

Fouad v. Isilon Systems, Inc., et al.

COURT: United States District Court, Western District of Washington
CASE NUMBER: 07-cv-1764
JUDGE: Hon. Marsha J. Pechman
CLASS PERIOD: 12/14/2006 - 11/08/2007

This is a class action on behalf of all persons who acquired the common stock of Isilon Systems, Inc. ("Isilon" or the "Company") pursuant or traceable to the Company's initial public offering ("IPO") on December 14, 2006, and on behalf of all persons who acquired the Company's stock between December 14, 2006 and November 8, 2007 (the "Class Period").

On February 4, 2008, the Honorable Marsha J. Pechman consolidated related actions and appointed Dr. Magdy Fouad as Lead Plaintiff. A Consolidated Class Action Complaint ("Complaint") was filed on April 18, 2008. BLB&G is Counsel for named Plaintiff Southwest Carpenters Pension Trust.

Isilon, headquartered in Seattle, Washington, is a provider of clustered storage systems for digital content, including video and audio. The Company's storage systems are composed of three or more nodes that are integrated with Isilon's operating system software, which unifies the nodes into a single shared resource. The Complaint alleges federal securities claims against the Company; several of its current and former officers and directors; the underwriters for the IPO; and three venture capital firms that collectively beneficially owned 69.8% and 60.2% of the shares of Isilon immediately before and after the IPO, respectively.

The Complaint alleges that, in connection with the IPO, the registration statement and accompanying prospectus contained materially false and misleading statements and omissions regarding Isilon's sales, revenues, earnings, and financial condition. Moreover, Plaintiffs allege that, throughout the Class Period, Defendants issued materially false and misleading statements regarding sales, revenue, accounts receivable, earnings, Isilon's overall financial condition, and the Company's prospects. The Complaint alleges that Defendants engaged in a variety of improper revenue recognition practices to inflate the Company's financial results artificially.

In February 2008, the Company announced that its Audit Committee had identified numerous errors in the Company's recognition of revenue, and the Company was forced to restate its financials for 2006 and the first two quarters of 2007. The restatement indicated that revenue was recognized prematurely on certain transactions and that revenue should not have been recognized at all for others. In all, the restated financials reduced previously reported revenue by almost \$7 million, or over 15% of that originally reported. Moreover, the restatement noted that the Audit Committee had found evidence that Isilon's former chief executive officer, former chief financial officer, and former vice president of North America sales all participated directly in certain of the transactions leading to the restatement.

As a result of Defendants' false and misleading statements, Isilon's stock price climbed 77% immediately following the IPO, and it subsequently climbed as high as \$27.37 per share on December 29, 2006. Between February and November of 2007, however, as the truth began to emerge regarding the Company's financial condition and the risks of the fraud materialized, the inflation was removed from Isilon's stock and the price collapsed. When the Company finally announced on November 8, 2007 that the Audit Committee was reviewing certain sales to customers, the timing and treatment of revenue recognition, and whether the Company's internal controls related to revenue recognition were sufficient, the price of Isilon shares opened the next day at \$4.65 per share, a fraction of the Class Period high.

Defendants moved to dismiss the Complaint, and on December 29, 2008, the Court entered an order upholding the majority of the claims. While the Court dismissed the claims against the venture capital firms and claims against two

outside directors, it sustained claims against Isilon, its former CEO and CFO, various directors, and various underwriters of Isilon's IPO. Discovery began, and the Court scheduled trial to commence on May 16, 2011.

After negotiations overseen by a mediator, on October 23, 2009, Plaintiffs and Defendants entered into a stipulation of settlement and agreed to resolve the remaining claims against the Defendants for a payment to the class of \$15 million, subject to Court approval. On November 2, 2009, the Court entered an order preliminarily approving the settlement, authorizing notice to the class, and scheduling a settlement fairness hearing on March 5, 2010. Following the hearing on March 5, 2010, the Court granted final approval to the terms of the settlement.