



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HESHAM M. GAD,

Plaintiff

v.

SAMUEL S. WEISER, JACK H. JACOBS,
H. TIMOTHY ERIKSEN, DAVID
LONTINI, HOWARD BROWNSTEIN and
BROADRIDGE CORPORATE ISSUER
SOLUTIONS, LLC,

Defendants,

-and-

PARAGON TECHNOLOGIES, INC.,

Nominal Defendant.

C.A. No. 2024-1134-JTL

PUBLIC VERSION
filed April 28, 2025

PARAGON TECHNOLOGIES, INC.,

Counterclaim Plaintiff

v.

HESHAM M. GAD,

Counterclaim Defendant.

**PARAGON TECHNOLOGIES, INC.'S ANSWER TO THE
VERIFIED SECOND AMENDED AND SUPPLEMENTAL COMPLAINT
AND VERIFIED COUNTERCLAIM**

Nominal Defendant Paragon Technologies, Inc. ("Paragon"), by and
through its undersigned counsel, hereby responds to the Verified Second Amended

and Supplemental Complaint of Plaintiff Hesham M. Gad (the “Second Amended Complaint”) filed in the above-captioned action as follows:

The Second Amended Complaint names Paragon solely as Nominal Defendant. No claims are asserted against Paragon, and no relief is sought from Paragon. Accordingly, no response is required as to any allegations of the Second Amended Complaint directed to Paragon. If a response is deemed required as to any such allegations, Paragon hereby enters a general denial of all such allegations and reserves all of its rights with respect to the allegations of the Second Amended Complaint.

WHEREFORE, Paragon requests judgment in such form and for such relief as the Court deems just and proper.

VERIFIED COUNTERCLAIMS

Nominal Defendant/Counterclaim Plaintiff Paragon Technologies, Inc. (“Paragon” or the “Company”) by and through their undersigned attorneys and pursuant to Court of Chancery Rule 13, hereby brings forth this counterclaim for breach of fiduciary duties against Plaintiff/Counterclaim Defendant Hesham M. Gad (“Gad”), and states the following in support thereof:¹

¹ Although there are no claims against the Company in this action, and it is a party only as a nominal defendant, the Company brings this claim as a counterclaim solely to avoid any potential argument by Gad that it is a compulsory counterclaim required to brought as such.

INTRODUCTION

1. Gad joined Paragon's Board in 2010 and became Chairman of the Board in March 2012. Since 2014, Gad has used his influence as Chairman to employ himself as CEO of Paragon and, since 2016, in executive officer or president roles at its subsidiaries. As such, Gad has worn three hats, each playing a key role in these claims: he was a director, officer and stockholder.

2. In those capacities, Gad intentionally concealed from the rest of the board (Weiser and Jacobs) and all other stockholders, that he was not authorized to work in the United States during much of his tenure, in violation of the Immigration and Nationality Act, 8 U.S.C. §1324a. As Gad well-knew, this exposed the Company to potential liability. Gad knowingly caused the Company to have that exposure solely so that he could keep control over the company and all of its affairs and continue to pay himself a salary as CEO.

3. To avoid detection, Gad repeatedly and intentionally misclassified himself as an independent contractor, causing the Company to pay his wholly owned consulting company, rather than pay him as an employee. This had the secondary impact of subjecting Paragon and its subsidiaries (the "Subsidiaries") to additional potential fines from the United States Department of Labor, the Internal Revenue Service, the Georgia Department of Labor, and the Pennsylvania Department of Labor and Industry.

4. Having been removed as CEO and Chairman in August 2024, and his illegality on the verge of discovery in September 2024, Gad solicited written consents to replace the Board without disclosing any of these issues to the stockholders from whom he solicited consents. Gad apparently hoped to gain control of the Board before his misconduct could be discovered so that he could continue to conceal it and resume paying himself as CEO. Gad's plan was unsuccessful because the written consents were invalid under Delaware law.

5. In response to discovery requests served by Weiser and Jacobs in this matter, and after repeated resistance, Gad finally produced evidence of his unlawful, self-dealing conduct, which showed his breaches his duties to Paragon and its stockholders.

PARTIES

6. Nominal Defendant/Counterclaim Plaintiff Paragon is a Delaware corporation that serves as a holding company of wholly owned subsidiaries engaged in diverse business activities including supply chain automation, distribution of technology products, and real estate ownership and services.

7. Defendant Samuel S. Weiser is a stockholder of Paragon. He is currently a director of Paragon and serving as interim CEO of Paragon as of August 9, 2024. Prior to assuming those roles, Weiser has been a director of Paragon since 2012.

8. Defendant Jack H. Jacobs is a stockholder of Paragon. He served on Paragon's Board until his resignation on December 31, 2024. Prior to his resignation, Jacobs had been a director of Paragon since 2012.

9. Defendant Howard Brod Brownstein is a stockholder of Paragon. He is also a director of Paragon. He was appointed to the Board on December 19, 2024, and is currently the Chair of Paragon's Audit Committee.

10. Defendant Howard Timothy Eriksen is a stockholder of Paragon. He is also a director of Paragon. He was appointed to the Board on December 19, 2024, and is currently Chair of Paragon's Nominating and Corporate Governance Committee.

11. Defendant David Lontini is a stockholder of Paragon. He is also the Chairman of Paragon's Board. He was appointed to the Board on December 19, 2024, and is currently Chairman of Paragon's Compensation Committee.

12. Plaintiff/Counterclaim Defendant Hesham M. Gad serves as a director on Paragon's Board. Prior to his termination on August 9, 2024, he was employed by Paragon as the CEO for more than a decade. In addition, from 2016 until he was terminated on November 4, 2024, he also served as the President of the Subsidiaries.

JURISDICTION

13. This Court has subject matter jurisdiction over this counterclaim pursuant to 10 *Del. C.* § 341.

14. This Court has personal jurisdiction over Gad pursuant to 10 *Del. C.* § 3114.

GAD'S IMMIGRATION TO THE UNITED STATES

15. Gad was born on March 27, 1978 in Cairo, Egypt. He is a citizen of the Arab Republic of Egypt and holds an Egyptian passport. Despite his repeated misrepresentations, he has never been a U.S. citizen.

16. Based on the documentation provided, Gad arrived in the United States through New York on August 5, 1985, when he was 7 years old. Gad's admission to the United States was through a Form I-94, which is a temporary visitor permit. Gad's I-94 permitted his presence in the United States until June 4, 1986.

17. Gad's family ultimately settled in Athens, Georgia, and, according to the findings of the Superior Court of Georgia in Athens-Clarke County in Civil Action No. SU-12-CV-0018, his lawful status in the United States expired on June 4, 1986, and was not renewed.

18. On or around February 22, 2008, Gad was arrested in Athens-Clarke County, Georgia, under suspicion of theft against his former employer, Earthfare.

During his booking, Gad lied to police, indicating that he was a U.S. citizen born in Athens, Georgia.

19. On May 8, 2008, Gad entered a negotiated plea to felony theft by taking, which had an agreed-to sentence of two years' probation under Georgia's First Offender Act.

20. In March 2009, Gad married Margaret Allen Gad, a U.S. Citizen who, unlike her husband, was born in Athens, Georgia. Gad's marriage to a U.S. Citizen would have made him eligible to apply for permanent residence, but for the plea he entered into in May 2008.

21. The felony guilty plea subjected Gad to mandatory deportation.

22. In March 2011, Gad engaged counsel to file a Motion for New Trial or In the Alternative Extraordinary Motion to Withdraw Guilty Plea in the Superior Court of Georgia. The Court found that Gad could not seek such relief except through a Petition for Habeas Corpus.

23. On January 10, 2012, Gad filed a Petition for Habeas Corpus seeking to withdraw his guilty plea, arguing that he did not understand that entering a guilty plea could subject him to deportation.

24. Things only got worse for Gad. On January 25, 2012, the Honorable H. Patrick Haggard for the Superior Court of Georgia heard argument on Gad's Petition for Habeas Corpus.

25. At the hearing, the State of Georgia presented evidence that Gad, at the time, had no immigration status and had been living illegally in the United States since June 4, 1986—accruing more than 15 years of unauthorized time and subjecting him to a mandatory 10-year ban if he were to leave the U.S. to seek proper status adjustment.

26. Not only did Gad not have immigration status, but an investigation also undertaken by the Georgia Department of Driver Services and a task force agent with the Department of Homeland Security revealed longstanding deceit and fraudulent claims of U.S. Citizenship by Gad.

27. Specifically, the investigation revealed that when Gad first applied for a driver's license in the United States in April 1994, he concealed his unlawful immigration status by claiming on his application that he was a U.S. Citizen, in violation of 8 U.S.C. § 1227(a)(3)(D).

28. The investigation did not stop there. The Secretary at the Board of Elections in Athens-Clarke County was notified. In reviewing records, it was determined that on January 10, 2000, Gad affirmed under penalty of perjury that he was a U.S. Citizen and registered to vote.

29. Records indicated that Gad voted in the November 2, 2004, General Election, in violation of 8 U.S.C. § 1227(a)(6).

30. Not only did the Superior Court deny his Petition for Habeas Corpus, but the State of Georgia brought new charges against Gad for making false statements on his driver's license documents. *See State v. Gad*, Case No. SU-11-CR-0622-H.

31. On April 3, 2014, the Superior Court approved Gad's request to be admitted into the Western Judicial Circuit District Attorney's Pretrial Diversion Program. If successfully completed, the State agreed to nolle prosequi/dismissal of the charges.

GAD HIRES HIMSELF IN VIOLATION OF FEDERAL LAW

32. Gad first joined Paragon in 2010 as a director. In October 2010, while seeking a board seat, Gad completed the mandatory Questionnaire for Directors, Executive Officers, and 5% Stockholders. The second question under personal information required Director Gad to state his country of nationality. Gad lied, stating that he was a U.S. citizen—starting a pattern of deceit that would go on for over a decade.

33. In May 2014, just one month after resolving charges for falsifying records related to his immigration status, Gad used his influence as Chairman of the Board to have himself appointed as CEO of Paragon.

34. Aware that he had no immigration status and no work authorization, having just been prosecuted for that exact reason, Gad used his position as Chairman

of the Board to cause the Company to employ him in knowing violation of 8 U.S.C. §1324a(a)(1)(A).

35. In doing so, Gad put his self-interest above Paragon and its stockholders, subjecting Paragon to potential civil fines and criminal penalties, and breaching his fiduciary duties to Paragon and its stockholders.

36. To further conceal his actions, Gad, without notice to the Board, directed Paragon to list the CEO (i.e., himself) for payroll purposes as an independent contractor with a third-party company, HG Consulting, Inc., which Gad wholly owns.

37. But Paragon has never entered into a consulting agreement with HG Consulting, Inc. for chief executive officer services, and no such agreement has ever been approved by Paragon's Board, nor did Gad seek the Board's approval of it with full and candid disclosure.

38. The result was that Gad caused Paragon to misclassify HG Consulting, Inc. as its CEO for payroll purposes such that Paragon failed to withhold taxes and underpaid payroll taxes in potential violation of federal and Pennsylvania and/or Georgia law—all at Gad's direction and without disclosing any of this material information.

39. This consulting arrangement and obvious misclassification was never shared with the other members of Paragon's Board or its stockholders, nor was any

authorization of the Board sought. To make matters worse, Gad made sure that all of the Company's public statements stated that Hesham M. Gad was the Chief Executive Officer or President of the Subsidiaries rather than disclosing the existence of HG Consulting.

40. In September 2015, Chief Financial Officer Deborah Mertz, who took over as CFO after Gad was appointed CEO, reviewed the compensation report and spotted a company liability issue with Gad's CEO compensation.

41. Ms. Mertz sought the input of Paragon's auditors, McGladrey LLP, who provided that "Sham is both a board member and the President/CEO of the company his compensation would be divided between 1099 and W-2 reporting based on the services that he is being compensated for (whether as a board member or an employee)."

42. Gad ignored Mertz and the outside auditors and abused his authority by continuing to cause the Company to pay his compensation as disguised consulting services to HG Consulting, Inc. And he did so because he knew at the time that he had no legal authority to work in the United States, and no right to receive the compensation he did as CEO—from salary, bonuses, and stock—as an illegal U.S. worker.

43. Gad's motivation is obvious. Paying himself as a W-2 employee would have required that Gad complete a Form I-9 and provide documentation to prove

that he was authorized to work in the United States—which he could not do. The Company would have had to immediately terminate him.

44. Two weeks later, Gad was given a brief reprieve when he was approved for an Employment Authorization Document (“EAD”). The EAD gave Gad the right to work in the United States for one year following its issuance on October 5, 2015. His application for permanent residence was, however, denied.

45. As such, Gad could have corrected his misclassification, completed a Form I-9, and prevented Paragon from continuing to potentially violate federal and Pennsylvania and/or Georgia law by failing to withhold taxes and underpaying payroll taxes.

46. Gad’s authorization to work in the United States expired on October 4, 2016, and upon information and belief, Gad made no effort to renew his status. Gad knew he was no longer authorized to work in the United States, which was material information that required disclosure to Paragon’s Board.

47. Gad again put his self-interest above Paragon and its stockholders and concealed this information to continue to compensate himself as CEO, in violation of 8 U.S.C. §1324a(a)(2), and breached his fiduciary duties to Paragon and its stockholders.

48. As of October 5, 2016, Gad was knowingly and willfully exposing the Company to potential violations of federal law by continuing to cause the Company

“to employ [Gad] in the United States knowing [Gad] is (or has become) an unauthorized alien with respect to such employment.” 8 U.S.C. §1324a(a)(2).

49. On or around October 17, 2016, Ark Investments, LLC (“Ark”), a wholly owned subsidiary of Paragon, was established to conduct investment activities. With his authorization to work in the United States having expired two weeks earlier, Gad used his influence and position as Chairman of Paragon’s Board to have himself appointed as President of Ark, in violation of 8 U.S.C. §1324a(a)(1)(A). This was an additional breach of his fiduciary duties to Paragon and its stockholders.

50. On or around December 11, 2017, Ohana Home Services, LLC (“Ohana”), a wholly owned subsidiary of Paragon, was established to acquire real estate for income and capital appreciation purposes. Again, with no legal right to work in the United States, Gad used his influence and position as Chairman of Paragon’s Board to have himself appointed as President of Ohana, in violation of 8 U.S.C. §1324a(a)(1)(A). This was yet another breach of his fiduciary duties to Paragon and its stockholders.

51. In December 2017, SI Systems’ President and CEO, John Molloy left the company. Paragon’s Board approved a four-month expansion of Gad’s role to oversee operations and strategic options during SI Systems’ transition.

52. At the December 18, 2018, board meeting, Gad made a presentation to the other board members that a search for a CEO at SI Systems would be “costly and unproductive to the business given the time and expense incurred to conduct a search along with the required compensation package that would likely be needed to recruit such an individual.” Instead, Gad stated his belief that the “most prudent course of action” was for the Board to also hire Gad as CEO at SI Systems— again in violation of federal law

53. At the time Gad was inducing the Board to hire him, he knew that he was not authorized to work in the United States, and that employing him as CEO at SI Systems would, again, cause Paragon to violate 8 U.S.C. §1324a(a)(1)(A). Gad's placement of his own interests above those of the Company and its stockholders was a breach of his fiduciary duties to Paragon and its stockholders.

54. Gad concealed his status from the Board, and instead had the Board officially hire him as CEO of SI Systems and pay him a salary equal to \$5,500 every two weeks, effective January 1, 2019.

55. Despite being approved as a base salary, Gad, as CEO and Chairman of Paragon, directed SI Systems not to change his payment arrangement. Instead of becoming a salaried W-2 employee, as the Board had explicitly approved, Gad continued to have SI Systems pay HG Consulting for his role as CEO, in violation of federal and Pennsylvania and/or Georgia law.

56. After positioning himself in the chief executive officer role at four different companies, earning \$143,000 per year in compensation and another \$24,000 in insurance benefits for roles he was holding illegally, Gad continued to violate federal law, Georgia law, and Pennsylvania law by continuing in each of these positions for years to come.

57. For the next five and a half years, Gad received more than \$1 million in compensation for his unlawful employment and deception.

58. But Gad's breaches did not stop with his cash compensation. In December 2023, Gad, in his capacity as CEO, was awarded a bonus of \$25,000 and a stock grant of 10,000 shares under his incentive plan. Those 10,000 shares were later used as part of written consents to attempt to remove Weiser and Jacobs, elect his slate of directors, and prevent any investigation into his illegal, self-dealing actions.

59. Gad's scheme started to unwind in 2024. After a disastrous activist campaign against Ocean Power Technologies, Inc. ("OPT")—one in which the Court of Chancery found that Gad had deleted text messages in the midst of litigation and subjected Paragon to an order to pay OPT's fees and costs related to their motion for sanctions—thereafter, the Board directed Gad to pause other activist campaigns.

60. Gad defied the Board. He caused the Company to accumulate a significant position in NeuroMetrix, Inc.

61. On August 9, 2024, Weiser and Jacobs, acting as the majority of Paragon's Board, voted to remove Gad as CEO of Paragon and as Chairman of the Board. Gad, however, maintained his executive officer positions at the Subsidiaries, and as a member of the Board.

62. In the same meeting, Weiser was appointed Chairman and CEO on an interim basis, while Gad was tasked with providing a strategic business plan for the Subsidiaries as part of a potential reinstatement to the CEO and Chairman roles.

63. With Weiser and Jacobs now in a position to discover his unlawful, self-dealing actions, Gad took action. Instead of working on a strategic business plan for the Subsidiaries, Gad solicited Paragon's largest stockholders to submit written consents to remove Weiser and Jacobs, and appoint Gad's hand-picked slate of directors. It appears as though this was an effort to stop and silence any investigation into his misconduct and reinstate himself as CEO of Paragon where he could continue to receive significant compensation that he could not receive anywhere else because of his employment status. His only potential source of income was making himself the CEO of Paragon again where he could work illegally without detection.

64. At the time Gad was soliciting written consents, he was unlawfully employed at each of the Subsidiaries but never disclosed that to Board or the stockholders from whom he was soliciting consents.

65. Instead, on September 27, 2024, Gad delivered written consents to Paragon, purporting to remove Weiser and Jacobs—ensuring his illegal, self-dealing actions would remain cloaked from other stockholders, including those from whom he had just solicited consents.

66. The written consents were invalid under Delaware law because they did not comprise a majority of the record stockholders required to take such actions.

67. Thereafter, Weiser continued to examine Gad's actions.

68. Now overseeing payroll, Weiser discovered that Gad's compensation for his executive officer roles with the Subsidiaries was being paid to HG Consulting, not to Gad, and not as a W-2 employee.

69. Paragon sought outside guidance on the subject. And, just as McGladrey LLP had advised in 2015, Paragon learned Gad was being misclassified and his compensation must be paid as a W-2 employee, with proper withholdings and payment of payroll taxes under federal law and Pennsylvania and/or Georgia law.

70. Paragon immediately sought to correct the misclassification and have Gad complete a Form I-9. Speaking only through lawyers, Gad refused to complete a Form I-9, because, as Paragon now knows, he could not because he is not authorized to work in the United States.

71. With Gad refusing to complete the Form I-9, Paragon was bound under federal law to terminate all remaining employment of Gad with the Subsidiaries. It did so on November 4, 2024.

72. In total, Gad caused the Company and its Subsidiaries to illegally employ himself for 9 years and 6 months, and to cause Paragon to fail to withhold taxes and underpay payroll taxes for 10 years and 6 months. Over the decade of deceit, Gad earned more than \$1,000,000 in employment compensation and received stock in an incentive plan—10,000 shares—all in violation of his fiduciary duties.

73. More potential misconduct immediately came to light. In addition to the self-dealing actions in unlawfully employing himself, it became clear that there were significant discrepancies in expense reports and that season tickets to Major League Soccer’s Inter Miami FC purchased by Paragon’s international subsidiary, SED Colombia (“SED”), were sold on StubHub and TicketMaster by Gad, but Paragon was not reimbursed.

74. The Audit Committee of the Board retained Holland & Knight to conduct an independent investigation into Gad’s actions both as CEO and a director, including getting to the bottom of the work authorization, and assessing any potential liability or obligations Gad’s actions had caused Paragon (the “Independent Investigation”).

75. The Independent Investigation began in early December 2024 and started in earnest in late December 2024 under the direction of Brownstein, Eriksen, and Lontini, three new directors who joined the Board on December 19, 2024, and were appointed to the Audit Committee.

76. On January 23, 2025, Holland & Knight contacted Gad's counsel at Greenberg Traurig regarding the collection of electronically stored information from Gad relevant to the investigation.

77. Gad's counsel stated on January 29, 2025, that Gad would provide the discovery in this case to the investigators as part of their investigation into his conduct. Although the investigators disagreed that this was sufficient, it nonetheless served as a starting point.

78. For the next two months, Gad's counsel stonewalled the Audit Committee, not responding to any further emails. Not a single document was provided to the Audit Committee by Gad. Yet, Gad requested advancement on more than \$100,000 in legal fees allegedly incurred in defense of the investigation.

79. Meanwhile, Gad's litigation counsel stated that Holland & Knight had no right to review any of the confidential discovery in the case and would not stipulate to their adherence to the confidentiality order to do so.

80. So, on one hand, Gad's investigation counsel at Greenberg Traurig was saying that Gad will not provide his ESI because the Audit Committee can get it

from the discovery in the civil suit, and on the other, Gad's litigation counsel was saying the Audit Committee cannot receive the discovery because of the Confidentiality Order.

81. It was not until March 28, 2025, after the parties were forced to threaten motion practice, that Gad finally agreed that a select portion of the documents he had produced in the litigation, which evidence his breaches of fiduciary duties, could be shared with Holland & Knight.

COUNT I – BREACH OF FIDUCIARY DUTY

82. Defendants repeat, reallege, and incorporate by reference as though fully set forth herein each and every allegation contained in the above paragraphs of this Counterclaim.

83. As a director of a Delaware corporation, Gad owed and owes Paragon and its stockholders fiduciary duties. These fiduciary duties required him to be candid to the Board and when communicating with stockholders. Gad also owed fiduciary duties as an officer of Paragon.

84. Gad breached his fiduciary duty beginning in May 2014 by using his influence as Chairman of the Board to knowingly employ and compensate himself as CEO of Paragon in violation of 8 U.S.C. §1324a(a)(1)(A).

85. Gad knowingly and intentionally concealed his immigration status and unlawful work authorization status from both the Board and Paragon's stockholders so that he could continue to be compensated as the CEO.

86. Gad's breach of fiduciary duty included knowingly and intentionally misclassifying his Paragon CEO role as an independent consulting arrangement with HG Consulting, Inc., solely for the purpose of concealing the fact that he could not be paid directly due to his immigration status.

87. As explained above, these breaches exposed the Company to potential tax and immigration fines and penalties under federal and state law.

88. Gad further breached his fiduciary duties by setting up similar unlawful arrangements for himself as CEO of Paragon's subsidiaries, which likewise expose Paragon to potential liability as the sole owner of those subsidiaries.

89. Through the actions described herein, Gad acted in bad faith and in violation of his fiduciary duties as an officer and a director of Paragon.

90. As a result of Gad's conduct, Paragon and its stockholders have been harmed in an amount to be determined at trial, but includes, at a minimum, the compensation paid to his consulting company in violation of the applicable laws and any fines, penalties, or sanctions imposed on Paragon as a result of his misconduct.

PRAYER FOR RELIEF

WHEREFORE, Paragon requests that the Court:

- (a) Enter an order declaring that Gad breached his fiduciary duties;
- (b) Enter an order declaring that Gad must indemnify and hold harmless Paragon and its Subsidiaries for any fines, penalties, or sanctions incurred for the employment of an unauthorized alien;
- (c) Enter an order declaring that Gad must indemnify and hold harmless Paragon and its Subsidiaries for any fines, penalties, or sanctions incurred for the misclassification of Gad as an independent contractor for his roles as CEO of Paragon, President and/or CEO of SI Systems, Ark, and Ohana;
- (d) Enter an order requiring Gad to disgorge to the Company the employment compensation paid to him while he was working illegally at the Company;
- (e) Enter an order rescinding the stock grant made to Gad while he was working illegally at the Company;
- (f) Enter an order requiring Gad to reimburse the Company for all attorneys' fees advanced to him in connection with the Independent Investigation;
- (g) Award any other damages in an amount to be determined at trial; and
- (h) Grant such other relief as this Court deems just, proper, and equitable.

MORRIS, NICHOLS, ARSHT &
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March 28, 2025