UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BENJAMIN WASSON, individually and on behalf of all others similarly situated, Plaintiff, v. LOGMEIN, INC., WILLIAM R. WAGNER, and ROBERT BRADLEY, Defendants.	* * * * * * * * * * * * *	Civil Action No. 18-cv-12330-ADB

MEMORANDUM AND ORDER ON MOTION TO DISMISS

BURROUGHS, D.J.

Lead Plaintiffs Larry Pollock[1] and Robert Daub and named Plaintiff Benjamin Wasson (together with Pollock and Daub, "Plaintiffs") bring this putative shareholder class action against Defendant LogMeIn, Inc. ("LogMeIn" or the "Company"), Defendant William R. Wagner, and Defendant Robert Bradley (with Wagner, the "Individual Defendants," and with LogMeIn and Wagner, "Defendants"), alleging that Defendants violated federal securities laws in connection with LogMeIn's acquisition of GetGo, Inc. ("GetGo") and the transition of former GetGo customers from monthly to annual billing plans.[2] See [ECF No. 75 ("SAC")]. Currently before the Court is Defendants' motion to dismiss the Second Amended Complaint ("SAC"). [ECF No.

---

[1] Mr. Pollock passed away on January 31, 2019. [ECF No. 53].

[2] Although Edward K. Herdiech was previously a defendant, he is not named in the operative complaint. Compare [ECF No. 54 (naming Herdiech as defendant)], with [ECF No. 75 (not naming Herdiech as defendant)].

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

76]. For the reasons set forth below, the motion is GRANTED, and no further amendments will be permitted.

I. BACKGROUND

A. Factual Background

For purposes of this motion to dismiss, the Court, as it must, "accept[s] as true all well-pleaded facts alleged in the [SAC] and draw[s] all reasonable inferences therefrom in the [Plaintiffs'] favor." A.G. ex rel. Maddox v. Elsevier, Inc., 732 F.3d 77, 80 (1st Cir. 2013) (quoting Santiago v. P.R., 655 F.3d 61, 72 (1st Cir. 2011)); see InterGen N.V. v. Grina, 344 F.3d 134, 145 (1st Cir. 2003) (noting that an amended complaint "supersedes the original complaint").[3]

LogMeIn offers free and fee-based subscription software services to mobile professionals and IT service providers. [SAC ¶ 31]. It derives revenue principally from subscription fees from customers, including individual consumers, small and medium businesses, and enterprises (i.e., larger companies). [Id.]. During the class period, Wagner was LogMeIn's President and Chief Executive Officer, and Bradley was its Vice President of Investor Relations. [Id. ¶¶ 21–22].

In July 2016, LogMeIn announced plans to enter a merger agreement with GetGo, a subsidiary of one of LogMeIn's competitors. [SAC ¶ 33]. LogMeIn expected the post-merger company to generate revenue exceeding $1 billion and stated that the strategic purposes for the merger were to double the Company's revenue within three or four years, to cross-sell products

[3] Plaintiffs base the allegations in the SAC on LogMeIn's public filings and statements, analyst reports concerning the Company, and interviews with former employees. [SAC ¶ 1]. With respect to former employees, the SAC includes allegations concerning the observations and statements of six confidential witnesses. [Id. ¶¶ 25–30].

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

across both companies' customer bases, and to fill in one another's product-line gaps. [Id.]. The merger closed in late January 2017. [Id. ¶ 34].

One of the Company's top priorities after the merger was transitioning existing GetGo customers to the Company's preferred billing model. [SAC ¶ 36]. Prior to the merger, nearly all of LogMeIn's customers had annual contracts and most paid upfront for the entire year with a credit card. [Id. ¶ 43]. Additionally, its customers' annual subscriptions would automatically renew unless specifically terminated by a customer, and LogMeIn typically did not permit its customers to cancel or terminate early. [Id.]. GetGo, on the other hand, took a more flexible approach. See [id. ¶ 44]. Seventy percent of its customers were invoiced monthly, and its customers were generally permitted to end their contracts early. [Id.].

LogMeIn began transitioning GetGo's former customers to the LogMeIn billing model in Q2 2017, and it did not go well. [SAC ¶¶ 7, 46, 48]. Customers complained, on social media and to the Company, about how the Company handled the transition. [Id. ¶¶ 65–91]. Customers were dissatisfied, among other reasons, because (1) they did not receive adequate notice of the transition, [id. ¶ 65]; (2) notices that were sent led them to believe that they were being forced to transition to annual billing, [id. ¶¶ 69–77]; (3) notices were silent about the elimination of termination for convenience clauses, [id. ¶¶ 78–82]; and (4) the Company's customer service representatives were unhelpful, difficult to contact, and slow to act, [id. ¶¶ 85–90]. Some customers, unhappy with the new regime, canceled their subscriptions. [Id. ¶¶ 10, 46]. For customers with annual subscriptions, cancelation meant that the subscription would end at the conclusion of the annual period (i.e., not be renewed). [Id. ¶ 10].

Before and during the class period, LogMeIn tracked its renewal rates, both for specific products and across all product lines, but publicly reported only its gross renewal rate across all

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

products. [SAC ¶ 45]. In late July 2018, the Company reported its Q2 2018 financial results, noting that customer churn (i.e., existing customers leaving the Company) had increased, and acknowledging that customers had not responded well to the Company's transition efforts. [Id. ¶ 12]. LogMeIn downwardly adjusted its revenue projections, and its share price decreased significantly. [Id. ¶ 13].

B. Procedural Background

Plaintiffs filed their first amended complaint ("FAC") on March 1, 2019. [ECF No. 54 ("FAC")]. On October 7, 2020, the Court granted Defendants' motion to dismiss but gave Plaintiffs leave to amend with respect to two of the forty-five allegedly fraudulent statements contained in the FAC (the "Conversion Policy Statements"). [ECF No. 72 at 35]. In its Order granting the motion (the "MTD Order"), the Court found that Plaintiffs' allegations regarding those two statements, which both concerned the transitioning of customers to annual payment plans, presented "close call[s]," but ultimately concluded that Plaintiffs' factual allegations, with respect to both falsity and scienter, were insufficient to withstand Defendants' motion. [Id. at 28–34].

On November 11, 2020, Plaintiffs filed the SAC, which brings a claim against Defendants for violations of § 10(b) of the Securities and Exchange Act of 1934 (the "Exchange Act") and a claim against the Individual Defendants for a violation of § 20(a) of the Exchange Act. [SAC ¶¶ 2, 148, 163–80]. Plaintiffs' core assertion is that the Company used overly aggressive methods to transition customers to an annual subscription plan, quickly realized that customers were dissatisfied with that approach and, as a result, were canceling their subscriptions, but nonetheless publicly reported that the transition was going well until finally coming clean in July 2018. See [id. ¶¶ 4–14]. Defendants moved to dismiss on December 16,

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

2020, [ECF No. 76], Plaintiffs opposed on January 20, 2021, [ECF No. 80], and Defendants replied on February 9, 2021, [ECF No. 83].

II. LEGAL STANDARD

> Section 10(b) of the Securities Exchange Act of 1934 forbids the "use or employ, in connection with the purchase or sale of any security . . . , [of] any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors."

Tellabs, Inc. v. Makor Issues & Rts., Ltd., 551 U.S. 308, 318 (2007) (alterations in original) (quoting 15 U.S.C. § 78j(b)). In turn, SEC Rule 10b-5 implements § 10(b) by declaring it unlawful, "in connection with the purchase or sale of any security,"

> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

17 C.F.R. § 240.10b-5. Therefore,

> a complaint alleging securities fraud under section 10(b) of the Exchange Act and Securities and Exchange Commission Rule 10b-5 must plead six elements: "(1) a material misrepresentation or omission; (2) scienter, or a wrongful state of mind; (3) a connection with the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation."

Kader v. Sarepta Therapeutics, Inc., 887 F.3d 48, 56 (1st Cir. 2018) (quoting ACA Fin. Guar. Corp. v. Advest, Inc., 512 F.3d 46, 58 (1st Cir. 2008)).[4]

---

[4] "Claims brought under section 20(a) of the [Securities Exchange] Act, 15 U.S.C. § 78t(a), are derivative of 10b-5 claims." Hill v. Gozani, 638 F.3d 40, 53 (1st Cir. 2011). Section 20(a) provides that once a company has been found to have violated the Exchange Act's substantive provisions, "[e]very person who, directly or indirectly, controls" the company "shall also be liable jointly and severally with and to the same extent as [the company] . . . unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action." 15 U.S.C. § 78t(a). Accordingly, to plead a viable

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

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.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase® Smarter legal research.