

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	No. 1:19-cv-1659
)	
CELADON GROUP, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”) alleges:

1. Between June 2016 and April 2017, defendant Celadon Group, Inc. (“Celadon” or “Defendant”) orchestrated a fraudulent scheme designed to avoid disclosing substantial losses. The fraud involved a series of deceptive third-party transactions and Celadon’s subsequent filing of false financials for public consumption with the SEC.

2. The assets in question were more than a thousand trucks. Celadon held certain trucks on its books at values far in excess of what they could fetch in arms-length transactions. Had the company sold these vehicles on the open market, such sales would have necessitated Celadon booking significant losses on its financial statements amounting to tens of millions of dollars.

3. Faced with this prospect, Celadon arranged a series of transactions with a third party, through which it sold trucks at significantly inflated prices, and in exchange bought trucks from the same party at similarly inflated prices. Celadon then put the trucks it bought on its books at the inflated values it paid. This resulted in the dissemination of false financial information to the public.

4. Celadon then transferred the new batch of trucks to an off-book entity at the fraudulently inflated values. Having dumped the trucks from its books, Celadon then filed inaccurate financial statements with the SEC that included its investment in the off-book entity at an inflated value. When its auditors asked questions about this sketchy sequence of transactions, Celadon lied and failed to disclose critical facts.

5. The SEC brings this civil law enforcement action to hold Celadon accountable for its wrongdoing.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Section 21 of the Exchange Act [15 U.S.C. § 78u].

7. This Court has jurisdiction over this action pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

8. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Acts, practices and courses of business constituting violations alleged herein have occurred within the jurisdiction of

the United States District Court for the Southern District of Indiana and elsewhere. Further, Defendant is located within the Southern District of Indiana.

9. Defendant directly and indirectly made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein.

DEFENDANT

10. Defendant Celadon Group, Inc. is a Delaware company with its principal place of business in Indianapolis, Indiana. During the relevant period, Celadon's common stock was registered with the SEC and traded on the New York Stock Exchange. That stock exchange has since delisted Celadon's common stock. Its common stock now trades on the OTC Pink Marketplace.

OTHER PARTIES

11. During the relevant period, Quality Companies, LLC, an Indiana limited liability company, formerly Quality Equipment Leasing, LLC, ("Quality"), was a wholly-owned subsidiary of Celadon.

12. 19th Capital Group, LLC ("19th Capital"), a Delaware limited liability company, was a joint venture between Celadon and another entity ("co-venturer").

FACTS

13. In 2016, Celadon described itself as one of North America's largest truckload freight transportation providers. It offered its customers point-to-point shipping within the United States, between the United States and Mexico, and between the United States and Canada. Celadon transported its customers' goods using its fleet of trucks. In 2016 it owned more than 1500 tractor trucks – the front of a “tractor trailer” containing the engine. (In this complaint, tractor trucks are referred to simply as “trucks.”)

14. In light of the trucks' high maintenance costs, Celadon developed a cost-containment strategy. Part of this strategy involved Celadon continuously refreshing its fleets, as newer trucks cost less to maintain.

15. Celadon then sought to monetize the older trucks. It delegated this responsibility to Quality, its wholly-owned subsidiary.

16. By the end of Celadon's fiscal year 2016, Quality, with over 11,000 trucks under management, had become a significant part of Celadon's business. As of that time, Quality maintained over 1,000 trucks in its own portfolio.

17. In mid-2016, Quality had a problem: the “net book value” for many of its trucks – that is, the value that Quality and Celadon had attributed to the trucks in their internal bookkeeping – greatly exceeded the amount the trucks could have actually been sold for in the open market. Therefore, if Quality sold these trucks for less than its net book value, Celadon – as Quality's

parent corporation – would have had to recognize the shortfall as a loss on its financial statements.

18. Given the hundreds of trucks involved, Celadon’s resulting losses either through sale or by adjusting net book values to fair values (also known as “impairment charges”) would have been significant. To avoid having to recognize such charges, Celadon orchestrated a fraudulent scheme.

The Truck Sales

19. Celadon through Quality found a truck dealer (“Party A”) to buy hundreds of Quality’s used trucks at the inflated net book values. Indeed, in some cases Quality sold the trucks for even *more* than the already inflated book values in order to claim a profit from the sales.

20. The flip side of this coin was Quality’s willingness to reciprocate by overpaying for the trucks it purchased from Party A – and by a similar amount. Indeed, in a draft contract memorializing one of their deals, the parties freely acknowledged that Quality’s truck sales to Party A, on the one hand, and Party A’s truck sales to Quality, were “subject to and dependent upon one another.” But Celadon insisted on deleting this language to maintain the fiction that the transactions were unrelated.

21. In various cases, the value that Celadon was carrying on its books for a truck was *more than double* what Quality could have actually commanded for the truck in the open market. Quality thus sold many of its trucks to Party A for prices substantially in excess of their fair value.

22. Consequently, the price Quality paid Party A for the newer trucks was similarly inflated – in certain instances approximately triple their fair value. Indeed, in several instances Party A purchased trucks with the express purpose of selling them to Quality.

23. To be clear, it wasn't as if Celadon was being deceived by Party A. To the contrary, Celadon was the instigator of the scheme. It knew full well that it was significantly overpaying for Party A's trucks. But Celadon deliberately paid such amounts in order to get the overvalued trucks off its books without recognizing losses.

24. Between June and October of 2016, Quality sold more than 900 trucks to Party A and purchased more than 600 trucks from Party A. The prices in these transactions were at least \$20 million more than the trucks were worth. Further, Celadon – by selling several of its trucks for more than their net book values – managed to fabricate a tidy \$1 million gain on the transactions with Party A.

25. By failing to recognize impairment charges on its trucks, Celadon materially overstated the value of its assets and, by extension, materially overstated its income before income taxes, net income and earnings per share in the following public filings: (a) its Form 8-K announcing its fourth quarter and fiscal year earnings filed on September 2, 2016; (b) its fiscal year 2016 Form 10-K filed on September 13, 2016; (c) its Form 8-K announcing its first quarter earnings filed on November 3, 2016; (d) its Form 10-Q filed on November 9,

2016; and (e) its Form 8-K announcing its second quarter earnings filed on February 2, 2017; and its Form 10-Q filed on February 10, 2017.

Straddling the Quarters

26. For the final tranche of these truck sales, Celadon persuaded Party A to divide Celadon's obligation into two parts: one September invoice for approximately \$6 million and a second October invoice for approximately \$27.9 million. Party A made its full payment of approximately \$30 million to Celadon in September on the same day Celadon made only a partial payment to Party A. Celadon deferred paying Party A most of what it had committed to pay until several days after Party A had fully paid Celadon.

27. From Celadon's perspective, this arrangement meant that it received Party A's payment in its *first* fiscal quarter of 2017, but didn't have to part with the remaining \$27.9 million Quality committed to pay Party A until its *second* quarter.

28. This sleight-of-hand effectively gave Celadon a secret short-term loan to increase its cash at the end of a reporting period. It enabled the company to misrepresent its financial condition to the investing public in its 10-Q filed on November 9, 2016 by underreporting its outstanding contractual obligations.

The Joint Venture

29. The initial batch of trucks was off Celadon's books. But it now had a *new* batch of trucks for which it had overpaid.

30. Enter 19th Capital. 19th Capital was a joint venture between Celadon and a co-venturer. Pursuant to that entity's formation documentation, in return for an ownership interest in the concern Celadon agreed to transfer money and equipment to 19th Capital. To meet this obligation, Celadon contributed many of the trucks it had recently acquired from Party A. Celadon valued these trucks at or above the inflated prices Celadon had paid for them.

31. Celadon materially misstated the value of its purported \$100 million investment in 19th Capital in its 8-K announcing the joint venture filed on January 6, 2017, and in its 10-Q filed on February 2, 2017.

32. So 19th Capital was burdened from its inception by the overvalued trucks that Celadon contributed. But 19th Capital's loss inured to Celadon's benefit as Celadon had caused the offending trucks – saddled as they were with the likelihood of future impairment charges – to be removed from Celadon's books.

33. True, Celadon co-owned 19th Capital, and therefore had an interest in the venture's success. But 19th Capital was an “off-balance sheet” entity – that is, structured as a joint venture in order to avoid having to consolidate 19th Capital into its own financial statements.

34. In any event, the consequences of 19th Capital having received

overvalued trucks would ultimately be allocated *pro rata* among 19th Capital's owners, rather than being borne by Celadon alone. By contrast, had Celadon kept the trucks and sold them at a steep loss, it would have been forced to take direct losses on its books.

35. Upon taking possession of the trucks that Celadon contributed, 19th Capital promptly adjusted the trucks' net book values to lower amounts. Critically, that adjustment occurred off of Celadon's books as had been envisioned.

The Cover-Up

36. In December 2016, Celadon's auditor requested information from the company about its dealings with Party A. Celadon responded with a campaign of deception. It told its auditors that Celadon's purchases and sales were at fair value. They also falsely claimed, repeatedly, – that Party A's truck purchases were in no way linked to Quality's truck purchases making bogus excuses to justify the high transaction prices. And Celadon did not provide its auditor with the signed documentation with Party A – even after the auditor requested it.

37. The auditor independently discovered that Party A had sold the trucks it had bought from Quality in the open market for a fraction of what it had paid for them.

38. When the auditor did not receive sufficient responses or evidence to quell its concerns regarding these transactions, it withdrew its previously

issued reports on Celadon's financial statements for the fiscal year ending June 30, 2016, and for the first two fiscal quarters of 2017. Celadon subsequently announced its intention to restate those financial statements. To date, it has not done so.

Other Accounting Issues

39. In 2014, Quality began selling large numbers of leased trucks to the co-venturer and providing the co-venturer and its lessees with driving, recruiting, lease payment remittance, insurance maintenance, and other services. Between 2014 and 2016, Celadon treated Quality's transfers to the co-venturer as sales and moved the trucks off of Celadon's books.

40. During the course of an internal investigation led by its Audit Committee, however, Celadon determined that Quality did not sufficiently transfer the risk of ownership on the leased trucks sold to the co-venturer and therefore should have recorded Quality's sales of lease portfolios to the co-venturer as borrowings rather than sales. In the April 2, 2018 press release, Celadon disclosed that it would make balance sheet adjustments to correct this error, and that the resulting income statement impacts were expected to reduce Celadon's net income before income taxes between \$200-\$250 million cumulatively over the three-year period ended June 30, 2016. To date there has been no restatement.

COUNT I

**Violations of Section 10(b) of the Exchange Act
and Rule 10b-5**

41. Paragraphs 1 through 40 are realleged and incorporated by reference.

42. By engaging in the conduct alleged above, Celadon, directly or indirectly, acting with scienter, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.

43. By reason of the foregoing, Celadon violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

COUNT II

**Violations of Section 13(a) and Rules 12b-20,
13a-1, 13a-11, and 13a-13 of the Exchange Act**

44. Paragraphs 1 through 40 are realleged and incorporated by reference.

45. Celadon filed materially false and misleading annual, current, and quarterly reports that made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

46. By engaging in the conduct described above, Celadon violated and, unless restrained and enjoined, will continue to violate Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13].

COUNT III

Violations of Section 13(b)(2)(A) and Section 13(b)(2)(B) of the Exchange Act

47. Paragraphs 1 through 40 are realleged and incorporated by reference.

48. Section 13(b)(2)(A) of the Exchange Act requires issuers registered with the Commission to make and keep accurate books, records and accounts that fairly reflect the transactions and dispositions of the assets of the issuer. Section 13(b)(2)(B) of the Exchange Act requires such issuers to devise and maintain a system of internal accounting controls among other things to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally

accepted accounting principles.

49. As described above, Celadon failed to make and keep books, records, and accounts as required by Section 13(b)(2)(A) of the Exchange Act. Further, as described above, Celadon failed to devise and maintain a system of internal accounting controls as required by Section 13(b)(2)(B) of the Exchange Act.

50. By engaging in the conduct alleged above, Celadon violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

51. Celadon violated Section 13(b)(2)(A) because its records repeatedly reflected inaccurate transactions and dispositions of assets by failing to mark down the trucks to their fair values. Celadon's records also reflected that Quality's transfers to a third-party were sales rather than borrowings.

52. Celadon violated 13(b)(2)(B) because, it had a number of internal control deficiencies, in that it failed to devise a system of internal accounting controls sufficient to provide reasonable assurance that transactions were recorded as necessary to prepare financial statement in accordance with GAAP. In addition, deficiencies existed in Celadon's internal controls over financial reporting that constituted material weaknesses over the affected periods between 2014 and 2016.

53. By reason of the foregoing, Celadon violated, and unless enjoined will again violate, Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A) and (B)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that Defendant Celadon committed the violations charged and alleged herein.

II.

Enter an Order of Permanent Injunction restraining and enjoining Defendant Celadon, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with Defendant who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b), Section 13(a), Section 13(b)(2)(A), Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j, 78m(b)(2)(A) and (B)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 [17 CFR §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13] thereunder.

III.

Enter an Order requiring Defendant Celadon to disgorge the ill-gotten gains received as a result of the violations alleged in this Complaint, including prejudgment interest.

IV.

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

V.

Grant such other relief as this Court deems appropriate.

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

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