

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KAREN SBRIGLIO and FIREMEN’S  
RETIREMENT SYSTEM OF ST.  
LOUIS, derivatively on behalf of  
Nominal Defendant FACEBOOK, INC.,

Plaintiffs,

v.

C. A. No. 2018-0307-JRS

MARK ZUCKERBERG, SHERYL  
SANDBERG, MARC ANDREESSEN,  
ERSKINE B. BOWLES, SUSAN  
DESMOND-HELLMANN, REED  
HASTINGS, JAN KOUM, PETER A.  
THIEL, and  
PRICewaterhouseCOOPERS,  
LLP,

Defendants,

and

FACEBOOK, INC.,

Nominal Defendant.

**CALIFORNIA STATE TEACHERS’ RETIREMENT SYSTEM’S  
 (“CALSTRS”) MOTION FOR INTERVENTION TO LIFT THE STAY FOR  
 THE LIMITED PURPOSE OF ADDING CALSTRS  
 AS A PARTY PLAINTIFF**

1. Proposed Intervenor, the California State Teachers’ Retirement System (“CalSTRS”), respectfully moves this Court, under Rule 24 of the Court of Chancery, to lift the stay ordered on December 17, 2018, for the limited purpose of

allowing CalSTRS to be named as a party plaintiff in the above-captioned action (“Action”).

2. CalSTRS seeks to intervene in the Action pursuant to Court of Chancery Rule 24(b) which provides, in pertinent part that:

Upon timely application anyone may be permitted to intervene in an action . . . when an applicant’s claim or defense and the main action have a question of law or fact in common. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Del. Ch. Ct. R. 24(b)(2).

3. Rule 24(b) contains the “less exacting [intervention] standard[,]” which allows intervention where the proposed intervenor’s claim has a question of law or fact in common with the main action. *In re Interstate Gen. Media Holdings, LLC*, No. 9221-VCP, 2014 WL 1364938, at \*3 (Del. Ch. Apr. 7, 2014) (granting intervention pursuant to Rule 24(b)); *Speiser v. Baker*, 525 A.2d 1001, 1005 n.2 (Del. Ch. 1987) (“if the proposed intervenors are in fact Chem stockholders, I see no reason to deny the application even if it were deemed to be governed by the standards of permissive intervention.”).

4. “[T]he Delaware courts embrace a liberal policy of allowing intervention,” and such “[i]ntervention [] should be liberally allowed if the proposed intervention will improve and strengthen the representation of the putative class and will not prejudice the defendants.” *Franklin Balance Sheet Inv. Fund v. Crowley*,

No. 888-N, 2006 WL 3095952, at \*3 (Del. Ch. Oct. 19, 2006); *Joseph v. Shell Oil Co.*, No. 7450, 1984 WL 19480, at \*1 (Del. Ch. July 13, 1984); *see also In re Ebix, Inc. Stockholder Litig.*, No. 8526-VCS, Hr'g. Tr., E-File 61932844, at 64:8-15, 133:12-23, 143:4-6 (Del. Ch. Apr. 2, 2018) (Slights, V.C.) (deeming a motion for joinder to be a motion for intervention of party plaintiff and granting intervention of party plaintiff in derivative action); *Bruno v. W. P. R. Co.*, No. 7250, 1984 WL 19477, at \*2 (Del. Ch. Feb. 8, 1984) (“the claims of the proposed intervenor have questions of law and fact which are common to the claims or defenses now being asserted in this action. . . . the proposed intervention will not unduly delay or prejudice the rights of the original parties. . . . the proposed intervenor should be permitted to intervene.”); *Krapf v. Holiday Health Clubs, Inc.*, No. 7238, 1984 WL 21878, at \*1 (Del. Ch. Dec. 27, 1984) (same).

5. As set forth below, CalSTRS’s motion for intervention is timely, CalSTRS clearly shares common questions of law and facts with the plaintiffs in the Action, and there will be no undue delay or prejudice to the adjudication of the rights of the original parties in the Action. Accordingly, CalSTRS’s motion should be granted.

**A. CalSTRS Seeks To Lift The Stay For A Limited Purpose**

6. On December 17, 2018, the Court stayed the Action pending the outcome of a parallel shareholder 220 action. *Sbriglio v. Zuckerberg*, No. 2018-

0307-JRS, Hr'g. Tr., E-File 62830667, at 53:16 – 64:20 (Del. Ch. Dec. 17, 2018) (“Stay Hr'g. Tr.”). At the time of the stay, the Court stated that the stay could be lifted for good cause shown. *Id.*, 64:11-12.

7. “It is well settled that the trial court has discretion to resolve scheduling issues and to control its own docket.” *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1107 (Del. 2006) (internal quotation omitted);<sup>1</sup> *see also Ezzes v. Ackerman*, 234 A.2d 444, 446-47 (Del. 1967) (“the grant or denial of a stay is solely within the discretion of the trial court”).

8. It is also well settled Delaware law that “[a]s with any stay ruling, the court should remain flexible and open to revisiting the situation as events develop.” *Brenner v. Albrecht*, No. 6514-VCP, 2012 WL 252286, at \*7 (Del. Ch. Jan. 27, 2012) (quoting *Brudno v. Wise*, No. 19953, 2003 WL 1874750, at \*5 (Del. Ch. Apr. 1, 2003)); *see also Mickman v. Am. Intern. Processing, L.L.C.*, No. 4368-VCP, 2011 WL 809482, at \*3 n.24 (Del. Ch. Feb. 23, 2011) (granting “limited lifting of [] stay” for particular purposes).

9. CalSTRS, as a large institutional investor generally, and a large Facebook shareholder specifically, seeks to partake in this Action and exercise its rights as a shareholder.

10. As the Court stated, the effects of the stay entered are that:

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<sup>1</sup> All internal citations and quotations omitted unless otherwise stated.

the stay of the litigation is really just a stay of filings. If you-all are talking, you should continue to talk. I would encourage that. And if there is production occurring off-line, meaning outside of the context of litigation, I certainly encourage that as well. That makes, in fact, a lot of sense to me.

Stay Hr'g. Tr., at 66:7-13.

11. Lifting the stay for the limited purpose of allowing CalSTRS to be added as a party plaintiff in this Action now will allow CalSTRS to participate in the ongoing conversations encouraged by the Court. *See* Stay Hr'g. Tr., at 66:7-13. Intervention now will also avoid delay of addressing these same issues at a later date, and is timely given that the litigation was stayed at the pleading stage.

12. Additionally, no party will suffer any prejudice or harm from lifting the stay for the limited purpose of naming CalSTRS as an additional party plaintiff. *See In re Freeport-McMoRan Copper & Gold Inc. Deriv. Litig.*, No. 8145-VCN, 2013 WL 616296, at \*2 (Del. Ch. Feb. 14, 2013) (allowing intervention where “[t]here is no reason to believe that allowing intervention will delay this action or prejudice the current parties.”).

13. Thus, this motion is supported by adequate good cause. *See Brenner*, 2012 WL 252286, at \*4 (consideration of whether to stay or lift a stay in an action is based on “economies of time and effort for the court, litigants and counsel.”); *see also In re Molycorp, Inc. Shareholder Deriv. Litig.*, No. 7282-VCN, 2014 WL 1891384, at \*1 (Del. Ch. May 12, 2014) (“The Court may lift the Stay upon a

showing of good cause by any party or on its own initiative”); *In re Bay Hills Emerging Partners I, L.P.*, No. 2018-0234-JRS, 2018 WL 3217650, at \*10 (Del. Ch. July 2, 2018) (Slights, V.C.) (same).

**B. CalSTRS Should Be Permitted To Be Named As An Additional Party Plaintiff**

14. CalSTRS has continuously held shares of Facebook, Inc. common stock throughout the wrongs alleged in the First Amended Verified Stockholder Derivative Complaint, filed in this Action (“Complaint”), and seeks to assert similar claims against those defendants as asserted by Plaintiffs Karen Sbriglio and the Firemen’s Retirement System of St. Louis (“Plaintiffs”) in the Action. *See* Affidavit of Kirsty Jenkinson, attached hereto as Exhibit 1.

15. Intervention of CalSTRS in order to be added as a party plaintiff is proper given that CalSTRS is represented by the same counsel as Plaintiffs in this Action and has directed its counsel to pursue on its behalf the claims stated in Complaint. Thus, by definition, CalSTRS’s claims have questions of law and fact in common with the asserted claims in the Action. *In re Crimson Expl. Inc. Stockholder Litig.*, No. 8541-VCP, 2014 WL 5449419, at \*28 (Del. Ch. Oct. 24, 2014) (noting that intervenor’s “motion satisfies the commonality requirement in that he asserts the same breach of fiduciary duty claims”); *Freeport-McMoRan*, 2013 WL 616296, at \*2 (“intervention clearly would be appropriate” where “Proposed Intervenor’s desire to pursue substantially the same claims”).

16. Under these circumstances, CalSTRS need not file a pleading in intervention, as contemplated by Rule 24(c). *See Smollar v. Potarazu*, No. 10287-VCS, 2016 WL 3910863, at \*1 (Del. Ch. June 29, 2016) (Slights, V.C.) (intervention of representative plaintiffs in derivative action granted as relating back to the original complaint); *Freeport-McMoRan*, 2013 WL 616296, at \*2 n.13 (intervenor need not file pleading where motion paper “clearly share the same focus as the [] Plaintiffs’ filings.”); *Young v. Janas*, 136 A.2d 189, 190 (Del. Ch. 1954) (allowing intervention, noting that “the intervenor’s complaint will be identical with that already filed.”).

17. Naming CalSTRS as an additional plaintiff is also proper given that no party will be prejudiced thereby as explained above. Plaintiffs Karen Sbriglio and the Firemen’s Retirement System of St. Louis consent to CalSTRS being named as a party plaintiff in this Action. *Haft v. Dart Group Corp.*, No. 13736, 1994 WL 705194, at \*2 (Del. Ch. Dec. 8, 1994) (granting permissive joinder, “accord[ing] weight” to parties consent).

18. Moreover, CalSTRS as an additional party plaintiff will not result in any delay of the proceedings. *Freeport-McMoRan*, 2013 WL 616296, at \*2 (allowing intervention where “[t]here is no reason to believe that allowing intervention will delay this action or prejudice the current parties.”).

WHEREFORE, Proposed Intervenor CalSTRS respectfully requests entry of the proposed order filed herewith, permitting CalSTRS to intervene to be added as a party plaintiff in the above-captioned Action.

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**Words: 1,517**

Dated: August 20, 2019

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