

1 Robert V. Prongay (SBN 270796)  
Pavithra Rajesh (SBN 323055)  
2 **GLANCY PRONGAY & MURRAY LLP**  
1925 Century Park East, Suite 2100  
3 Los Angeles, California 90067  
4 Telephone: (310) 201-9150  
Facsimile: (310) 201-9160  
5 Email: rprongay@glancylaw.com

6 Benjamin I. Sachs-Michaels  
7 **GLANCY PRONGAY & MURRAY LLP**  
712 Fifth Avenue  
8 New York, New York 10019  
Telephone: (212) 935-7400  
9 Facsimile: (212) 756-3630  
Email: bsachsmichaels@glancylaw.com

10  
11 *Counsel for Plaintiff*

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 ANTHONY ANDERSON, Derivatively on  
Behalf of Nominal Defendant ZENDESK,  
15 INC.,

16 Plaintiff,

17 v.

18 MIKKEL SVANE, ELENA GOMEZ,  
19 NORMAN GENNARO, MICHELLE  
WILSON, CARL BASS, HILARIE  
20 KOPLOW-MCADAMS, MICHAEL  
FRANDSEN, THOMAS SZKUTAK,  
21 MICHAEL CURTIS, and CARYN  
MAROONEY,

22 Defendants.

23 and

24 ZENDESK, INC., a Delaware Corporation,

25  
26 Nominal Defendant,  
27  
28

Case No.

**VERIFIED SHAREHOLDER  
DERIVATIVE COMPLAINT**

1 Plaintiff Anthony Anderson (“Plaintiff”), by and through his undersigned attorneys, brings  
2 this derivative complaint for the benefit of nominal defendant, Zendesk, Inc. (“Zendesk” or the  
3 “Company”), against certain members of its Board of Directors (the “Board”) and certain of its  
4 officers seeking to remedy defendants’ breaches of fiduciary duties, insider trading (i.e. *Brophy*  
5 claim), and violations of § 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”).  
6 Plaintiff’s allegations are based upon his personal knowledge as to himself and his own acts, and  
7 upon information and belief, developed from the investigation and analysis by Plaintiff’s counsel,  
8 including a review of publicly available information, including filings by Zendesk with the U.S.  
9 Securities and Exchange Commission (“SEC”), press releases, news reports, analyst reports,  
10 investor conference transcripts, publicly available filings in lawsuits, and matters of public record.

11 **I. NATURE AND SUMMARY OF THE ACTION**

12 1. Zendesk is a customer service software company that offers a platform and products  
13 to unify customer communication and customer data across disparate channels and departments.

14 2. In early 2019, the Company reported strong demand for its products, leading to  
15 revenue growth of at least 38%, including in the Europe, Middle East, and Africa (“EMEA”) and  
16 Asia-Pacific (“APAC”) regions. Zendesk also emphasized the importance of data security, given  
17 the nature of its products. Though the Company warned that breaches of data security could cause  
18 Zendesk to lose customers, it suggested that its data was secure.

19 3. On July 30, 2019, Zendesk disclosed that its sales growth in the EMEA and APAC  
20 regions “lagg[ed] other regions” in second quarter 2019. Specifically, revenue growth in the EMEA  
21 region fell to 33% and growth in the APAC region fell to 31%. Regarding fiscal 2019 financial  
22 guidance, Zendesk expected ongoing revenue growth of just 30% and free cash flow of just \$35-  
23 \$45 million (compared to prior guidance of \$55-\$65 million), citing increased vendor prepayments,  
24 capital expenditures, and acquisition costs.

25 4. On this news, Zendesk’s share price fell \$9.56, or 10%, to close at \$83.56 per share  
26 on July 31, 2019, on unusually high volume.

27 5. Then, on October 2, 2019, in a blog post, Zendesk disclosed that it had experienced  
28 a data breach in 2016 involving 10,000 Support and Chat accounts that were activated prior to

1 November 1, 2016 and that Zendesk agents' email addresses, phone numbers, and passwords had  
2 been accessed.

3 6. On this news, Zendesk's share price fell \$2.90, or about 4%, to close at \$69.81 per  
4 share on October 2, 2019, on unusually heavy trading volume.

5 7. These revelations precipitated the filing of a securities class action in this District  
6 against Zendesk and certain of defendants, captioned *Reidinger v. Zendesk, Inc., et al.*, Case No.  
7 3:19-cv-06968-CRB (the "Securities Class Action").

8 8. Plaintiff did not make a litigation demand prior to filing this action because such  
9 demand would have been futile based upon the composition of the Board and the actions taken by  
10 the Board. The Board is currently composed of seven members, all of whom are named in this  
11 action. As alleged herein, Svane as Chief Executive Officer and Wilson, Frandsen, and Szkutak as  
12 members of the Audit Committee, knew that demand for the Company's products was declining yet  
13 allowed misleading statements to be disseminated. Moreover, Svane sold nearly \$20 million in  
14 Zendesk stock while in possession of material nonpublic information. Thus, more than half the  
15 members would be interested in a demand to investigate their own wrongdoing.

16 **II. JURISDICTION AND VENUE**

17 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that this  
18 Complaint states a federal question: violations of Section 10(b) of the Securities Exchange Act of  
19 1934. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant  
20 to 28 U.S.C. § 1367(a). This action is not a collusive one to confer jurisdiction on a court of the  
21 United States which it would not otherwise have.

22 10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1401 because a  
23 substantial portion of the transactions and wrongs complained of herein occurred in this District,  
24 and the Defendants have received substantial compensation in this district by engaging in numerous  
25 activities that had an effect in this District.

26  
27  
28

1 **III. PARTIES**

2 **Plaintiff**

3 11. Plaintiff Anthony Anderson purchased shares of Zendesk in February 2019 and has  
4 continuously owned his stock since that date.

5 **Nominal Defendant**

6 12. Nominal Defendant Zendesk is a Delaware corporation with its principal executive  
7 offices located at 1019 Market Street, San Francisco, CA 94103. The Company's stock trades on  
8 the New York Stock Exchange ("NYSE") under the symbol "ZEN."

9 **Defendants**

10 13. Defendant Mikkel Svane ("Svane") co-founded Zendesk and has served as its Chief  
11 Executive Officer ("CEO") since August 2007 and as Chair of its Board of Directors since January  
12 2014. Svane is a defendant in the Securities Class Action.

13 14. Defendant Elena Gomez ("Gomez") has served as Chief Financial Officer ("CFO")  
14 of the Company since May 2016. Gomez is a defendant in the Securities Class Action.

15 15. Defendant Norman Gennaro ("Gennaro") has served as President of Sales of the  
16 Company since November 2019. Prior to that, he served as Senior Vice President, Worldwide Sales  
17 from January 2018 to November 2019. Gennaro is a defendant in the Securities Class Action.

18 16. Defendant Michelle Wilson ("Wilson") has served as a director of the Company  
19 since January 2014. Wilson is a member of the Audit Committee.

20 17. Defendant Carl Bass ("Bass") has served as a director of the Company since February  
21 2016.

22 18. Defendant Hilarie Koplow-McAdams ("Koplow-McAdams") has served as a  
23 director of the Company since September 2017.

24 19. Defendant Michael Frandsen ("Frandsen") has served as a director of the Company  
25 since November 2017. Frandsen is a member of the Audit Committee.

26 20. Defendant Thomas Szkutak ("Szkutak") has served as a director of the Company  
27 since January 2019. Szkutak is the Chair of the Audit Committee.

28

1           21. Defendant Michael Curtis (“Curtis”) has served as a director of the Company since  
2 April 2019.

3           22. Defendant Caryn Marooney (“Marooney”) served as a director of the Company from  
4 January 2014 to May 2020.

5           23. The defendants named in ¶¶ 13-22 are sometimes referred to hereinafter as the  
6 “Individual Defendants.”

7 **IV. DUTIES OF THE INDIVIDUAL DEFENDANTS**

8           24. By reason of their positions as officers, directors, and/or fiduciaries of Zendesk and  
9 because of their ability to control the business and corporate affairs of Zendesk, at all relevant times,  
10 the Individual Defendants owed Zendesk and its shareholders fiduciary obligations of good faith,  
11 loyalty, and candor, and were required to use their utmost ability to control and manage Zendesk in  
12 a fair, just, honest, and equitable manner. The Individual Defendants were required to act in  
13 furtherance of the best interests of Zendesk and its shareholders so as to benefit all shareholders  
14 equally and not in furtherance of their personal interest or benefit. Each director and officer of the  
15 Company owes to Zendesk and its shareholders a fiduciary duty to exercise good faith and diligence  
16 in the administration of the affairs of the Company and in the use and preservation of its property  
17 and assets, and the highest obligations of fair dealing.

18           25. The Individual Defendants, because of their positions of control and authority as  
19 directors and/or officers of Zendesk, were able to and did, directly and/or indirectly, exercise control  
20 over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and  
21 directorial positions with Zendesk, each of the Individual Defendants had knowledge of material  
22 non-public information regarding the Company.

23           26. To discharge their duties, the officers and directors of Zendesk were required to  
24 exercise reasonable and prudent supervision over the management, policies, practices and controls  
25 of the Company. By virtue of such duties, the officers and directors of Zendesk were required to,  
26 among other things:

27  
28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.