

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

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.) **No. 1:19-cv-1878**
)
DANNY R. WILLIAMS,)
)
Defendant.)
_____)

COMPLAINT

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

1. In 2016 and 2017, defendant Danny R. Williams (“Williams”) engaged in a fraudulent scheme designed to enable Celadon Group, Inc. (“Celadon”), an Indiana-based trucking company, to hide substantial losses attributed to the value of certain Celadon equipment assets. The fraud involved a series of deceptive third-party transactions aimed at masking these overvalued assets, largely facilitated by Williams, and resulted in Celadon filing false financial reports for public consumption with the SEC.

2. The assets in question were more than a thousand trucks that Celadon wanted its wholly owned-subsidiary, Quality Companies, LLC (“Quality”), to sell. Celadon held these trucks on its accounting records at

values far in excess of what they could obtain in arms-length transactions. Had Quality sold any significant portion of these vehicles on the open market, Celadon would have had to record losses on its financial statements, amounting to tens of millions of dollars.

3. Faced with this prospect, Williams arranged a series of transactions with two third parties, in which Quality sold the trucks at significantly inflated prices, and in exchange bought different trucks from the same parties at similarly inflated prices.

4. Williams falsely portrayed the truck exchanges to Celadon's board of directors and its outside auditors as unrelated and unlinked purchases and sales that reflected current market values. Williams knew that this false portrayal of the transactions would allow Celadon to avoid reporting tens of millions of dollars in losses.

5. Celadon, with the substantial assistance of Williams, then fraudulently transferred the new batch of trucks to an off-book entity at the inflated values. Having dumped the trucks from its books, Celadon filed inaccurate financial statements with the SEC that included its investment in the off-book entity at an inflated value. When Celadon's auditor asked questions about this sequence of transactions, Williams repeatedly lied to hide the fraudulent scheme.

6. The SEC brings this civil law enforcement action to hold Williams accountable for his wrongdoing.

JURISDICTION AND VENUE

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

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

9. 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 lives in the Southern District of Indiana.

10. 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

11. Defendant Danny R. Williams, age 35, is a resident of New Palestine, Indiana. During the relevant period, Williams served as president of Quality. He resigned in 2017.

OTHER PARTIES

12. Celadon is a Delaware corporation 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, which has since delisted Celadon's common stock. Celadon's

common stock now trades on the OTC Pink Marketplace.

13. Quality, an Indiana limited liability company, formerly Quality Equipment Leasing, LLC, is a wholly-owned subsidiary of Celadon.

14. 19th Capital Group, LLC (“19th Capital”), a Delaware limited liability company, is a joint venture between Celadon and another entity (“co-venturer”).

FACTS

15. 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 provided most of these transportation services through its own 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.”)

16. In approximately 2007, Celadon formed a subsidiary, Quality, which sold and leased trucks that Celadon was no longer using in its operations to independent truck operators. This allowed Celadon to use primarily newer trucks to provide transportation services.

17. In 2016, at Celadon’s direction, Quality sought to replace a group of trucks with newer ones that would command higher lease payments. At the time, Celadon’s net book values for this group of trucks—the original purchase prices less depreciation, the amounts listed on the company’s financials—were

well above what they could actually command for the trucks on the open market.

18. Once Celadon made its decision to classify its trucks as held-for-sale, it was required under generally accepted accounting principles to value those trucks on its financial statements at their current market value.

19. In June 2016, Celadon's chief operating officer emailed Williams about Quality's need to sell \$70 million in equipment. Williams responded: "We aren't in the money on hardly any of the \$70M, so we are going to have to lease through it unless we can handle losses?" Williams was referencing the chasm between the net book values of the trucks, on the one hand, and their actual value. He knew that as of mid-2016, many trucks were listed on Celadon's accounting records for at least 20 to 30 percent higher than their market value. Thus, he knew that in an above-board, arms-length sale of the trucks, Celadon would have sustained significant losses on its financial statements.

20. To avoid that, Williams orchestrated a series of fraudulent transactions.

The Truck Sales

21. Williams found a truck dealer ("Party A") to buy hundreds of Quality's used trucks at higher than market prices. Indeed, in some cases Quality sold the trucks for *more* than the *already* inflated book values.

22. Party A was willing to buy Quality trucks at inflated prices only if

Quality returned the favor by overpaying for trucks from Party A – and by a similar amount. In one instance, Party A sent Williams pricing information that broke out the *actual* values of the trucks being sold to Quality, on the one hand, and the *inflated* prices Quality was actually paying for each truck. So Williams knew Quality was buying Party A’s trucks for inflated prices.

23. Quality and Party A engaged in four such deals between June and October of 2016. All told, Quality sold more than 900 trucks to Party A and purchased more than 600 trucks from Party A. Party A calculated that it paid Quality at least \$30 million more than Quality’s trucks were worth. Further, by selling several of its trucks for more than their net book values, Celadon managed to fabricate an approximately \$1 million gain in one of the deals with Party A.

24. In various cases, the value that Celadon was carrying on its accounting records 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.

25. Consequently, the price Quality paid Party A for the newer trucks was similarly inflated – in certain instances by about triple their fair value. Indeed, in several instances Party A purchased trucks with the express purpose of selling them to Quality. Critically, Party A paid *a third* of what it then charged Quality for these trucks.

26. In a draft contract memorializing their last deal, 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."

27. Upon reviewing the draft contract, Celadon's former chief financial officer told Williams that the contract should not indicate that the purchases were linked. So Williams wrote Party A: "We would like this to be more structured as a purchase agreement from us versus a trade. The section below specifically points to it as a trade and we have booked all other transactions as separate purchases. Would you guys be ok if the language was tweaked and we focused on our commitment to purchase versus a 'trade deal.'"

28. Later that day, Williams sent a follow-up email to Party A reiterating his insistence that the written agreement be stripped of any requirement – or even so much as a suggestion – that the cross-sales depended on one another. He wrote: "remove section 1 (your commitment to purchase- we don't need this), and focus on section 2 (our commitment to purchase). . . . We would then remove sections 3, 4, and 5 (makes it look like a trade – like past transactions these are separate purchases) and leave the rest."

29. Party A made the changes Williams requested. But both sides understood that the purchases remained linked. Williams signed the revised contract on behalf of Quality, and Celadon's chief operating officer signed the guaranty on behalf of Celadon.

30. Between August 2016 and February 2017, Williams facilitated similar transactions with another counterparty, known in this complaint as

“Party B.” In these deals, Quality and Party B swapped more than 300 trucks at inflated prices.

31. By failing to recognize at least \$20 million in 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; (e) its Form 8-K announcing its second quarter earnings filed on February 2, 2017; (f) its Form 10-Q filed on February 10, 2017; and (g) its Form 10-Q filed on February 10, 2017.

32. For example, Celadon overstated its income before income taxes by at least 149% in its Form 10-K filed on September 13, 2016.

Straddling the Quarters

33. Throughout this period, Celadon’s financial condition was precarious. The company had an agreement with its creditors that limited the amount of debt it could carry as a ratio of its earnings before income taxes, depreciation, amortization, and rent/restructuring costs. In September 2016 Celadon was dangerously close to breaching such debt covenants.

34. In order for Celadon to meet its debt covenants on September 30, 2016–Celadon’s reporting date under its credit facility–Williams persuaded

Party A to pay Quality for Quality's trucks before September 30th, but to allow Quality to hold off paying most of what it owed Party A until October.

35. Williams' sleight-of-hand effectively gave Celadon a secret short-term \$25 million loan to increase its cash at the end of a reporting period. Of course, all of that cash was spoken for, since Quality was required to repay it to Party A in a matter of days. But that small time-lag enabled the company to misrepresent its financial condition to the investing public in its Form 10-Q filed on November 9, 2016 by not disclosing its outstanding contractual obligations.

The Joint Venture

36. The initial batch of trucks was off Celadon's books. But the company now had a new problem: A *new* batch of trucks for which it had overpaid.

37. 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.

38. 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.

39. 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, since Celadon had caused the offending trucks – saddled as they were with the likelihood of future impairment charges – to be removed from Celadon’s accounting records.

40. Williams knew that Celadon planned to contribute the purchased trucks to a new joint venture. He also knew that Celadon planned to use the new joint venture to avoid recognizing impairment charges. In a November 16, 2016 email to the co-venturer, Williams acknowledged this accounting sleight-of-hand: “Assuming the [joint venture] closes this quarter we feel we can wait to book [a deal involving overpriced trucks] until the values are re-assigned, thus not requiring any of us to take a loss.”

41. Sure enough, 19th Capital ultimately adjusted the trucks’ net book values to much lower amounts when it took possession of Quality’s trucks. That adjustment occurred off of Celadon’s accounting records – just as Williams and others had planned.

The Cover-Up

42. In December 2016, Celadon’s auditor began asking questions about the transactions with Party A. Celadon and Williams made bogus excuses to justify the high transaction prices paid for the trucks. Williams lied to the auditor by stating that the purchases and sales were at fair value. Williams participated in a presentation to Celadon’s auditors, during which he again claimed that the “[e]quipment and pricing was evaluated independently” by each party in the transactions with Party A. That was a lie.

43. Williams also lied to Celadon's auditor and board of directors by claiming that Celadon had no undisclosed agreements with Party A. Only later did Williams supply the auditor with the executed contract with Party A. And Williams never disclosed to the auditor the *draft* of that contract that lay bare the linkage between the sales among and between the parties.

44. When Celadon was unable to provide support for the prices it paid in Quality's transactions with Party A and Party B, Celadon's auditor 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.

COUNT I

AIDING AND ABETTING CELADON'S FRAUDULENT MISREPRESENTATIONS AND OMISSIONS

(In Violation of Sections 20(e) and 10(b) and Rule 10b-5(b) of the Exchange Act)

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

46. By virtue of the conduct alleged herein, Celadon committed primary violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) by making several material misstatements and omissions of material fact that made its quarterly and periodic reports for the periods ending between June 2016 and

December 2016 misleading.

47. In connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, Celadon directly and indirectly made untrue statements of material fact and 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.

48. Williams aided and abetted, and is therefore liable for, the primary violations committed by Celadon. Among other misconduct, he knowingly enabled Celadon's fraud by hiding the linked nature of the truck transactions alleged above, which enabled the company to avoid taking impairment charges. Unless enjoined, Williams will likely aid and abet violations of these provisions again.

COUNT II

FRAUDULENT SCHEME

(In Violation of Section 10(b) and Rule 10b-5(a) and 5(c) of the Exchange Act)

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

50. By virtue of the conduct alleged herein, Williams, directly or indirectly, singly or in concert with others, by use of the means or

instrumentalities of interstate commerce, or by the use of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, has employed devices, schemes and artifices to defraud; and has engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities and upon other persons.

51. As alleged above, Williams convinced truck dealers Party A and Party B to purchase and sell trucks at inflated prices in an effort to avoid taking impairment charges and to present a false depiction of Celadon's financial condition. Through April 2017, Williams furthered this scheme by deleting material terms from a contract for the express purpose of concealing the linkage between the parties' truck sales to one another; by not disclosing relevant emails to Celadon's auditor; and by misrepresenting to Celadon's auditor that the purchases among and between the parties were not linked, and that the trucks were sold at arm's length values.

52. In the course of engaging in the conduct described herein, Williams acted knowingly or with a reckless disregard for the truth.

53. By reason of the foregoing, Williams violated, and unless enjoined will likely again violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

COUNT III

AIDING AND ABETTING CELADON'S REPORTING VIOLATIONS

(In Violation of Section 20(e), 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 of the Exchange Act)

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

55. Celadon violated Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1, 13a-11, and 13a-13 by inaccurately reporting its income before income taxes, net income and earnings per share in its Form 10-K on September 13, 2016; its Form 10-Q filed on November 9, 2016; and its Form 10-Q filed on February 10, 2017.

56. As alleged above, the inaccuracies concerned: (a) Celadon fraudulently selling and buying overpriced trucks; (b) Celadon not recording the trucks at their fair values; and (c) Celadon failing to take impairment charges. Additionally, Celadon misstated the value of its investment in 19th Capital. This misconduct caused Celadon to misstate its key financial metrics by significant amounts for the impacted periods.

57. Additionally, Celadon violated Section 13(a) of the Exchange Act and Rules 12b-20 by omitting Celadon's \$27.9 million purchase obligation from its Form 10-Q filed on November 9, 2016.

58. Williams aided and abetted Celadon's violation because he knew

about Celadon's failure to take impairment charges, its outstanding purchase obligation in September of 2016, and that Celadon contributed trucks to 19th Capital at inflated prices. Williams recognized, or was reckless in not recognizing, that these actions would result in inaccuracies in Celadon's financial statements. By first executing the transactions, and by then hiding the fact that the parties' truck purchases among and between the parties were intrinsically linked, Williams substantially assisted Celadon's violations of 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 IV

AIDING AND ABETTING CELADON'S RECORD-KEEPING VIOLATIONS

(In Violation of Sections 20(e) and 13(b)(2)(A) of the Exchange Act)

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

60. 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.

61. Celadon violated Section 13(b)(2)(A) because its records repeatedly reflected inaccurate transactions and dispositions of assets.

62. As set forth above, Williams knowingly or recklessly provided

substantial assistance to Celadon by knowingly or recklessly effectuating the improper trucks transactions at the inflated prices, as set forth above.

COUNT V

FALSE STATEMENTS TO ACCOUNTANTS

(In Violation of Rule 13b2-2 of the Exchange Act)

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

64. Rule 13b2-2 under the Exchange Act prohibits directors and officers from directly or indirectly making or causing to be made materially false or misleading statements or omitting to state material facts necessary to make statements made not misleading to accountants in connection with their audit, review, examination or preparation of financial statements or filings with the Commission.

65. Williams violated Rule 13b2-2 by misleading Celadon's auditor about the existence of a contract governing the transactions and the terms of that contract, and by lying to the auditor about characteristics of Celadon's transactions with Party A, including the valuations of the trucks, the linked nature of the purchases, and the agreements among and between the parties in conjunction with the truck sales.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that defendant Danny Williams committed the violations charged and alleged herein.

II.

Enter an Order of Permanent Injunction restraining and enjoining Danny Williams, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him 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), and Section 20(e) of the Exchange Act [15 U.S.C. §§ 78j, 78m(a), 78m(b)(2)(A), 78t(e)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-2 [17 CFR §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, and 240.13b2-2] thereunder.

III.

Issue an order imposing upon him appropriate civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

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**

By: /s/ Jonathan S. Polish

Jonathan S. Polish

Amy S. Cotter

Jaclyn J. Janssen

Attorneys for Plaintiff

**U.S. SECURITIES AND
EXCHANGE COMMISSION**

175 West Jackson Blvd., Suite 1450

Chicago, IL 60604

Telephone: (312) 353-7390

Dated: May 9, 2019