

IN THE U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

COLLEEN A. GRAHAM,

Complainant,

v.

CREDIT SUISSE SECURITIES, ET AL.,

Respondents.

Case No. 2019-SOX-00040

SIGNAC'S MOTION FOR A STAY OF THE CASE AND FOR DISMISSAL OR
SUMMARY DECISION

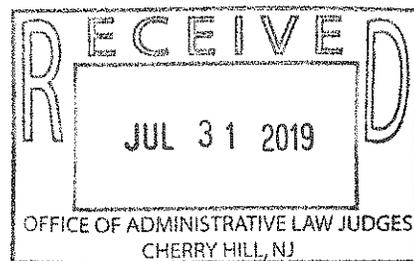


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INTRODUCTION

The basis for dismissal of the Complaint in this matter is straightforward and obviates the need for any discovery. Ms. Graham has not alleged (nor can she allege) the requisite elements of a prima facie whistleblower retaliation claims under 18 U.S.C. § 1514A of the Sarbanes-Oxley Act (“SOX”). Ms. Graham’s claim appears to hinge on the theory that she suffered retaliation after refusing to give in to “pressure” by Credit Suisse First Boston Next Fund, Inc. (“CSFB Next”) and Credit Suisse Securities (USA) LLC (“Credit Suisse”) (together, the “Credit Suisse Respondents”) and Palantir Technologies Inc. (“Palantir”) to distort facts relative to Signac LLC’s (“Signac”) revenue recognition. In truth, Ms. Graham (1) led the charge at Signac to try to advocate for the very revenue recognition practice that she now claims she opposed; (2) never voiced any opposition or disagreement with regard to that revenue recognition position; and (3) never actually reported this purportedly illegal conduct to the appropriate entities under SOX. With no allegations of “protected activity” and no allegations of reporting any of the alleged illegal activities to any of the individuals or entities required by statute, Ms. Graham’s SOX claim falls flat and should be dismissed.

BACKGROUND

Signac was a joint venture formed by Palantir and the Credit Suisse Respondents in 2016 to build, test, and market a product to help financial institutions identify rogue traders. Signac is now a dissolved entity. It has no employees or business operations – just lawyers managing the wind-down of the business.

As set forth below, Signac joins in certain arguments made in the Credit Suisse Respondents’ Memorandum of Law in Support of their Motion to Dismiss (the “CS Motion”) and Palantir’s Motion for a Stay of the Case and for Dismissal or Summary Decision (the “Palantir Motion”), and seeks a stay of the case pending resolution of the Respondents’ motions as well as

dismissal or summary decision in Signac's favor. In the interest of judicial efficiency, rather than restating the factual background here, Signac incorporates by reference all relevant factual background set forth in the Palantir and CS Motions.

ARGUMENT

This court has the authority to dismiss all or part of a claim for any "reasons recognized under controlling law," including "failure to state a claim upon which relief can be granted." 29 C.F.R. § 18.70(c). It may also grant summary disposition at any time, so long as it finds that "there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." *Id.* § 18.72(a). Here, it is plain from the face of the Complaint that Ms. Graham has failed to properly plead the elements necessary for a retaliation claim under Section 806 of SOX. Accordingly, this Court should dismiss Ms. Graham's Complaint in its entirety. In the interim, while considering this motion, this Court should stay the case so Signac is not forced to incur the costs of discovery and otherwise defending a meritless claim.

I. The Entire Case Should Be Dismissed For The Reasons Articulated In the Credit Suisse Respondents' Motion To Dismiss.

As is set forth in the CS Motion, the Credit Suisse Respondents have moved to dismiss Ms. Graham's Complaint. Two of the independent reasons for dismissal set forth in their brief apply with equal force to the claim against Signac, which are the following: (1) Ms. Graham did not reasonably believe that any of the Respondents violated a relevant fraud or securities law because Signac abided by KPMG's accounting recommendation; and (2) Ms. Graham does not qualify as a whistleblower because she did not report to one of the people identified in Section 1514A.

Signac joins in the CS Motion on these two points and incorporates by reference all relevant factual and legal recitations provided therein. First, while Ms. Graham has stated in a conclusory manner that she refused to participate in conduct she believed violated securities laws, Ms. Graham

has failed to allege facts sufficient to explain what actions by Respondents led to her believe that there was a violation of law occurring. Going further, Ms. Graham has not even identified what the laws are that were purportedly violated. This is plainly insufficient to state a claim under SOX. Second, Ms. Graham fails to set forth any allegation that she ever reported these supposed violation of securities law to any entity or person that meets the statutory requirements. As this is the *sine qua non* of whistleblowing, her claim must be dismissed as a matter of law. Accordingly, because the allegations in the Complaint fail to state a claim against the Credit Suisse Respondents, they also fail to state a claim against Signac for retaliation under SOX.

II. The Case Should Be Stayed For the Reasons Articulated in Palantir's Motion To Stay.

As is set forth in Palantir's Motion, the equities of this case uniformly favor a stay prior to a decision on the motions to dismiss, and Signac hereby incorporates by reference all relevant factual and legal recitations provided therein. Both CS and Palantir Motions present a dispositive issue, that if resolved in favor of Respondents brings an end to this case. Resolving these issues requires no further factual development. As such, Signac respectfully joins Palantir's Motion to stay discovery pending a decision on the motions to dismiss that have been filed by Respondents.

CONCLUSION

For the foregoing reasons, this Court should stay the case pending a decision on Signac's motion and then either dismiss the Complaint or grant summary decision in its favor.

July 29, 2019

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 30, 2019, the original and a copy of **SIGNAC'S MOTION FOR A STAY OF THE CASE AND FOR DISMISSAL OR SUMMARY DECISION** were served by Federal Express on the following:

Hon. Theresa C. Timlin
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U.S. Department of Labor
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