JAMES N. KRAMER (STATE BAR NO. 154709)
jkramer@orrick.com
JONATHAN B. GASKIN (STATE BAR NO. 203625)
jgaskin@orrick.com
BENJAMIN P. VAN HOUTEN (STATE BAR NO. 241355)
bvanhouten@orrick.com
LUCY E. BUFORD (STATE BAR NO. 244885)
lbuford@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: 415-773-5700
Facsimile: 415-773-5759

Attorneys for Defendants Bryan D. Stolle, Carol B. Schrader, Dorothy O. Wise, Thomas P. Shanahan, Gregory G. Schott, William R. Jamaca, Jeff G. Johnson, Carolyn V. Aver, Christopher Wong, Jay B. Fulcher, Nancy J. Schoendorf, Paul Wahl, and Klaus-Dieter Laidig and Nominal and Third-Party Defendant Agile Software Corporation

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re AGILE SOFTWARE CORPORATION DERIVATIVE LITIGATION

This Document Relates To: ALL ACTIONS

Case No. 5:06-cv-07434-JW

DIRECTOR DEFENDANTS BRYAN D. STOLLE, JAY B. FULCHER, NANCY J. SCHOENDORF, PAUL WAHL, AND KLAUS-DIETER LAIDIG'S MOTION TO DISMISS PLAINTIFFS' AMENDED CONSOLIDATED SHAREHOLDER CLASS AND DERIVATIVE COMPLAINT

Date: October 1, 2007
Time: 9:00 a.m.
Judge: Hon. James Ware

TABLE OF CONTENTS

CASES

STATUTES

NOTICE AND MOTION

PLEASE TAKE NOTICE that defendants Bryan D. Stolle, Jay B. Fulcher, Nancy J. Schoendorf, Paul Wahl, and Klaus-Dieter Laidig (collectively the "Director Defendants") hereby move to dismiss this action under Fed. R. Civ. P. 12(b)6. The Motion is scheduled to be heard on October 1, 2007 at 9:00am before the Honorable James Ware, in the U.S. District Court, Northern District of California, San Jose Division. By this Motion, the Director Defendants request that Plaintiffs' Amended Consolidated Shareholder Class and Derivative Complaint ("Compl." or "Complaint") be dismissed with prejudice pursuant to Federal Rules of Civil Procedure 12(b) and related legal standards.

This Motion is based on the pleadings on file, the accompanying Memorandum of Points and Authorities, Agile Corporation's Motion to Dismiss, Individual Defendants' Motion to Dismiss, Request for Judicial Notice, and other matters as may be presented at the hearing.[1]

ISSUE PRESENTED

1. Whether Plaintiffs have stated a claim against the Director Defendants for breach of the fiduciary duty of candor.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Steven Rosen and Mary Jo Meek, former shareholders of Agile Software Corporation ("Agile" or "the Company"), accuse the Director Defendants, in the single direct claim of the Complaint,[2] of breaching their duty of candor by failing to inform Agile shareholders at the time of the merger with Oracle (the "Merger") (1) that certain defendants' "options may either accelerate and vest or be converted into valid Oracle shares" (Compl. ¶¶ 149, 237) and (2)

[1] This motion to dismiss is one of three interconnected briefs filed in response to Plaintiffs' Complaint. Each brief incorporates fully and adopts the factual background and arguments of the other briefs. Agile Corporation brought a separate motion to address Plaintiffs' fundamental standing failures ("Agile Motion to Dismiss"), which should be reviewed first. The Director Defendants bring this motion to address Plaintiffs' single purported "class action" claim, which should be reviewed next. The Individual Defendants have filed a concurrent separate brief addressing the derivative claims alleged against them, which should be reviewed last.

[2] The Complaint is clear that the only direct claim (Count XI) is for breach of the duty of candor. *See* Compl. ¶¶ 236-39. The remaining fiduciary duty allegations are brought derivatively under Count III (*Id.* ¶¶ 202-07). Plaintiff's derivative breach of fiduciary claim, along with Plaintiffs' nine other purported derivative claims, is addressed in the Individual Defendants' Motion to Dismiss Derivative Claims.

that Oracle's acquisition of Agile may extinguish the pending shareholder derivative claims. *Id.* This claim fails for the most basic possible reason: judicially noticeable documents make clear that this information *was*, in fact, disclosed to shareholders in the proxy statement concerning the Merger.

Plaintiffs claim that "the Proxy fails to inform Agile shareholders of the full implications of the treatment of stock options granted under the Company's stock plans in the Acquisition." (Compl. ¶¶ 149, 237). Not so. Agile clearly disclosed in the Definitive Proxy Statement with respect to the Merger (the "Definitive Proxy"), in a section entitled "Interests of Agile's Directors and Management in the Merger" and elsewhere, that options held by employees, officers and directors would be either assumed and converted by Oracle, or accelerated in whole and cashed out. RJN Ex. E at 4, 28-31, 34-35. For example, the Proxy provides:

> Under the merger agreement, at the effective time of the merger, each stock option granted under our stock option plans (other than certain options Oracle may elect not to assume, which will be accelerated so that these options will become fully vested, and cashed out at closing) will be assumed by Oracle and converted into an option to acquire a number of shares of Oracle common stock...[t]he options that are not assumed by Oracle will become fully vested at the effective time of the merger and exchanged into the right to receive an amount in cash. *Id*. at 28.

Agile's Definitive Proxy not only includes this specific information, but also explicitly provides the treatment that executive officers and directors would receive from the Merger's effect on outstanding options:

> Each of our executive officers has outstanding stock options that will be assumed by Oracle in the merger...
>
> Under the terms of the options agreements covering stock options granted to each of our non-employee directors, in the event of any corporate transaction (as defined in these option agreements, and which would include the merger) each such option will automatically vest in full so that the option will become fully exercisable immediately prior to the effective date of the merger. RJN Ex. E at 29.

The Definitive Proxy even goes on to list the precise value of the options that will automatically vest for each non-employee director and explains in detail how the option exchange ratio will be calculated for converted options. *Id*. at 28-30.

Likewise, in direct contradiction to Plaintiffs' contention that "[n]owhere in the Proxy

does the Company disclose that all derivative claims[] will be extinguished as a result of the completion of the Acquisition," (Compl. ¶¶ 148, 237) the Definitive Proxy clearly discloses that all shareholder rights will be eliminated in the Merger:

> After the merger is completed, you will have the right to receive the merger consideration, but you will no longer have any rights as an Agile stockholder and will not have any rights as an Oracle stockholder. RJN Ex. E at 4.
>
> As of the effective time of the merger, all shares of our common stock will no longer be outstanding and will automatically be cancelled and will cease to exist and each holder of a certificate representing any shares of our common stock [] will cease to have any rights as a stockholder, except the right to receive $8.10 per share in cash, without interest. RJN Ex. E at 33.

No reasonable shareholder could assume, after reviewing that language, that his or her right to pursue a derivative claim was somehow preserved.

The claim is also moot. Plaintiffs allege that the harm caused by these purported omissions can only be cured through injunctive relief and assert there is no adequate remedy at law if an Agile shareholder vote on the Oracle Merger is not enjoined. *Id.* ¶¶ 238-39. Agile's shareholders have voted, however, and those holding 74% of Agile's shares voted in favor of the Merger. The Merger has closed. Thus, by Plaintiffs' own allegations, the claim is moot; it can (and should be) dismissed.

II. FACTUAL BACKGROUND[3]

Agile Software Corporation was founded in 1995, and completed its initial public offering in August of 1999 ("IPO"). In each of the years since Agile's IPO, Agile posted a financial loss. Compl. ¶¶ 117-18. In the interest of maximizing shareholder value, and facing a share price that had been languishing in the $6-$7 range, Agile's Board of Directors began to contemplate the sale of the Company in the fall of 2006. Agile retained Citigroup Global Markets, Inc. as financial advisor for the potential transaction and Citigroup launched an extensive marketing effort. Agile engaged in discussions with eleven potential buyers (eight strategic acquirors and three private equity firms), and ultimately settled on a transaction with Oracle as the best potential deal. RJN Ex. E at 15. In April of 2007, Agile entered into exclusive negotiations with Oracle, and agreed

[3] The Director Defendants hereby incorporate and refer the Court to the comprehensive Factual Background set forth in the Agile Motion to Dismiss.

to sell the Company for $8.10 per share – an additional $0.10 higher than Oracle's offer and a 26% premium over Agile's 52-week average share price of $6.43.

In September of 2006, Agile disclosed that it had instituted a voluntary internal investigation of its historical stock option practices. RJN Ex. C. Agile publicly updated the progress of its investigation and the lawsuits with regularity through the end of 2006 and the beginning of 2007. RJN Ex. D (informing shareholders that the Special Committee had determined that incorrect measurement dates had been used and that the Audit Committee and management had determined that the Company would need to restate certain of its financials and that its previous financial statements should no longer be relied upon); RJN Ex. J (reiterating that incorrect measurement dates appeared to have been used); RJN Ex. K (announcing delisting by NASDAQ because of inability to file financial statements due to options investigation).

Close on the heels of the first disclosure of improper measurement dates, Agile announced that a series of putative derivative suits based on alleged options backdating had been filed, including this one. RJN Ex. L (announcing that shareholder derivative suit based on options backdating had been filed in the Northern District of California); RJN Ex. M (announcing filing of a second derivative complaint based on backdating).

Agile disclosed the results of its independent internal investigation on March 5, 2007. RJN Ex. A. In the same disclosure, Agile also provided an update on the various derivative lawsuits. *Id.* at 27, 41. On March 7, 2007, Agile issued a detailed announcement of the results of the options investigation. RJN Ex. N.

On May 16th, Agile announced that it had entered into an Agreement and Plan of Merger with a subsidiary of Oracle. RJN Ex. O. On May 25, 2007, Agile filed a Preliminary Proxy Statement, setting forth the history of the Merger negotiations and discussing the Merger's extinguishment of all shareholder rights and the Merger's proposed treatment of stock options held by Agile employees, management and directors. RJN Ex. F. On June 7, 2007, Agile repeated these disclosures in its Definitive Proxy distributed to its shareholders.

On July 6, 2007, Plaintiffs filed an ex parte motion for a Temporary Restraining Order ("TRO") seeking to enjoin the Special Meeting of the Shareholders to approve the Merger.

Docket 31. At the same time they filed the TRO, Plaintiffs amended the Complaint to add the purported direct claim for breach of the duty of candor. In the TRO motion, Plaintiffs made the same arguments as here: that the Proxy suffered from material omissions regarding the effect of the Merger on the derivative claims and the effect of the Merger on certain defendants' stock options. Docket 31. This Court, in a an order issued July 9, 2007, refused to issue the TRO, finding that the circumstances alleged did not call for such action. Docket 38.

Shortly thereafter, on July 12, 2007, Agile held the Special Meeting for its shareholders, who overwhelmingly voted in favor of the proposed Merger with Oracle. RJN Ex H.

III. LEGAL STANDARDS

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claim alleged in the complaint. *In re CNET Networks, Inc. S'holder Deriv. Litig.*, 483 F. Supp. 2d 947, 953 (N.D. Cal. 2007). Although a plaintiff's allegations are taken as true for purposes of a motion to dismiss, a court may order dismissal with prejudice when amendment would be futile. *See In re Mercury Deriv. Litig.*, 487 F. Supp. 2d 1132, 1137-38 (N.D. Cal. 2007). A district court may consider facts subject to judicial notice on a motion to dismiss. *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).[4]

Plaintiffs are obligated to plead with factual particularity under Rule 9(b) because their claims are premised on allegedly intentional, reckless or purposeful wrongdoing. *See In re Glenfed Sec. Litig.*, 60 F.3d 591, 592 (9th Cir. 1995); *see also In re Real Estate Assoc. Ltd. P'ship. Litig.*, 223 F. Supp. 2d 1142, 1147 (C.D. Cal. 2002) (allegations of "conscious and intentional conduct" are subject to Rule 9(b)). Under Rule 9(b), Plaintiffs' allegations must not only "state precisely the time, place and nature of the misleading statements, misrepresentations and specific acts of fraud," but Plaintiffs must also set forth an explanation as to why the statement or omission complained of was false and misleading. *Kaplan v. Rose*, 42 F.3d 1363, 1370 (9th Cir. 1994); *see also Yourish v. California Amplifier*, 191 F.3d 983, 993 (9th Cir. 1999).

[4] On a motion to dismiss, judicial notice of the full text of documents referenced in a complaint is proper under the doctrine of incorporation by reference. *See No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 925 n.2 (9th Cir. 2003). In addition, "[a] court may take judicial notice of public filings when adjudicating a motion to dismiss a complaint for failure to state a claim upon which relief can be granted." *In re Calpine Sec. Litig.*, 288 F. Supp. 2d 1054, 1076 (N.D. Cal. 2003).

The substantive requirements of the breach of the duty of candor are governed by Delaware law.[5] Directors of Delaware corporations, as part of their fiduciary duties of care and loyalty, are bound by a duty of candor or disclosure.[6] Directors must "fully and fairly [disclose] all material information within the board's control when it seeks shareholder action." *Stroud*, 606 A.2d at 84. Information is material when "there is a substantial likelihood that a reasonable shareholder would consider [the information] important in deciding how to vote." *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 944 (Del. 1985) (adopting *TSC Indus. V. Northway, Inc.*, 426 U.S. 438, 449 (1976)). Plaintiffs bear the burden to show that there is a substantial likelihood that, given all the circumstances surrounding the situation, the allegedly omitted fact would have been actually significant in the deliberations of a reasonable shareholder – i.e. that the omitted fact would have been seen to have significantly altered the "total mix" of information available. *Id.*

IV. ARGUMENT

A. Agile's Proxy Statement Disclosed That the Merger Would Accelerate the Vesting of Defendants' Options or Convert Them to Oracle Options.

Plaintiffs' claim that the Proxy failed to inform shareholders that Defendants would benefit from the treatment of options in the Merger transaction is directly contradicted by the Proxy's extensive discussion of the Merger's effect on Agile stock options and restricted shares. RJN Ex. E at 4, 28-31. *See Louisiana Mun. Police Employees' Ret. Sys. v. Crawford* (hereinafter "*Crawford*"), 918 A.2d 1172, 1176 (Del. Ch. 2007) (dismissing similar claims where alleged omissions were actually disclosed in the proxy). On just the second page of the summary (right after explaining that all shareholder rights will cease), under the unambiguous heading "**Treatment of Awards Outstanding Under Agile's Stock Plans**," the Definitive Proxy clearly

---

[5] Plaintiffs seek this Court's jurisdiction over their breach of the duty of candor claim by exercise of supplemental jurisdiction. Compl. ¶ 13. A federal court applies the same principles of law to claims heard under supplemental jurisdiction as it would to those entertained under the diversity jurisdiction of 28 U.S.C. § 1332. *See In re Mercury*, 487 F. Supp. 2d at 1136, n.8. *See also Bouker v. CIGNA Corp.*, 847 F. Supp. 337, 338 (E.D. Pa. 1994). A court sitting in diversity applies federal law to procedural matters and the law of the state in which it sits to substantive matters. *Id. See also Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

[6] Plaintiffs style this claim as one based on a breach of the duty of candor. The Delaware Supreme Court has emphasized that such a "duty" is no different from the directors' well-established fiduciary duty of full and fair disclosure. *See Stroud v. Grace*, 606 A.2d 75, 84 (Del. 1992) (noting that "the term 'duty of candor' has no well accepted meaning in the disclosure context").

provides:

> Except as provided below, stock options to purchase our common stock that are outstanding immediately prior to the effective time of the merger will each be converted into an option to acquire....a number of shares of Oracle common stock [...] The options that are not assumed by Oracle will become fully vested at the effective time of the merger and exchanged into the right to receive an amount of cash (without interest and less applicable withholding) equal to the positive difference (if any) between $8.10 and the per-share exercise price of the option. RJN Ex. E at 2.

In the body of the Definitive Proxy, an even more comprehensive discussion of the treatment of stock options is provided:

> Under the merger agreement, at the effective time of the merger, each stock option granted under our stock option plans, (other than certain options Oracle may elect not to assume, which will be accelerated so that these options will become fully vested, and cased out at closing) will be assumed by Oracle and converted into an option to acquire a number shares of Oracle common stock equal to the number of shares of our common stock subject to the stock option multiplied by the option exchange ratio.
> [….]
> The options that are not assumed by Oracle will become fully vested at the effective time of the merger and exchanged into the right to receive an amount in cash (without interest and less applicable withholding) equal to the positive difference (if any) between $8.10 and the per-share exercise price of the option multiplied by the number of shares of our common stock subject to the option. RJN Ex. E at 28.

The Definitive Proxy details the status of each of the executive officers' and non-employee directors' options, indicating whether they will be assumed by Oracle or not. RJN Ex. E at 28-29. Further, the Definitive Proxy details the intrinsic value[7] of the total number of options held by each executive officer and non-employee director. Nowhere does the Definitive Proxy state that the Merger agreement excludes allegedly-backdated options from being honored. *See Crawford*, 918 A.2d at 1189 (dismissing exact same claim).

Agile shareholders were explicitly informed by the unambiguous language of the Proxy that certain of the defendants in this derivative case stood to realize a financial gain from their options through this Merger. Additionally, the Proxy explained in great detail the potential effects of various defendant's employment agreements on their stock options and the potential

[7] As stated in the proxies, the intrinsic value "is the amount by which the merger consideration payable with respect to the underlying shares exceeds the aggregate exercise price thereof and with respect to restricted shares, the intrinsic value is $8.10 per share." RJN Ex. E at 29.

ramifications of post-merger terminations. As discussed above, the majority of these disclosures were made under the instantly recognizable heading: "**Interests of Agile's Directors and Managers in the Merger.**"

In addition to the Definitive Proxy, Agile made numerous public disclosures thoroughly apprising its shareholders of the ongoing developments related to stock options: the internal investigation, the delays of the public filings, the restatement and the litigations. RJN Exs. C-D; J-O. It is clear that any literate shareholder possessed more than sufficient information to understand precisely what effects the Merger would have on the outstanding options of Defendants – and to fully incorporate that information into their vote.

B. Agile's Proxy Statement Disclosed the Fact that Agile Shareholders Would Lose All Rights as Shareholders If the Merger Closed.

Plaintiffs' attempt to claim that Agile's Proxy failed to disclose that the shareholders would lose their derivative rights to assert a claim based on alleged backdating likewise must fail.[8] The loss of shareholder rights that Plaintiffs allege was omitted was disclosed in two separate places in the proxy statements. The Definitive Proxy directly states:

> After the merger is completed, you will have the right to receive the merger consideration, but ***you will no longer have any rights as an Agile stockholder and will not have any rights as an Oracle stockholder***.
>
> As of the effective time of the merger, all shares of our common stock will no longer be outstanding and will automatically be canceled and will cease to exist and each holder of a certificate representing any shares of our common stock (other than stockholders who have perfected their appraisal rights) ***will cease to have any rights as a stockholder***, except the right to receive $8.10 per share in cash, without interest. RJN Ex. E at 4 and 33 (emphasis added).

The language of these paragraphs could not be more clear. They state unequivocally that, if the Merger is completed, Agile shareholders will lose any and all rights as a shareholder, except the right to receive cash for their shares. The broad but indisputable language of the Proxy makes clear that *all rights cease to exist*. No reasonable shareholder would need more information to understand that one of those rights, the right to pursue a derivative claim on behalf of the

[8] Plaintiffs' claim that "the Individual Defendants' derivative liability for their roles in the options backdating scheme may be extinguished in the Acquisition" is misleading. Defendants remain subject to derivative liability if Oracle chooses to bring those claims. *See* Agile Motion to Dismiss at 14.

corporation, will also cease to exist.

In addition to the disclosures above, Agile gave repeated and extensive notice that derivative claims were being asserted by shareholders. See RJN Exs. K, L, A. Agile shareholders were thus on notice immediately prior to the filing and delivery of the Definitive Proxy and the vote on the Merger of their right to bring a derivative claim. *See In re MONY Group, Inc. S'holder Litig.*, 853 A.2d 661, 683 (Del. Ch. 2004) (noting that a proxy statement does not have to disclose facts known or reasonably available to the shareholders). Against the backdrop of the disclosure of the assertion of derivative claims, the disclosures in the Proxy could not have been more clear.

Delaware law affirms that as long as a proxy statement meets the standard of making a full and fair disclosure of all material information to the shareholders, neither the shareholders nor the courts can dictate the language or level of detail of those disclosures. *Crawford* is quite informative in this situation. 918 A.2d at 1176.

In *Crawford*, plaintiffs sued to enjoin an impending merger, alleging several different supposedly misleading omissions from Caremark's proxy statements regarding its proposed merger with CVS. The Court dismissed all the claims, repeatedly noting that the proxy statements, even if not specifically addressing the narrow issue raised by plaintiffs, sufficiently apprised the shareholders of all the concerns. Among those was an allegation that there was an agreement concerning Crawford's tenure as Chairman of Caremark after the merger. *Crawford*, 918 A.2d at 1187. The court found the allegations meritless because the proxy statement provided: "There is no agreement, arrangement, or understanding between the parties mandating a specified length for Mr. Crawford's tenure as chairman of the combined company." *Id.* (citing proxy). The court decided that to the extent that Mr. Crawford's continued employment post-merger would alter a shareholder's vote, this general disclosure was sufficient to make a reasonable shareholder aware of the possibility that he would depart. *Id.* Another allegation accused the directors of failing to disclose sufficient information regarding the impact of the merger on pending backdating litigation because it failed to state specifically that the agreement with CVS might entitle management to more indemnification than that currently offered by

Caremark. *Id.* at 1189. The court rejected this claim, too, noting that the proxy stated that CVS would indemnify the directors not only under Caremark's terms, but also to the fullest extent of the law. *Id.* The court determined that this disclosure sufficiently informed shareholders that the indemnification would cover claims regarding backdated options. *Id.*

Agile's warnings that shareholders would lose "any rights" following the Merger do not just suffice to inform shareholders that they will lose the right to maintain a derivative action, but repeatedly red flag the loss of all rights and the conclusive end of each shareholder's relationship with Agile. *See also Orman v. Cullman*, 794 A.2d 5, 34 (Del. Ch. 2002) (dismissing disclosure claim in part because underlying information was actually disclosed).

C. Count XI Should Be Dismissed As Moot.

Plaintiffs' claim in Count XI should be dismissed because the remedy sought, an injunction against the Special Meeting of Agile Stockholders, has been mooted by subsequent events; this Court denied Plaintiff's Ex Parte Motion for an Injunction, the Special Meeting occurred, Agile's shareholders voted to approve the Merger, and the Merger has been completed. It is thus impossible for the Court to grant the only relief sought.

Courts will not even consider granting injunctions when "the circumstances are such that the injunction cannot be enforced by the court." *See Kalmanovitz v. G. Heileman Brewing Co., Inc.*, 595 F. Supp. 1395 (D. Del. 1984), *aff'd*, 769 F.2d 152 (3d Cir. 1987) (noting that it is "presently infeasible" for the plaintiffs to ask the court to enjoin acts supposedly violating federal and Delaware state law when those acts already happened). There is nothing any longer to enjoin: the Merger has concluded. RJN Exs. G & H. Because injunctive relief is the only remedy sought on the 11th claim, there is no relief for the court to give. The claim must therefore be dismissed as moot.

V. CONCLUSION

For the foregoing reasons, the Director Defendants respectfully request that the Plaintiffs' purported class action claim (Count XI) be dismissed with prejudice pursuant to Rule 12(b)(6).

Dated: August 22, 2007

JAMES N. KRAMER
JONATHAN B. GASKIN
BENJAMIN P. VAN HOUTEN
LUCY E. BUFORD

Orrick, Herrington & Sutcliffe LLP

/s/ JAMES N. KRAMER
JAMES N. KRAMER
Attorneys for Defendants Bryan D. Stolle, Carol B. Schrader, Dorothy O. Wise, Thomas P. Shanahan, Gregory G. Schott, William R. Jamaca, Jeff G. Johnson, Carolyn V. Aver, Christopher Wong, Jay B. Fulcher, Nancy J. Schoendorf, Paul Wahl, and Klaus-Dieter Laidig and Nominal and Third-Party Defendant Agile Software Corporation