

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

AUSTIN COHEN,

Plaintiff,

v.

INPHI CORPORATION, DIOSDADO P.
BANATAO, DR. FORD TAMER, NICHOLAS E.
BRATHWAITE, DR. CHENMING C. HU, DR.
DAVID LIDDLE, DR. BRUCE MCWILLIAMS,
ELISSA MURPHY, WILLIAM J. RUEHLE, and
SAM S. SRINIVASAN,

Defendants.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, Austin Cohen (“Plaintiff”), by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel, as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This is an action brought by Plaintiff against Inphi Corporation (“Inphi” or the “Company”) and the members of the Company’s board of directors (collectively referred to as the “Board” or the “Individual Defendants” and, together with Inphi, the “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a) and Rule 14a-9, 17 C.F.R. § 240.14a-9. Plaintiff’s claims arise in connection with the proposed merger between Inphi, Marvell Technology Group Ltd. (“Marvell”), Marvell Technology, Inc. (“HoldCo”), a wholly-owned subsidiary of Marvell, Maui Acquisition Company Ltd (“Bermuda Merger Sub”), a wholly-owned subsidiary of HoldCo, and Indigo Acquisition Corp. (“Delaware Merger Sub”), another wholly-owned subsidiary of HoldCo (“Proposed Transaction”).

Plaintiff also asserts a claim against the Individual Defendants for breaching their fiduciary duty of candor/disclosure under state law.

2. On October 29, 2020, Inphi entered into an agreement and plan of merger with Marvell, HoldCo, Bermuda Merger Sub, and Delaware Merger Sub (“Merger Agreement”), whereby: (i) Bermuda Merger Sub will be merged with and into Marvell, with Marvell continuing as a wholly-owned subsidiary of HoldCo; and (ii) Delaware Merger Sub will be merged with and into Inphi, with Inphi continuing as a wholly-owned subsidiary of HoldCo.

3. Upon consummation of the Proposed Transaction, each share of Inphi common stock will be converted into the right to receive: (i) \$66.00 in cash; and (ii) 2.323 shares of HoldCo common stock (“Merger Consideration”).

4. On December 22, 2020, in order to convince Inphi public common shareholders to vote in favor of the Proposed Transaction, the Defendants authorized the filing of a materially incomplete and misleading Form S-4 Registration Statement (“Registration Statement”) with the SEC, in violation of Sections 14(a) and 20(a) of the Exchange Act.

5. In particular, the Registration Statement contains materially incomplete and misleading information concerning: (i) the financial projections prepared by Inphi management; and (ii) the valuation analyses performed by the Company’s financial advisor, Qatalyst Partners LP (“Qatalyst Partners”).

6. The Proposed Transaction is expected to close in the second half of 2021, so the special meeting of Inphi shareholders to vote on the Proposed Transaction is imminent (“Shareholder Vote”). Therefore, it is imperative that the material information omitted from the Registration Statement be disclosed prior to the Shareholder Vote, so Inphi’s shareholders can properly exercise their corporate voting rights.

7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against

Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9. Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction, unless and until the material information discussed below is disclosed to Inphi shareholders sufficiently in advance of the upcoming Shareholder Vote or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

9. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over each Defendant by this Court permissible under the traditional notions of fair play and substantial justice. "Where a federal statute such as Section 27 of the [Exchange] Act confers nationwide service of process, the question becomes whether the party has sufficient contacts with the United States, not any particular state." *Sec. Inv'r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315 (9th Cir. 1985). "[S]o long as a defendant has minimum contacts with the United States, Section 27 of the Act confers personal jurisdiction over the defendant in any federal district court." *Id.* at 1316.

10. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as 28 U.S.C. § 1391, because Defendants are found or are inhabitants or transact business in this District. Indeed, Inphi's common stock trades on the NasdaqGS, which is headquartered in this District. *See, e.g., United States v. Svoboda*, 347 F.3d 471, 484 n.13 (2d Cir. 2003) (collecting cases). In addition, the Company's proxy solicitor, Mackenzie Partners, Inc. is

located in this District at 1407 Broadway, New York, NY 10018.

PARTIES

11. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Inphi common stock.

12. Defendant Inphi is a public company incorporated under the laws of Delaware with principal executive offices located at 110 Rio Robles, San Jose, CA 95134. Inphi's common stock trades on the NasdaqGS under the ticker symbol "IPHI."

13. Defendant Diosdado P. Banatao is, and has been at all relevant times, a director of the Company and Chairman Emeritus of its Board.

14. Defendant Dr. Ford Tamer is, and has been at all relevant times, a director of the Company, its President, and Chief Executive Officer.

15. Defendant Nicholas E. Brathwaite is, and has been at all relevant times, a director of the Company.

16. Defendant Dr. Chenming C. Hu is, and has been at all relevant times, a director of the Company.

17. Defendant Dr. David Liddle is, and has been at all relevant times, a director of the Company.

18. Defendant Dr. Bruce McWilliams is, and has been at all relevant times, a director of the Company.

19. Defendant Elissa Murphy is, and has been at all relevant times, a director of the Company.

20. Defendant William J. Ruehle is, and has been at all relevant times, a director of the Company.

21. Defendant Sam S. Srinivasan is, and has been at all relevant times, a director of the

Company.

22. The defendants identified in paragraphs 13 through 21 are collectively referred to herein as the “Board” or the “Individual Defendants,” and together with the Company, the “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background of the Company, Marvell, and the Proposed Transaction

23. Inphi provides high-speed analog and mixed signal semiconductor solutions for the communications, datacenter, and computing markets in China, the United States, Thailand, and internationally. Its analog and mixed signal semiconductor solutions offer high signal integrity at various data speeds and reduce system power consumption. The Company’s semiconductor solutions address bandwidth bottlenecks in networks, maximize throughput and minimize latency in computing environments, and enable the rollout of communications and datacenter infrastructures. Its solutions provide a high-speed interface between analog and mixed signals, and digital information in high-performance systems, such as telecommunications transport systems, enterprise networking equipment, and data centers. The Company also provides 25G to 600G high-speed analog and mixed semiconductor solutions for the communications market. Its products perform a range of functions, such as amplifying, encoding, multiplexing, demultiplexing, and retiming signals at speeds up to 400 Gbps. Inphi sells its products directly through its sales force, as well as through a network of sales representatives and distributors to original equipment manufacturers.

24. Marvell first revolutionized the digital storage industry by moving information at speeds never thought possible. Today, that same breakthrough innovation remains at the heart of the company’s storage, processing, networking, security and connectivity solutions. With leading intellectual property and deep system-level knowledge, Marvell’s semiconductor solutions continue to transform the enterprise, cloud, automotive, industrial and consumer markets.

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