and to the Yahoo! shareholders. The remedy is not for this Court to permit information that is neither privileged nor confidential to continue to be filed under seal when defendants have failed to show good cause in accordance with Rule 5(g).

I therefore grant plaintiffs' motion to amend the complaint and also order the unsealing of the amended complaint. In addition, because defendants have failed to satisfy their burden with respect to the filing of the amended complaint under seal, I also authorize the release of the May 20, 2008 transcript in its entirety.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and is positioned above the printed name.

William B. Chandler III

WBCIII:mpd