

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

WESTERN PENNSYLVANIA ELECTRICAL )  
EMPLOYEES PENSION FUND, Individually )  
and On Behalf of All Others Similarly Situated,)

Plaintiff, )

vs. )

CANDELA CORPORATION, GERARD E. )  
PUORRO and PAUL BROYER, )

Defendants. )  
\_\_\_\_\_ )

No.

CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF  
FEDERAL SECURITIES LAWS

**JURY TRIAL DEMANDED**

Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Candela Corporation ("Candela" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a securities class action on behalf of purchasers of the securities of Candela between February 1, 2006 and August 21, 2006, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC") [17 C.F.R. §240.10b-5].

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act [15 U.S.C. §78aa].

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §1391(b), as many of the acts and practices complained of herein occurred in substantial part in this District.

5. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## **PARTIES**

6. Plaintiff Western Pennsylvania Electrical Employees Pension Fund, as set forth in the accompanying certification, incorporated by reference herein, purchased the securities of Candela during the Class Period and has been damaged thereby.

7. Defendant Candela engages in the development and commercialization of laser and light-based systems that allow physicians and personal care practitioners to treat various cosmetic and medical conditions worldwide.

8. (a) Defendant Gerard E. Puorro (“Puorro”) served as Candela’s Chief Executive Officer (“CEO”) and President during the Class Period.

(b) Defendant Paul Broyer (“Broyer”) served as Candela’s Chief Financial Officer (“CFO”) during the Class Period.

(c) Defendants Puorro and Broyer are collectively referred to herein as the “Individual Defendants.”

9. Because of the Individual Defendants’ positions with the Company, they had access to the adverse undisclosed information about the Company’s business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company’s operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

10. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company’s public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers of Candela, by

virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

11. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the Nasdaq National Market System (“NASDAQ”), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to the Company’s financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company’s publicly-traded common stock would be based upon truthful and accurate information. The Individual Defendants’ misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

12. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of

their Board membership and/or executive and managerial positions with Candela, each of the Individual Defendants had access to the adverse undisclosed information about Candela's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Candela and its business issued or adopted by the Company materially false and misleading.

13. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

14. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Candela common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Candela's business, operations, management and the intrinsic value of Candela common stock; and (ii) caused Plaintiff and other members of the Class to purchase Candela common stock at artificially inflated prices.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased the securities of Candela during the Class Period, inclusive (the "Class Period") and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant

times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

16. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Candela common shares were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Candela or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

17. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

18. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Candela; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

### **SUBSTANTIVE ALLEGATIONS**

21. Defendant Candela engages in the development and commercialization of laser and light-based systems that allow physicians and personal care practitioners to treat various cosmetic and medical conditions worldwide.

22. The Class Period commences on February 1, 2006. On January 31, 2006, after the close of trading, Candela issued a press release announcing its financial results for the second fiscal quarter of 2006, the period ending December 31, 2005. For the quarter, the Company reported revenues of \$37.7 million and income of \$0.19 per share. Defendant Puorro commented on the announcement stating in pertinent part as follows:

We are obviously delighted with these results, especially given that the December quarter is traditionally our second slowest . . . As we head into the second half of our fiscal year, we remain confident of our ability to execute our business plan and continue to be the leader in this space.

23. In response to the positive earnings announcement, the price of Candela stock surged, rising from \$14.97 per share to \$18.60 per share on heavy trading volume.

24. On May 2, 2006, Candela issued a press release announcing its financial results for its third fiscal quarter, the period ending April 1, 2006. For the quarter, the Company reported that revenues and profits “reached all-time Company highs” with \$42.3 million in revenues and net

income of \$0.21 per share. Defendant Puorro commented on the results stating in pertinent part as follows:

We obviously are pleased with these record results. Our growth continues to be strong and we remain the market share leader. The introduction of our Vbeam platform has been well received and we remain optimistic about our opportunities going forward.

25. On August 10, 2006, Candela issued a press release announcing that it had filed a complaint against Palomar Medical Technologies, Inc. (“Palomar”) for patent infringement.

26. The statements referenced above in ¶¶22, 24-25 were each materially false and misleading when made because they failed to disclose and misrepresented the following material adverse facts which were known to Defendants or recklessly disregarded by them:

(a) that the Company was quickly losing market share to competitors as it lacked a competitive multi-configuration/multi-application device;

(b) that the Company had received communications from Palomar regarding the alleged infringement of Palomar’s patents by Candela. These communications were material information for investors as Palomar has made it a pattern and practice of suing the cosmetic laser industry for infringement and has successfully forced numerous competitors to license its technology. At a minimum, the prospect of patent litigation presented increased costs to the Company; and

(c) based on the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, its earnings and prospects.

27. Then, On August 21, 2006, after the close of the market, Candela issued a press release announcing its financial results for its fourth fiscal quarter and fiscal year 2006. For the fourth quarter, the Company reported net income of \$0.10 per share – far below analysts’ earnings



expectations of \$0.23 per share. Defendant Puorro commented on the announcement stating in pertinent part as follows:

While we are pleased with the full year results of 21% revenue growth and 104% profit growth, we are not satisfied with our fourth quarter finish. As we examine our position in the market and our plan to introduce several new products in the first half of calendar 2007, we are optimistic we will grow with or above the market in the coming year.

28. In response to the announcement, the price of Candela stock declined from \$14.49 per share to \$10.33 per share on extremely heavy trading volume.

29. Analysts quickly noted that the Company was losing market share to competitors and that the patent litigation with Palomar presented a significant risk to the Company. For example, on August 22, 2006, Cowen And Company issued a report downgrading Candela stock from “Outperform” to “Neutral” noting that Candela was losing market share and would report slowing growth for the near future while it attempted to catch up to its competitors.

30. The market for Candela’s common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Candela’s common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Candela common stock relying upon the integrity of the market price of Candela’s common stock and market information relating to Candela, and have been damaged thereby.

31. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Candela’s common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make Defendants’ statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

32. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Candela's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Candela and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

#### **Additional Scienter Allegations**

33. As alleged herein, Defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Candela, their control over, and/or receipt and/or modification of Candela's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Candela, participated in the fraudulent scheme alleged herein.

**Applicability of Presumption of Reliance:  
Fraud on the Market Doctrine**

34. At all relevant times, the market for Candela's common stock was an efficient market for the following reasons, among others:

(a) Candela stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, Candela filed periodic public reports with the SEC and the NASDAQ;

(c) Candela regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Candela was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

35. As a result of the foregoing, the market for Candela's common stock promptly digested current information regarding Candela from all publicly available sources and reflected such information in Candela's stock price. Under these circumstances, all purchasers of Candela's common stock during the Class Period suffered similar injury through their purchase of Candela's common stock at artificially inflated prices and a presumption of reliance applies.

**No Safe Harbor**

36. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint.

Many of the specific statements pleaded herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Candela who knew that those statements were false when made.

## COUNT I

### **Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants**

37. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

38. During the Class Period, Defendants disseminated or approved the materially false and misleading statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

39. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company’s common stock during the Class Period.

40. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Candela common stock. Plaintiff and the Class would not have purchased Candela common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

41. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases of Candela common stock during the Class Period.

## **COUNT II**

### **Violation of Section 20(a) of the Exchange Act Against the Individual Defendants**

42. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

43. The Individual Defendants acted as controlling persons of Candela within the meaning of Section 20(a) of the Exchange Act as alleged herein. By reason of their positions as officers and/or directors of Candela, and their ownership of Candela stock, the Individual Defendants had the power and authority to cause Candela to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: April 2, 2008

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