



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IAN BEISER,
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v.
PMC-SIERRA, INC., a Delaware corporation,
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Defendant.

Civil Action No.

COMPLAINT UNDER 8 DELAWARE CODE SECTION 220

1. Plaintiff Ian Beiser (“Beiser”) by and through his undersigned attorneys, submit this Complaint (the “Complaint”) against defendant PMC-Sierra, Inc. (“PMC-Sierra” or the “Company”).

NATURE OF THE ACTION

2. Pursuant to §220 of the Delaware General Corporation Law, 8 Delaware Code § 220 (“§220”), this action (the “§220 Action”) is brought to enforce plaintiff’s statutory right to inspect and make copies and extracts of certain books and records of PMC-Sierra.

PARTIES

3. Plaintiff Beiser is and has been a shareholder of defendant PMC-Sierra continuously since April 19, 1999.

4. Defendant PMC-Sierra is a Delaware corporation with its principal executive offices located at 3975 Freedom Circle, Santa Clara, California 95054.

FACTUAL ALLEGATIONS

5. In March 2006, *The Wall Street Journal* published an article and report examining the historical stock option granting practices of various companies, and specifically, the option grants, their prices and their 20-day returns. Charles Forrelle and James Bandler, “The Perfect Payday

Some CEOs reap millions by landing stock options when they are most valuable; Luck – or something else?” *The Wall Street Journal*, March 18, 2006 (“*The Wall Street Journal Report*”). *The Wall Street Journal Report* analysis focused on financial filings from several high-tech companies and was an extension of recent academic articles which suggested that “backdating [stock options] was widespread, particularly from the start of the tech-stock boom in the 1990s through the Sarbanes-Oxley corporate reform act of 2002.” *The Wall Street Journal Report* also noted that stock options appeared to be backdated at a number of high technology companies and that such practice could result in false disclosures and the need to restate financials due to overstatement of profits. Since then over 160 public companies have come under scrutiny for their stock option granting practices.

6. On May 16, 2006, the Center for Financial Research and Analysis (“CFRA”), an economic research firm, issued an analysis of stock option grant timing for 100 publicly traded companies, seeking to identify those with “risky” historical option grant patterns. To analyze the integrity of purported dates of option grants, the CFRA analyzed the extent to which on three or more occasions companies granted options at exercise prices that matched, or were close to, lows of the companies’ stock price between 1997 and 2002, followed by a sharp increase of at least 10% in share price.

7. On August 14, 2006, PMC-Sierra issued a press release titled “PMC-Sierra Completes Review of Stock Option Awards” stating that measurement dates for stock options were incorrect and it had failed to properly apply Accounting Principles Board Opinion No. 25:

The Company has concluded that, pursuant to the requirements of Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees (APB 25) that were in effect prior to 2006, the accounting measurement dates for certain stock option grants awarded primarily during the years 1998-2001 differ from the measurement dates previously used to determine any stock-based compensation expense for the years 1998-2002. ***The Company has determined that for certain option grants the allocations to individual recipients and/or the proper documentation of formal corporate approvals had not been completed as of the***

original accounting measurement dates. As a result, new accounting measurement dates are being applied to the affected option grants.

8. On August 16, 2006, the Company filed a Form 10-Q/A announcing that the Company's Audit Committee had completed its stock option review and that PMC-Sierra would restate its financial results in the amount of \$89.6 million due to option manipulation but concluded that the errors and incorrect accounting were not the result of any deliberate misconduct by anyone at the Company:

Our Audit Committee has completed a review of our stock option-award practices. Based on the results of the review we concluded that the accounting measurement dates for certain stock option grants awarded primarily during the years 1998-2001, differ from the measurement dates previously used to determine any stock-based compensation expense for the years 1998-2002. We determined that for certain option grants the allocations to individual recipients and/or the proper documentation of formal corporate approvals had not been completed as of the original accounting measurement dates. . . . The Audit Committee has concluded that, while the Company used incorrect accounting measurement dates for certain stock option grants awarded primarily during the years 1998-2001, those errors were not the product of any deliberate misconduct by the Company's executives, staff, or members of its board of directors.

9. In the August 16, 2006 Form 10-Q/A, the Company admitted that with respect to a number of stock option grants, there were material accounting errors which resulted from material weaknesses in internal controls and procedures during the period 1998 to 2001:

The Company has concluded that a number of written consents were not fully executed or effective on the stated dates and thus that using the stated date as the measurement date was incorrect. . . .

- ***we treated unanimous written consents approving stock option grants as effective on the date stated on the consent, instead of the date upon which we received the consent form containing the last signature required for unanimity;***
- ***we treated option grants to multiple employees as effective prior to the date upon which we had determined the exact number of options that would be granted to each individual employee, or we failed to assure that lists of grantees and amounts of stock option grants could not be changed following the date of grant;***

- *we failed to assure that there were written minutes* for all meetings of the compensation committee or board of directors that documented the grant of stock options

* * *

- *we failed to assure that there was proper delegation of authority to grant stock options and that documents* evidencing delegation of authority and selection of dates for stock grants *were completed* on a *timely* basis.

10. The backdating of stock options at PMC-Sierra violated the express terms of the Company's shareholder-approved stock option plans, which required that options be granted at not less than 100% of the fair market value of PMC-Sierra common stock at the date of grant. Shareholder approval was never obtained for deviation from the minimum pricing provisions as PMC-Sierra's stock option plans required. PMC-Sierra's current and/or former officers and directors actively concealed this misconduct from PMC-Sierra shareholders.

Plaintiff's Inspection Demand

11. Currently pending in the United States District Court for the Northern District of California is a shareholder derivative action styled *In re PMC Sierra, Inc. Derivative Litig.*, Master File No. C-06-05330-RS.

12. In accordance with §220, on April 15, 2008, plaintiff served upon PMC-Sierra a written demand under oath and power of attorney (the "Inspection Demand"). A true and correct copy of the Inspection Demand is attached hereto as Exhibit A.

13. On May 8, 2008 United States Magistrate Judge Richard Seeborg of the Northern District of California issued an Order Re Motions to Dismiss and Re Motion for Leave to Conduct Discovery stating: "Whatever rights plaintiffs may have under Delaware law to seek corporate records are matters that plaintiffs must pursue, if at all, in the Delaware courts." May 8, 2008 Order (attached hereto as Ex. B) at 7.

14. The April 15, 2008 Inspection Demand specifically demanded to inspect and make copies and extracts of all books and records of PMC-Sierra relating to, *inter alia*: (i) establishing the specific chronology and events leading to the stock option grants challenged in the derivative complaint filed in the derivative action and exercise prices and grant dates associated therewith; (ii) the extent to which the Compensation Committee delegated or did not delegate to management, either expressly or by custom and practice, the authority to select the exercise price or grant date of stock options and, if such delegation occurred, the extent to which the Compensation Committee was aware of the exercise prices and dates selected; (iii) whether member of the Board of Directors or committee thereof received stock options that were backdated, misdated, mispriced, or incorrectly dated; (iv) the extent to which any minutes or unanimous written consents for the Compensation Committee or other committees were backdated, at least as to those minutes involving or relating to stock option grants; and (v) the written report and finding of the Board of Director's Audit Committee. Further, plaintiff demanded to inspect and make copies and of any and all documents provided to the Securities and Exchange Commission ("SEC") in connection with the SEC's investigation into PMC-Sierra's stock option granting practices and procedures. *See Ex. A.*

15. PMC-Sierra has subsequently indicated that it will not comply with the Inspection Demand.

16. The Inspection Demand is proper. Plaintiff has complied with the provisions of §220 relating to the form and manner of making the Inspection Demand to inspect and make copies and extracts of the books and records of PMC-Sierra and is entitled to inspect and make copies and extracts of the books and records of PMC-Sierra identified in the Inspection Demand.

17. PMC-Sierra's refusal of the Inspection Demand is in violation of §220.

18. The Inspection Demand states that Plaintiff demands to inspect and make copies and extracts of the books and records of PMC-Sierra for the purposes of: (i) investigating possible

violations of law by the officers and directors of the Company in connection with the Company's option granting practices and procedures and internal controls; and (ii) determining whether the Company's officers and directors are independent and/or disinterested and whether they have acted in good faith. *See id.*

19. Pursuant to §220, the stated purposes are proper purposes for inspecting and making copies and extracts of the books and records of PMC-Sierra.

20. The documents Plaintiff seeks to inspect and make copies and extracts of are all reasonably related to the foregoing proper purposes for the Inspection Demand. The Inspection Demand is narrowly tailored to include books and records concerning: (i) alleged violations of law by the officers and directors of PMC-Sierra in connection with the Company's stock option granting practices and procedures and internal controls; and (ii) determining whether the Company's officers and directors are independent and/or disinterested and whether they have acted in good faith. *See id.*

PRAYER FOR RELIEF

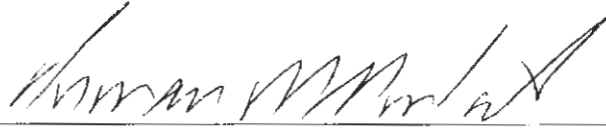
WHEREFORE, plaintiff demands judgment as follows:

A. An Order compelling PMC-Sierra, its officers, directors, employees, and/or agents immediately to permit Plaintiff, his attorneys, and/or agents to inspect and make copies and extracts of the books and records of PMC-Sierra identified in the Inspection Demand;

B. An Order requiring PMC-Sierra to pay Plaintiff's costs and expenses, including reasonable attorneys' fees, incurred in the prosecution of the §220 Action; and

C. Granting such other and further relief as the Court deems just and proper.

Rosenthal Monhait & Goddess, P.A.



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July 15, 2008