UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re NOKIA ERISA LITIGATION

MEMORANDUM DECISION AND ORDER

10 cv 03306

GEORGE B. DANIELS, District Judge:

Plaintiffs Javad Majd and Ryan Sharif,[1] on behalf of the Nokia Retirement Savings and Investment Plan (hereinafter, the "Plan") and All Other Similarly Situated Plan Participants and Beneficiaries, brought an action against the following Defendants who are alleged to be Plan fiduciaries: (1) Nokia Inc.; (2) the Board of Directors for Nokia Inc. and its individual members (Mark Louison, Timo J. Karppinin, Adele Louis Pentland, Richard W. Stimson, Benjamin C. Adams, and Darren A. Bowie); and (3) the Plan Committee and its individual members (Catherine Camley, Cecily Cohen, Jose Conejos, Billie Harless, Ronnie King, Tina Kremenetzky, Thomas Libretto, Brian Miller, Kirsty Russell, Arto Sirvo). Plaintiffs assert claims for various breaches of fiduciary duties under sections 502(a)(2) and (a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and (a)(3), based upon Defendants' decision to continue to offer American Depository Shares of Nokia Corporation (hereinafter, "Nokia Corp. Stock") as an investment option available to Plan Participants.[2] Defendants have moved to dismiss the Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). Defendants' motion is GRANTED.

[1] Plaintiff Majd commenced 10-cv-3306 and Plaintiff Sharif commenced 10-cv-3360 against the same defendants. Both cases were consolidated. See 10-cv-3306, Docket # 12. Defendant Fontenaux, the Plan administrator, was voluntarily dismissed without prejudice. See 10-cv-3306, Docket # 27.

[2] The Class Period is alleged to be from January 1, 2008, through the present.

BACKGROUND

A. THE PLAN

The Plan is a defined contribution pension benefit plan sponsored and administrated by Nokia Inc. for its eligible employees. EC ¶¶ 55, 20-25. The Plan qualifies as an eligible individual account plan or EIAP,[3] and thus is subject to the rules and regulations provided by ERISA. The Plan operates as follows: Plan Participants may contribute to the Plan an amount up to 50% of their eligible compensation, and the employer matches each participant's contribution in cash in the amount equal to $1.00 for each $1.00 of participant deferrals. EC ¶¶ 58-59. Plan Participants can invest the contributions in their accounts in any combination of investment options, which have varying objectives and risk and return characteristics. EC ¶¶ 59-60. Nokia Corp. Stock was initially a default investment option for the Plan. EC ¶¶ 66-67. However, the Defendant Plan Committee, whose members were selected by the Board of Directors for Defendant Nokia Inc., was responsible for overseeing the investment options offered under the Plan, and had the sole discretion to make changes to the set of investment options as appropriate and prudent. EC ¶¶ 60, 64-67, 26-33, 34-53. At all relevant times, the principal equity investment option under the Plan was Nokia Corp. Stock. EC ¶¶ 61-63.

B. DEFENDANTS' ALLEGED CONDUCT

Nokia Corp., the corporation that issued Nokia Corp. Stock, is the corporate parent of Defendant Nokia. Inc. EC ¶¶ 17-18. The remaining individually named Defendants are the Board of Directors and the Plan Committee members of Defendant Nokia Inc., not Nokia Corp.

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[3] An "individual account plan" is a "pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account." 29 U.S.C. § 1002(34). An "eligible individual account plan" is defined as "an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; [or] (ii) an employee stock ownership plan." 29 U.S.C. § 1107(d)(3)(A).

EC ¶¶ 26-53.

"Plaintiffs allege that Defendants, as fiduciaries of the Plan, breached their duties to the Plan and its participants . . ., particularly with regard to the Plan holdings of [Nokia Corp. Stock], which Defendants knew or should have known was an imprudent investment alternative for the Plan." EC ¶ 2. Plaintiffs allege that "Defendants allowed the imprudent investment of Plan assets in Nokia [Corp.] Stock throughout the Class Period, even though they knew or should have known that such investment was unduly risky and imprudent." EC ¶ 4. Plaintiffs allege that Defendants had "knowledge of the actual financial condition of Nokia [Corp.]" and that "Defendants knew or should have known during the Class Period [that] . . . positive statements [made by Nokia Corp. and its officers and directors] . . . lacked [a] reasonable basis."[4] EC ¶¶ 4, 215. Plaintiffs further allege, "[u]pon information and belief, [that] these public statements were incorporated into the Plan documents and communications and, as such, constitute fiduciary communications made in connection with Plan Participants' retirement benefits pertaining to Plan investments." EC ¶ 215.

The bulk of Plaintiffs' 157 page ERISA Complaint restates the allegations in the related Securities Fraud Action (10-cv-967) that Nokia Corp. and its officers and directors perpetrated a fraud on investors through making various misrepresentations about Nokia Corp.'s financial condition. Compare 10-cv-03306, Docket # 28, ¶¶ 92-217 with 10-cv-967, Docket # 42, ¶¶ 27-

[4] Plaintiffs further allege that Defendants knew or should have known that: (1) Nokia Corp. was losing market share due to intense price cuts by competitors; (2) while the Company representatives stated that they expected the overall industry ASPs, the average selling price of mobile devices, to decline in 2008, Defendants failed to disclose to the Plan Participants that Nokia Corp. dramatically slashed its ASPs to maintain its market share due to severe plan competition; (3) the Company had decreasing operating and profit margins due to the failed strategy of competing mainly at the low-end of the cell phone market, yet simultaneously claimed that it had new products and growth strategies that would enable them to compete in the high-end market; and (4) Nokia Corp. championed its Symbian operating system even though it was never able to compete with those of its competition. EC ¶¶ 7, 4.

82. That is, Plaintiffs allege that "[a] significant factor in the profitability of any business based in mobile communications devices is the average selling prices ('ASPs') of their mobile devices" and that "a higher ASP typically results in greater profit margins." EC ¶ 83. Plaintiffs allege that "[b]oth prior to and during the class period, ASPs for mobile devices were experiencing an industry-wide decline" "due to an increase in sales of lower priced phones in the world's emerging markets." EC ¶ 84. Plaintiffs allege that "while Nokia [Corp.] acknowledged the expected drop in ASPs, it simultaneously claimed that the expected decline would actually be a boon to Nokia [Corp.]'s business generally," but that "this was not an accurate portrayal of Nokia's product development and manufacturing situation." EC ¶¶ 85-87. Plaintiffs allege that "Nokia was having extreme difficulties maintaining its industry leading market share in China" and "abruptly changed course and internally decided to no longer compete on price in the Chinese market, but that "[t]his decision ran counter to the strategy the Company previously touted and had already began executing in China." EC ¶¶ 88-89. Plaintiffs allege that, even though this decision "reflected a dramatic shift in Nokia [Corp.]'s global business approach and substantially affected the Company," "this information was not disclosed to the public." EC ¶¶ 89. Finally Plaintiffs allege that "[a]s a result of the adverse events facing the Company that were undisclosed to the investing public," the price of Nokia Corp. Stock "plummeted" from a Class Period high of $38.25 to its current value of $9.90 per share, when the true information was eventually disclosed to the public. EC ¶ 91.

STANDARD OF REVIEW

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937,1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This

standard is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. A court should not dismiss a complaint for failure to state a claim if the factual allegations sufficiently "raise a right to relief above the speculative level." Twombly, 550 U.S. at 555

The task of the court in ruling on a motion to dismiss is to "assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." In re Initial Pub. Offering Sec. Litig., 383 F. Supp. 2d 566, 574 (S.D.N.Y. 2005) (internal quotation marks and citation omitted). The court must accept all well-pleaded factual allegations in the complaint as true, and draw all reasonable inferences in the plaintiffs favor. Chambers v. Time Warner. Inc., 282 F.3d 147, 152 (2d Cir. 2002). In deciding a motion to dismiss, the Court is not limited to the face of the complaint. The court "may [also] consider any written instrument attached to the complaint, statements or documents incorporated into the complaint by reference, legally required public disclosure documents filed with the SEC, and documents possessed by or known to the plaintiff and upon which it relied in bringing the suit." ATSI Commc'ns v. Shaar Fund. Ltd., 493 F.3d 87, 98 (2d Cir. 2007).

BREACH OF FIDUCIARY DUTY CLAIM

The Complaint claims three grounds for finding that Defendants breached their fiduciary duties to the Plan: (a) failure to prudently and loyally manage Plan assets; (b) failure to disclosure complete and accurate information; and (c) against only Nokia Inc. and the Director Defendants, failure to monitor. However, with respect to each of these grounds, Plaintiffs have failed to allege sufficient facts to provide a plausible basis for concluding that Defendants engaged in any of the alleged misconduct. Plaintiffs have thus failed to state a claim for breach of any fiduciary duty.

A. FAILURE TO PRUDENTLY AND LOYALLY MANAGE AND TO DISCLOSE

Plaintiffs claim that Defendants breached their fiduciaries duties by continuing to offer Nokia Corp. Stock. as an investment option when Defendants knew, or should have known, that Nokia Corp. Stock was an imprudent investment during the Class Period. Plaintiffs allege that Nokia Corp. Stock was an imprudent investment because Nokia Corp. and its officers and directors were making false statements and material omissions that constituted securities fraud, and therefore the price of the stock was artificially inflated. Plaintiffs also allege that Defendants failed to disclose complete and accurate information about the safety, stability and prudence of investment in Nokia Corp. Stock during the Class Period. Plaintiffs also claim that Defendants decided to incorporate into Plan documents the alleged fraudulent misrepresentations by Nokia Corp., despite allegedly having knowledge of their misleading nature.

Plaintiffs have failed to state a breach of fiduciary duty based upon a failure to prudently and loyally manage the Plan assets, or based upon a failure to disclose complete and accurate information to Plan Participants. Plaintiffs' claim is defective because the Complaint is utterly devoid of any factual allegations demonstrating that Nokia Corp. Stock constituted an imprudent investment. The Complaint restates the allegations of fraudulent conduct asserted against others in the related Securities Fraud Action. However, the allegations in both complaints failed to sufficiently allege a factual basis to demonstrate that any representations by Nokia Corp. and its officers and directors were false or misleading in a manner that constitutes securities fraud. Having failed to sufficiently allege a securities fraud violation, Plaintiffs' theory of liability lacks a plausible factual basis to assert that Nokia Corp. Stock was artificially inflated by fraud. Accordingly, Plaintiffs have failed to allege that Nokia Corp. Stock constituted an imprudent investment because of false and misleading statements and material omissions regarding Nokia

Corp.'s financial condition.

Even if the Complaint did properly allege a securities fraud violation, Plaintiffs' claim would be additionally defective because the Complaint is utterly devoid of any factual allegations demonstrating that the Defendants in this ERISA Action knew or should have known of such fraudulent misrepresentations in order to conclude that Nokia Corp. Stock constituted an imprudent investment. Plaintiffs bear the burden of pleading sufficient factual allegations to demonstrate that Defendants not only offered the investment option, but also did so despite their knowledge that the investment was not suitable or appropriate for Plan assets. Yet, Plaintiffs rest solely upon their conclusory assertion that Defendants here must have known of fraudulent representations by Nokia Corp. management. Plaintiffs never identify in the Complaint which factual statements by Nokia Corp. that Defendants knew or should have known were false, or what true information inconsistent with those factual statements was possessed by or otherwise available to Defendants.

Plaintiffs allege no facts that demonstrate how, or on what basis it would be reasonable to infer knowledge on Defendants' part that Nokia Corp. Stock constituted an imprudent investment because of fraud. Plaintiffs provide no factual basis to support their conclusion that Defendants possessed or had access to any information that would have led them to reasonably reach such a conclusion. Plaintiffs never allege, even on information and belief, any facts demonstrating that Defendants acquired, were privy to, or should have known of, any fraudulent concealment of Nokia Corp.'s true financial condition. The Complaint does not allege circumstances where it is appropriate to assume such knowledge, particularly in light of the independent positions of the various named ERISA Defendants from the Securities Fraud Defendants, and the lack of any allegations that the ERISA Defendants here had a role in the

alleged securities fraud.[5] [6] Accordingly, Plaintiffs have failed to state a breach of fiduciary duty based upon a failure to prudently and loyally manage the Plan,[7] having premised that alleged violation on the offering of Nokia Corp. Stock.[8]

Plaintiffs' failure to inform theory in support of their claim is also defective because Plaintiffs have not established that Defendants had an independent obligation to inform Plan Participants of Defendants' evaluation of the true financial condition of Nokia Corp. Having

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[5] Defendants in this case are not officers or directors of Nokia Corp., nor are they alleged to have been the source of any actionable misrepresentation that forms the basis of the claims asserted in the Securities Fraud Action. The fact that Nokia Corp., a corporate parent, is alleged to have perpetrated a fraud does not alone establish a plausible theory for imputing Nokia Corp.'s knowledge of the truth to the subsidiary Defendants Nokia Inc., its corporate board of directors, or its ERISA Plan Committee.

[6] Also insufficient is the unsupported assertion by Plaintiffs that Defendants should have been aware of certain information withheld from investors simply because, by hindsight, such information could have led Defendants to conclude that Nokia Corp. Stock was an imprudent investment. The facts as alleged in the Complaint provide no basis to conclude that any Defendant ever had access to, or knowledge of, information about the financial status of Nokia Corp. different than that which was publicly disclosed by Nokia Corp. and provided to Plan Participants to guide their investment decisions.

[7] The parties dispute whether Defendants' decision to offer Nokia Corp. Stock as a Plan investment option throughout the Class Period is entitled to a presumption of prudence pursuant to Moench v. Robertson, 62 F.3d 553 (3d Cir. 1995), Edgar v. Avaya, Inc., 503 F.3d 340 (3d Cir. 2007), and a line of cases within this district. See SLM Corp. ERISA Litig., 2010 U.S. Dist. LEXIS 109775, at *18 (S.D.N.Y. Sep. 24, 2010) (quoting In re Polaroid ERISA Litig., 362 F. Supp. 2d 461 (S.D.N.Y. 2005)); Fisher v. JP Morgan Chase & Co., 703 F. Supp. 2d 374, 383 (S.D.N.Y. 2010) ("[T]he presumption 'applies to any allegations of fiduciary duty breach for failure to divest an EIAP or ESOP of company stock,' . . . 'regardless of whether the plan requires, encourages, or permits investment so long as the investment is an EIAP or ESOP.'") (quoting Kirschbaum, 526 F.3d at 254; In re Dell, Inc. ERISA Litig., 563 F. Supp. 2d 681, 691-692 (W.D. Tex. 2008)); In re Citigroup ERISA Litig., 2009 U.S. Dist. LEXIS 78055, at *37-38 n.5 (S.D.N.Y. Aug. 31, 2009) ("Much of the caselaw in this area addresses ESOPs in particular, not just EIAPs in general. Nevertheless, nearly all of the points made about ESOPs apply equally to EIAPs."); see also Kirschbaum v. Reliant Energy, Inc., 526 F.3d 243, 254 (5th Cir. 2008) ("The Moench presumption logically applies to any allegations of fiduciary duty breach for failure to divest an EIAP or ESOP of company stock."). However, it is unnecessary for this Court to address whether that presumption applies to the present circumstances, where the investment option at issue is stock in the corporate parent of a wholly-owned subsidiary. Plaintiffs' factual allegations are wholly insufficient to demonstrate that Defendants engaged any conduct that would make them liable for breach of their fiduciary duties.

[8] Plaintiffs do not allege any facts that would support a breach of the duty separate and apart from the allegations regarding imprudent investment. Thus, having failed to state a plausible claim for imprudent investment, Plaintiffs cannot demonstrate that the same conduct was a specific conflict of interest that resulted in an improper benefit to Defendants. See In re Bank of Am. Corp. Secs, 756 F. Supp. 2d 330, 356 (S.D.N.Y. 2010); In re McKesson HBOC, Inc. ERISA Litig., 391 F. Supp. 2d 812, 835 (N.D. Cal. 2005) ("Because it was not imprudent to refuse to sell company stock, [defendant's] alleged conflict could not have harmed plaintiff.").

asserted no facts to demonstrate actual knowledge of fraud, Defendants had no obligation in their capacity as Plan fiduciaries to somehow investigate further the condition of Nokia Corp., uncover its true condition, and thereafter provide additional more accurate information to the Plan Participants. It is well-established that ERISA plan fiduciaries "have no affirmative duty under ERISA to disclose information about the company's financial condition to plan participants." See Gearren v. McGraw Hill Co., 690 F. Supp. 2d 254, 271-72 (S.D.N.Y. 2010); see also 29 U.S.C. §§ 1021-31; 29 C.F.R. §§ 2520.101-1 to 2520.107-1; Bd. of Trs. of CWA/ITU Negotiated Pension Plan v. Weinstein, 107 F.3d 139, 147 (2d Cir. 1997) ("[W]e think it inappropriate to infer an unlimited disclosure obligation [under ERISA] on the basis of general provisions that say nothing about disclosure."); Citigroup, 2009 U.S. Dist. LEXIS 78055, at *21-22 (rejecting the suggestion that a fiduciary must volunteer financial information about companies in which participants may invest because "fiduciaries do not have a duty to give investment advice or to opine on the stock's condition" (internal quotation marks omitted)). Defendants did not have an obligation in their ERISA fiduciary capacity to inform Plan Participants about the nature of the Plan investment options and the risks involved in choosing among the available options.

Moreover, none of the fraudulent statements and material omissions identified by Plaintiffs were made by any of the Defendants in the ERISA Action – that is, publically generated by Defendant Nokia, Inc., or any of the Director Defendants and Committee Defendants. All of the alleged misleading statements and filings cited in the Complaint were made by Nokia Corp., the corporate parent of Nokia Inc., and Nokia Corp.'s officers. Plaintiffs do not allege that the named Defendants here played any role in the preparation of those statements, or the purposeful perpetration of the alleged securities fraud.

Plaintiffs' factual allegations also provide no basis to conclude that Plan documents incorporated or otherwise referenced the alleged misrepresentations by Nokia Corp. Even if they had been incorporated, such communications with the Plan Participants by Defendants would not be fiduciary in nature and thus would not be subject to ERISA. "[S]tatements concerning a company's financial condition" are not considered to have been made in the company representative's ERISA fiduciary capacity unless "the statements are made by the plan administrator and are intentionally connected to statements regarding a plan's benefits." Gearren, 690 F. Supp. 2d at 272 (quoting In re Bausch & Lomb, Inc. ERISA Litig., 2008 U.S. Dist. LEXIS 106269, at *7 (W.D.N.Y. Dec. 12, 2008)); accord Varity v. Howe, 516 U.S. 489, 504-05 (1996). The statements at issue clearly and objectively relate to the financial health of Nokia Corp. There is no reasonable interpretation in support of Plaintiffs' contention that the statements at issue conveyed any information about the Plan or Plan benefits. See Gearren, 690 F. Supp. 2d at 271-72; In re Citigroup, 2009 U.S. Dist. LEXIS 78055, at *66-67 (citing Polaroid, 362 F. Supp. 2d at 478; other citations omitted). As such, Plaintiffs cannot demonstrate that Defendants breached their ERISA disclosure obligations to Plan Participants about the Plan, based solely upon alleged misrepresentations which Plaintiffs contend form the basis for an alleged securities fraud violation by others. Having failed to allege that Defendants "intentionally" made statements "connect[ing] the content of th[e] SEC filings to statements about [P]lan benefits," Plaintiffs have not identified any conduct by the Defendants that could constitute a breach of their duty to disclose. Gearren, 690 F. Supp. 2d at 273.

B. FAILURE TO MONITOR FIDUCIARIES

Plaintiffs claim that Nokia Inc. and the Director Defendants also breached their duties of loyalty, exclusive purpose, and prudence by failing to monitor the Plan Committee and its

members. EC ¶¶ 246-257. Appointing fiduciaries have the duty to monitor the fiduciaries they appoint. See In re Polaroid, 362 F. Supp. 2d at 477 (collecting cases). "Where a claim rests on allegations that the appointed fiduciaries breached a duty of prudence, a failure to monitor claim fails where the plaintiffs do not successfully allege a breach of the duty of prudence." In re Bank of Am., 756 F. Supp. 2d at 359 (citing Avaya, 503 F.3d at 349 n.15 ("Because we affirm the District Court's dismissal of [plaintiff's] duty of prudence claim, there is no basis to disturb the District Court's dismissal of [the] other claims."); Fisher, 703 F. Supp. 2d at 389-90); see also Citigroup, 2009 U.S. Dist. LEXIS 78055, at *79-80 (dismissing the duty to monitor claim "because plaintiffs have failed to cite any instance of misconduct that the Monitoring Defendants failed to detect"); In re Avon Prods., 2009 U.S. Dist. LEXIS 32542, at *57-59 (S.D.N.Y. Mar. 3, 2009) (R&R of MHD; adopted by LAK) (Where claim for breach of duty of prudence fails, "[i]t necessarily follows that no appointing fiduciary can be deemed liable for failing to monitor the conduct of her appointees."). Having failed to sufficiently allege an antecedent breach of a fiduciary duty by the monitored parties in this case, Plaintiffs necessarily fail to state a plausible claim for breach of the duty to monitor.[9] See, e.g., In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig., 763 F. Supp. 2d 423, 580 (S.D.N.Y. 2011). Furthermore, the Complaint does not allege any specific factual basis to support Plaintiffs' conclusory allegation of a lack of legally sufficient monitoring by Defendants.

CO-FIDUCIARY LIABILITY CLAIM

Plaintiffs assert a claim for co-fiduciary liability against Defendant Nokia Inc. and the

[9] Moreover, it is inconsistent for Plaintiffs to assert this claim for failure to monitor fiduciaries against Nokia Inc. and its Board of Directors in light of the fact that Plaintiffs have also asserted a claim for failure to prudently and loyally manage the Plan against the same defendants. The failure to monitor claim requires Plaintiffs to allege that Nokia Inc. and its Board of Directors lacked, but should have had, knowledge of certain undisclosed information. The failure to prudently and loyally manage claim, on the other hand, requires Plaintiffs to allege that the same defendants had knowledge of certain undisclosed information and yet failed to take appropriate action.

Director Defendants. EC ¶¶ 258-270. A plan fiduciary is liable for a breach of a fiduciary responsibility by another fiduciary: "(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (2) if, by his failure to comply with section 404(a)(1) . . . in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach." 29 U.S.C. § 1105(a). No specific factual allegations are made to support Plaintiffs' conclusory claim. Having failed to plausibly allege a breach of fiduciary duty by any of the Plan Committee Defendants, Plaintiffs necessarily fail to state a claim for co-fiduciary liability.[10] See, e.g., In re Bear Stearns, 763 F. Supp. 2d at 580. Accordingly, Plaintiffs' claim for co-fiduciary liability is DISMISSED.

CONCLUSION

The ERISA Defendants' motion to dismiss is GRANTED. The ERISA Complaint is DISMISSED. Having requested leave to amend in the event of dismissal, the Plaintiffs may file a motion to amend that attaches a proposed amended complaint within sixty (60) days of this Memorandum Decision and Order if such an amendment would not be futile. The Clerk of the Court is directed to close motion #32 on docket 10-cv-03306.

Dated: New York, New York
September 6, 2011

SO ORDERED:

GEORGE B. DANIELS
United States District Judge

[10] Even assuming Plaintiffs could state a primary fiduciary duty claim, a conclusory statement that Defendants should have known certain facts about Nokia Corp.'s finances, products, or business strategies is insufficient. Specific facts absent from the Complaint must be alleged to sufficiently support the claim. See, e.g., In re Lehman Bros., 683 F. Supp. 2d at 303.