

# *Employees' Retirement System of Rhode Island v. Paul Marciano et al.*

**COURT:** Delaware Court of Chancery  
**CASE NUMBER:** 2022-0839-NAC  
**CASE LEADERS:** Rebecca E. Boon, Jeroen van Kwawegen, Gregory V. Varallo  
**CASE TEAM:** Mae Oberste

This stockholder derivative action sought damages on behalf of Guess, Inc. ("Guess") related to allegations of sexual misconduct against Guess co-founder Paul Marciano. On September 19, 2022, BLB&G initiated this lawsuit. To view the public version of the Complaint, see the **Case Documents** section of this page.

In 2018, after the #MeToo movement caused many companies to revisit their sexual harassment policies, Kate Upton and several other models levied high-profile accusations of sexual harassment and assault against Marciano. At the time, Marciano was Executive Chairman of Guess's Board of Directors. In response to these allegations, the Board of Directors formed a special committee to conduct an investigation. In June 2018, the special committee concluded that plausible allegations of improper conduct "could, and did, arise."

Immediately following the investigation, Guess removed Marciano as a corporate officer and Executive Chairman of the Board. The company also adopted specific anti-harassment policies. But Marciano was permitted to stay on as a member of the Board. Just a few months later, in January 2019, Guess reinstated Marciano as its Chief Creative Officer, a position that enabled Marciano to continue harassing Guess models. Since January 2019, several women have come forward to accuse Marciano of sexual harassment and assault. Despite multiple allegations of harassment, the Board of Directors has continued to protect Marciano.

The Complaint asserted breach of fiduciary duty claims against Marciano in his capacities as an officer, director, and controlling stockholder of Guess. In support of this claim, the Complaint alleged that Marciano propositioned potential Guess models for modeling contracts in exchange for sexual favors, terminated or rejected models' employment opportunities if they refused his unwanted advances, and offered hush money to models to ensure that his misconduct would not be revealed.

The Complaint also asserted breach of fiduciary duty claims against Guess's other directors. These alleged breaches are the result of the directors willfully ignoring models' allegations of Marciano's sexual abuse. Moreover, the other directors allowed Marciano to maintain his seat on the Board and serve out his term of employment as Chief Creative Officer after the investigation in 2018 found evidence of plausible allegations of sexual misconduct.

In October 2023, Plaintiff, Defendants, and Guess together reached a proposed settlement of this action. Under the terms of the settlement, Guess will adopt corporate governance reforms including (1) implementing a sexual harassment policy that will protect Guess models and prospective models from sexual harassment and abuse, (2) the creation of a Diversity, Equity, and Inclusion Committee that will review reported violations of the sexual harassment policy and recommend appropriate consequences to Guess's board of directors, and (3) appointing two new, independent directors to Guess's board. These corporate governance reforms provide meaningful protections against the sexual harassment or abuse of Guess's models and prospective models and ensure Guess will enforce those protections. Additionally, the parties agreed to payments by Defendants and insurers totaling \$30 million

dollars to settle the action. The terms of settlement are described more fully in the Notice of Pendency and Proposed Settlement of Stockholder Derivative Action, which is available under the **Case Documents** section of this page.

On January 4, 2024, the Court approved the terms of the settlement. The Court's Order and Final Judgment dated January 5, 2024 can be found under the **Case Documents** section of this page.

## Case Documents

- January 5, 2024 - Granted Order and Final Judgement
- October 26, 2023 - Notice of Pendency and Proposed Settlement of Stockholder Derivative Action
- October 12, 2023 - Stipulation and Agreement of Compromise, Settlement, and Release
- September 22, 2022 - Verified Stockholder Derivative Complaint