COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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New Castle County Court House
500 N. King Street, Suite 11400
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Submitted: February 9, 2009
Decided: March 17, 2009

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RE: Benjamin Langford v. Edward W. Barnholt, et al. and KLA-Tencor Corp. C.A. No. 2295-VCL

Dear Counsel:

On August 13, 2008, the court stayed this action pending the outcome of the motion to terminate filed by KLA-Tencor Corporation's Special Litigation Committee in the related consolidated federal derivative action in California. Recently, the California court denied that motion. Therefore, this court will now consider the remaining arguments made in connection with the defendants' pending motion to stay or dismiss.

For the reasons set forth herein, the court will lift the current stay, dismiss count II of the plaintiff's amended complaint, and then stay the remainder of this action in favor of the first-filed consolidated California action.

I.

Generally, the court will either stay or deny a stay as to the entire action. Here, however, because count II does not appear to be a part of the federal action, the court, exercising its discretion, will consider the arguments related to that count.[1]

The defendants have moved to dismiss count II pursuant to Court of Chancery Rule 12(b)(6). Under this rule, a claim must be dismissed where "under no reasonable interpretation of the facts alleged in the Complaint (including reasonable inferences) could [the] plaintiff state a claim for which relief might be granted."[2]

The plaintiff pleads count II, a claim for equity dilution due to allegedly improper stock option backdating, as a class claim. The claim is clearly derivative in nature under the authority of *Feldman v. Cutaia*.[3] In *Feldman*, the Delaware Supreme Court discussed its decisions in *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*,[4] *Gentile v. Rossette*,[5] *Gatz v. Ponsoldt*,[6] *Kramer v. Western Pacific Industries, Inc.*,[7] and *In re J.P. Morgan Chase & Co. Shareholder Litigation*,[8] among others, and noted that, in the absence of a controlling shareholder, a claim for equity dilution must be pleaded as a derivative claim.[9] The plaintiff here has not pleaded the existence of a controlling shareholder; nor has he pleaded any harm independent from the alleged harm to the corporation. Accordingly, count II cannot be maintained as an individual or class action and will be dismissed.

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[1] *See In re KLA-Tencor Corp. S'holders Deriv. Litig.*, No. C. 06-03345 (N.D. Cal. 2009). The court may take judicial notice of the complaints filed in the California cases. D.R.E. 201(b); *see, e.g., Nelson v. Emerson*, 2008 WL 1961150, at *2 n.2 (Del. Ch. May 6, 2008) (drawing facts from "documents filed in the related federal court proceedings" in a motion to dismiss); *In re Wheelabrator Techs., Inc. S'holders Litig.*, 1992 WL 212595, at *11-12 (Del. Ch. Sept. 1, 1992) (taking judicial notice, in a motion to dismiss context, of publicly filed documents).
[2] *Wolf v. Assaf*, 1998 WL 326662, at *1 (Del. Ch. June 16, 1998).
[3] 951 A.2d 727 (Del. 2008).
[4] 845 A.2d 1031 (Del. 2004).
[5] 906 A.2d 91 (Del. 2006).
[6] 925 A.2d 1265 (Del. 2007).
[7] 546 A.2d 348 (Del. 1998).
[8] 906 A.2d 766 (Del. 2006).
[9] *Feldman*, 951 A.2d at 732.

II.

Under *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Engineering Co.*[10] and its progeny, as applied in the context of representative litigation, the remainder of this case should be stayed. In *McWane*, the Delaware Supreme Court stated that, while the decision to stay an action is discretionary, such "discretion should be exercised freely in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues."[11] The Delaware Supreme Court endorsed the propositions that "as a general rule, litigation should be confined to the forum in which it is first commenced, and a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing . . . . [T]hese concepts are impelled by considerations of comity and the necessities of an orderly and efficient administration of justice."[12]

All of the *McWane* factors favor a stay in this case. First, all of the five federal derivative actions in California were filed before the Delaware action. The first federal action was filed nearly two months before this case.[13] Second, the federal actions and this case arise out of a common nucleus of operative facts—that KLA granted improperly backdated stock options and that certain KLA directors and officers breached their fiduciary duties in authorizing those options. In fact, the federal actions cover a longer time frame and a broader set of claims.

Third, all of the parties in this action are included in the federal actions, save Michael Marks. Marks became a director of KLA in 2003. The plaintiff here focuses on 1997 to 2001 as the time period during which the allegedly improper stock option backdating took place. In addition, the plaintiff makes no individualized allegations against Marks. To grant a stay, the parties in the related cases need not be identical.[14] Substantial or functional identity is sufficient.[15] The

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[10] 263 A.2d 281 (Del. 1970).
[11] *Id*. at 283.
[12] *Id.*
[13] The first related federal derivative case was filed on May 22, 2006. *Kornreich v. Barnholt*, Case: 5:06-cv-03345-JW (N.D. Cal. 2009). The complaint in this action was filed on July 21, 2006.
[14] *AT&T Corp. v. Prime Sec. Distribs., Inc.*, 1996 WL 633300, at *2 (Del. Ch. Oct. 24, 1996).
[15] *See, e.g., In re Westell Techs., Inc. Deriv. Litig.*, 2001 WL 755134, at *2 (Del. Ch. June 28, 2001).

federal actions and this case focus on officers and directors of KLA during the late 1990s and early 2000s. Here, the existence of one additional defendant, against whom no particularized claims have been made, and who appears to be outside of the date range of the majority of the allegations, will not destroy substantial or functional identity.[16]

Finally, the federal court is clearly capable of providing prompt and complete justice to the parties. This court has routinely found the federal courts capable of applying Delaware law. Moreover, the consolidated federal action is more procedurally advanced than this case.[17] Delaware courts have ruled on numerous stock option backdating cases in the past two years, and the plaintiff has pointed to nothing about this case that raises novel or difficult legal issues.[18]

III.

For the reasons detailed above, the plaintiff's motion to lift the stay is GRANTED and count II of the plaintiff's amended complaint is DISMISSED. Immediately thereafter, the defendants' motion to stay is GRANTED. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor

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[16] *See Westell*, 2001 WL 755134, at *2 (finding the naming of two additional defendants in the Delaware action to be insufficient to destroy substantial or function identity); *see also Schnell v. Porta Sys. Corp.*, 1994 WL 148276, at *5 (Del. Ch. Apr. 12, 1994) (finding the naming of five additional outside directors in the Delaware action to be an immaterial difference).
[17] *See, e.g., AT&T Corp.*, 1996 WL 633300, at *2; *Westell*, 2001 WL 755134, at *2.
[18] *See, e.g., Weiss v. Swanson*, 2008 WL 623324 (Del. Ch. Mar. 7, 2008); *Desimone v. Barrows*, 924 A2d 908 (Del. Ch. 2007); *In re Tyson Foods, Inc.*, 919 A.2d 563 (Del Ch. 2007); and *Ryan v. Gifford*, 918 A.2d 341 (Del. Ch. 2007).