



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BRET KUKARD, Derivatively on Behalf)
of the Symantec Corporation Employee) C.A. No. _____
Stock Purchase Plan,)
) TRIAL BY JURY OF 12
) DEMANDED
)
Plaintiff,)
)
vs.)
)
)
SYMANTEC CORPORATION, FRANK)
E. DANGEARD, GERALDINE B.)
LAYBOURNE, DAVID L. MAHONEY,)
ROBERT S. MILLER, SUZANNE M.)
VAUTRINOT, and V. PAUL UNRUH,)
)
)
Defendants.)
)

Plaintiff Bret Kukard (“Plaintiff”), by his undersigned attorneys, for his derivative complaint against Defendants (defined below) alleges the following based upon personal knowledge as to his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of Defendants’ public documents, announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Symantec Corporation (“Symantec” or the “Company”), securities analysts’ reports and advisories about the Company, and information readily obtainable from public sources. Plaintiff believes that

substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. Plaintiff, derivatively on behalf of the Symantec Corporation Employee Stock Purchase Plan (“ESPP” or “Plan”), brings this action in a derivative capacity against the below-named defendants on behalf of all persons who purchased or otherwise acquired Symantec stock between May 22, 2015 and May 10, 2018 (“Relevant Period”) in the Plan. Plaintiff seeks to recover compensable damages and pursue remedies against Defendants on behalf of the Plan.

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to § 11 of the Securities Act, 15 U.S.C. §§ 77k. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, which explicitly states that “[e]xcept as provided in section 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court in the United States.” Section 16(c) of the Securities Act refers to “covered class actions,” which are defined lawsuits brought as class actions or brought on behalf of more than 50 persons asserting claims under state or common law. This is an action asserting federal law claims. Thus, it does not

fall within the definition of a “covered class action” under § 16(c) and therefore is not removable to federal court under the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”).

3. The Court has personal jurisdiction over each of the parties to this action. Defendant Symantec is subject to the jurisdiction of this Court because it is incorporated in Delaware and therefore a citizen of Delaware.

4. Venue is proper because Defendant Symantec is incorporated in Delaware.

PARTIES

5. *Plaintiff Bret Kukard* purchased Symantec stock during the Relevant Period through the Plan at artificially inflated prices and was damaged as more fully described hereunder.

6. *Defendant Symantec* provides cybersecurity solutions worldwide. The Company is incorporated in Delaware and its principal executive offices are located at 350 Ellis Street, Mountain View, California 94043. Symantec’s securities are traded on the Nasdaq Global Select Market (“NASDAQ”) under the ticker symbol “SYMC.”

7. *Defendant Frank E. Dangeard* (“Dangeard”) is a director of the Company. Defendant Dangeard signed the Plan’s Form S-8, dated October 24, 2013.

8. *Defendant Geraldine B. Laybourne* (“Laybourne”) is a director of the Company. Defendant Laybourne signed the Plan’s Form S-8, dated October 24, 2013.

9. *Defendant David L. Mahoney* (“Mahoney”) is a director of the Company. Defendant Mahoney signed the Plan’s Form S-8, dated October 24, 2013.

10. *Defendant Robert S. Miller* (“Miller”) is a director of the Company. Defendant Miller signed the Plan’s Form S-8, dated October 24, 2013.

11. *Defendant Suzanne M. Vautrinot* (“Vautrinot”) is a director of the Company. Defendant Vautrinot signed the Plan’s Form S-8, dated October 24, 2013.

12. *Defendant V. Paul Unruh* (“Unruh”) is a director of the Company. Defendant Unruh signed the Plan’s Form S-8, dated October 24, 2013.

THE COMPANY’S ESPP

13. The Form S-8, dated October 24, 2013 for the Plan states in relevant part:

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed by Symantec Corporation (the “Registrant”) with the Securities and Exchange Commission (the “Commission”), are hereby incorporated by reference in this Registration Statement:

- (a) Registrant's Annual Report on Form 10-K for the fiscal year ended March 29, 2013, filed with the Commission on May 17, 2013;
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended ("Exchange Act") since the end of the fiscal year covered by the Registrant's Annual Report referred to in (a) above; and
- (c) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A filed with the Commission on May 24, 1989 (including any amendment or report filed for the purpose of updating such description).

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

14. A Form S-8 is an SEC corporate filing filed with the SEC for the purpose of registering employer securities under an employee benefit plan and *is required to incorporate future filings.*

SUBSTANTIVE ALLEGATIONS

15. On May 22, 2015, Symantec filed its annual report on Form 10-K for the fiscal year ended April 3, 2015 ("2015 Form 10-K") with the SEC which provided the Company's annual financial results and position. The 2015 Form 10-K stated that the Company's internal control over financial reporting was effective as of April 3, 2015.

16. On May 20, 2016, Symantec filed its annual report on Form 10-K for the fiscal year ended April 1, 2016 (“2016 Form 10-K”) with the SEC which provided the Company’s annual financial results and position. The 2016 Form 10-K stated that the Company’s internal control over financial reporting was effective as of April 1, 2016.

17. On May 19, 2017, Symantec filed its annual report on Form 10-K for the fiscal year ended March 31, 2017 (“2017 Form 10-K”) with the SEC which provided the Company’s annual financial results and position. The 2017 Form 10-K stated that the Company’s internal control over financial reporting was effective as of March 31, 2017.

18. On August 16, 2017, the Company filed a Schedule 14A with the SEC (the “2017 Proxy Statement”), which set forth the Company’s Executive Compensation practices and philosophy. The 2017 Proxy Statement stated that the Company’s Executive Compensation programs provide “direct alignment with stockholders” and that the Company uses “responsible pay policies to reinforce strong governance and enhance stockholder alignment.” The 2017 Proxy Statement discussion of executive compensation states, in relevant part:

OUR EXECUTIVE COMPENSATION PHILOSOPHY AND PRACTICES

The overriding principle driving our compensation programs continues to be our belief that it benefits our employees, customers,

partners and stockholders to have management’s compensation tied to our near- and long-term performance.

Our pay programs reward achievement of challenging performance goals that align with our business strategy. We measure shorter-term results, though the majority emphasis is placed on long-term equity compensation that provides direct alignment with stockholders. We use responsible pay policies to reinforce strong governance and enhance stockholder alignment.

Base Salary	Annual Incentives	Long-Term Incentives
<ul style="list-style-type: none"> • Aligned with role, contributions, and competitive market practice • Supports attraction and retention of talent 	<ul style="list-style-type: none"> • 50% Revenue (non-GAAP) • Encourages overall company growth, a key shareholder value driver 	<ul style="list-style-type: none"> • 70% Performance Units (PRUs)* • Special 1-time design that reinforces the multi-year business transformation and aligns to stockholder value generation* • Measures Operating Income (non-GAAP) at the end of fiscal 2018 to assess achievement of growth and cost reduction goals
Pay Policies	<ul style="list-style-type: none"> • 50% Operating Income (non-GAAP) • Provides a strong focus on cost control, aligns with shareholder value growth 	<ul style="list-style-type: none"> • 30% time-vested restricted stock units (RSUs) • Promotes retention and shareholder alignment

19. The statements referenced in above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operational and financial results, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) Symantec’s internal controls over financial reporting were materially weak and deficient; (2) Symantec’s later disclosed “reporting of certain

Non-GAAP measures including those that could impact executive compensation programs” would lead to heightened regulatory scrutiny by the SEC; and (3) as a result, Symantec’s public statements were materially false and misleading at all relevant times.

THE TRUTH EMERGES

20. On May 10, 2018, the Company reported it would likely have to delay the filing of its annual report for the fiscal year ended March 30, 2018 because its Audit Committee “commenced an internal investigation in connection with concerns raised by a former employee.” The Company’s statement provides, in relevant part:

Audit Committee Investigation

The Audit Committee of the Board of Directors has commenced an internal investigation in connection with concerns raised by a former employee. The Audit Committee has retained independent counsel and other advisors to assist it in its investigation. The Company has voluntarily contacted the Securities and Exchange Commission to advise it that an internal investigation is underway, and the Audit Committee intends to provide additional information to the SEC as the investigation proceeds. The investigation is in its early stages and the Company cannot predict the duration or outcome of the investigation. The Company’s financial results and guidance may be subject to change based on the outcome of the Audit Committee investigation. It is unlikely that the investigation will be completed in time for the Company to file its annual report on Form 10-K for the fiscal year ended March 30, 2018 in a timely manner.

21. On this news, shares of Symantec fell \$9.66 per share or over 33%, from its previous closing price to close at \$19.52 per share on May 11, 2018, damaging investors.

OTHER RELEVANT NEWS

22. On May 14, 2018, the Company provided an updated statement regarding the internal investigation, disclosing that the “internal investigation [is] in connection with concerns raised by a former employee regarding the Company’s public disclosures including commentary on historical financial results, its reporting of certain Non-GAAP measures including those that could impact executive compensation programs, certain forward-looking statements, stock trading plans and retaliation.” The Company’s statement provides, in relevant part:

Symantec Provides Additional Information

Company to Discuss Fiscal Year 2019 Financial Guidance and Fiscal Year 2020 Financial Outlook on Conference Call Today

MOUNTAIN VIEW, Calif. – May 14, 2018 – Symantec Corp. (NASDAQ: SYMC) today released an updated statement regarding the ongoing internal investigation by the Audit Committee previously announced on May 10, 2018.

The Company also will provide information on its fiscal year 2019 financial guidance and fiscal year 2020 financial outlook on a conference call with the financial community to be held today.

Statement:

The Audit Committee of the Board of Directors has commenced an internal investigation in connection with concerns raised by a

former employee regarding the Company's public disclosures including commentary on historical financial results, its reporting of certain Non-GAAP measures including those that could impact executive compensation programs, certain forward-looking statements, stock trading plans and retaliation. The Audit Committee has retained independent counsel and other advisors to assist it in its investigation. The Company has voluntarily contacted the Securities and Exchange Commission to advise it that an internal investigation is underway, and the Audit Committee intends to provide additional information to the SEC as the investigation proceeds. The investigation is in its early stages and the Company cannot predict the duration or outcome of the investigation. The Company's financial results and guidance may be subject to change based on the outcome of the Audit Committee investigation. It is unlikely that the investigation will be completed in time for the Company to file its annual report on Form 10-K for the fiscal year ended March 30, 2018 in a timely manner. At this time, the Company does not anticipate a material adverse impact on its historical financial statements. [Emphasis added].

23. On May 31, 2018, Symantec received a notice (the "Notice") from The Nasdaq Stock Market LLC ("Nasdaq") stating that because the Company had not yet filed its Annual Report on Form 10-K for the fiscal year ended March 30, 2018 (the "Form 10-K"), the Company is no longer in compliance with Nasdaq Listing Rule 5250(c)(1). Nasdaq Listing Rule 5250(c)(1) requires listed companies to timely file all required periodic financial reports with the Securities and Exchange Commission. The Notice states that the Company has 60 calendar days to submit to Nasdaq a plan to regain compliance with the Nasdaq Listing Rules. If Nasdaq accepts the Company's plan, then Nasdaq may grant the Company up to 180 days from the prescribed due date for filing the Form 10-K to regain

compliance. If Nasdaq does not accept the Company's plan, then the Company will have the opportunity to appeal that decision to a Nasdaq Hearings Panel.

24. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS IN THE ALTERNATIVE

25. In the alternative, Plaintiff brings this action as a class action on behalf of a class consisting of all individuals who purchased or otherwise acquired Symantec stock pursuant to the Company's Plan during the Class Period (May 22, 2015 through May 10, 2018). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

26. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class.

27. Record owners and other members of the Class may be identified from records maintained by Symantec and may be notified of the pendency of this

action by mail, using the form of notice similar to that customary used in securities class actions.

28. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class were similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

29. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

30. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants during the Relevant Period misrepresented material facts about the financial condition, business, operations, and management of the Company;

(d) whether Defendants' public statements during the Relevant Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(e) whether Defendants caused the Company to issue false and misleading SEC filings and public statements during the Relevant Period;

(f) whether the prices of Symantec stock during period set forth herein were artificially inflated because of the Defendants' conduct complained of herein; and

(h) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

COUNT I

(Violation of Section 11 of The Securities Act Against All Defendants)

31. Plaintiff incorporates by reference and re-alleges each allegation contained above, as though fully set forth herein.

32. The Registration Statement, along with other documents it incorporates by reference was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

33. Symantec is the registrant of the Registration Statement. Defendants are responsible for the contents of the Registration Statement based upon their status as directors and/or officers of the Company and because they signed or

authorized the signing of the Registration Statement on their behalf pursuant to Sections 11(a)(1)-(3) of the Securities Act.

34. As issuer of the Symantec stock, Symantec is strictly liable to Plaintiff and members of the Plan (and the Plan itself) for the misstatements and omissions.

35. Symantec is strictly liable for the contents of the Registration Statement, and for the documents it incorporates (past and future) by reference. Defendants failed to make a reasonable investigation or to possess reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not misleading.

36. By reasons of the conduct herein alleged, each Defendant named in this Count violated Section 11 of the Securities Act.

37. Plaintiff and the Plan have sustained damages. The value of Symantec stock has declined substantially subsequent to and due to Defendants' violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

(A) A judgment awarding compensatory damages in favor of Plaintiff and the other members of the Plan against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be

proven at trial, plus pre-judgment and post-judgment interest thereon at the highest rates permissible at law or in equity;

(B) A judgment awarding Plaintiff and the members of the Plan their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

(C) In the alternative, an order determining that this action is a proper class action, designating Plaintiff as a class representative and designating Plaintiff's counsel Gainey McKenna & Egleston as Lead Counsel and O'Kelly Ernst and Joyce, LLC as liaison counsel; and

(D) A judgment awarding such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: July 13, 2018

O'KELLY ERNST & JOYCE, LLC

/s/ Ryan M. Ernst

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