

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CASEY ROBERTS, *et al.*,  
Plaintiffs,  
v.  
ZUORA, INC., *et al.*,  
Defendants.

Case No. [19-cv-03422-SI](#)

**ORDER DENYING DEFENDANTS’  
MOTION TO DISMISS**

Re: Dkt. No. 64

Now before the Court is defendants’ motion to dismiss the consolidated amended complaint. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and hereby VACATES the hearing. For the reasons set forth below, the Court DENIES defendants’ motion.

**BACKGROUND**

**I. Parties and Products**

This securities fraud case is brought by Lead Plaintiff New Zealand Methodist Trust Association (“plaintiff”) on behalf of itself and a class of those who purchased securities from Zuora, Inc. (“Zuora”) in the period from April 12, 2018 to May 30, 2019 (the “Class Period”). Consol. Am. Class Action Compl. ¶¶ 22, 268 (“CACAC” or “Complaint”) (Dkt. No. 60).

Defendant Zuora is an enterprise software company providing “subscription commerce, billing and finance systems to its enterprise clients on a subscription basis.” *Id.* ¶ 27. Also named as defendants are Chief Executive Officer and Chairman of the Board of Directors Tien Tzuo (“Tzuo”), and Chief Financial Officer Tyler Sloat (“Sloat”) (collectively, the “individual defendants”). *Id.* ¶¶ 24-25.

Zuora coined the phrase “Subscription Economy” when it was founded in 2006,

1 “predict[ing] a new business environment in which traditional product or service companies would  
2 shift toward subscription business models.” *Id.* ¶ 29. The Zuora Central Platform offers five  
3 software products, including Zuora Billing (“Billing”) which is the “primary and most widespread”  
4 of the products. *Id.* ¶¶ 32-34. Billing was launched in 2008 and “provides customers with the  
5 flexibility to bill in multiple ways, calculate proration when needed, group customers into batches  
6 for different billing and payment operations, set payment terms, consolidate invoicing across  
7 multiple subscriptions, and collect revenue.” *Id.* ¶ 34.

8 The Zuora Central Platform also includes the software product RevPro, which Zuora  
9 acquired when it purchased another company, Leeyo Software, Inc., in May 2017. *Id.* ¶ 35. “Similar  
10 to what [Billing] does for managing subscription model processes, RevPro automates the range of  
11 internal, multi-departmental processes required to comply with the new Accounting Standard  
12 Codification 606/International Financial Reporting Standards 15 [‘ASC 606’].” *Id.* ASC 606  
13 obligated companies to adopt new standards for allocating and recognizing revenue; public  
14 companies were required to adopt such standards by the start of their fiscal year beginning after  
15 December 15, 2017, and private companies were required to do so by the start of their fiscal year  
16 beginning after December 15, 2018. *Id.* ¶ 36. The individual defendants “consistently noted that  
17 companies would attempt to adopt ASC using traditional financial tools or internal systems, which  
18 likely would prove cumbersome,” and so Zuora “immediately heralded the RevPro acquisition as  
19 creating a ‘one-stop shop for automating financial operations.’” *Id.* ¶¶ 37-38.

## 20 21 **II. Initial Public Offering**

22 Plaintiff alleges that Zuora’s acquisition of Leeyo “paved the way” for the company to go  
23 public. *Id.* ¶ 46. In preparation for an initial public offering (“IPO”), Zuora released an Investor  
24 Presentation in April 2018, which emphasized its “Cross-Sell Flagship Products,” Billing and  
25 RevPro, *id.* ¶¶ 47-48, and a registration statement, prospectus, and prospectus supplement that  
26 became effective on April 12, 2018 (collectively the “Registration Statement”). *Id.* ¶ 49. As  
27 described in the Complaint, the Registration Statement “highlighted the functionality and integrated  
28 features of Zuora’s solutions, stating ‘our solution functions as an intelligent subscription

1 management hub that automates and orchestrates the entire subscription order-to-cash process[.]”  
2 *Id.* ¶ 50. The Registration Statement also described Zuora’s platform as “captur[ing] financial and  
3 operational data, enabling subscription businesses to have a single system of record rather than  
4 having to reconcile data from multiple systems.” *Id.* ¶ 51; *see also id.* ¶¶ 52-56 (quoting other  
5 statements in Registration Statement about the platform and products). Plaintiff alleges that “[t]he  
6 Registration Statement’s representations about Zuora’s solution made the IPO a rousing success.  
7 On April 16, 2018, the Company announced that it had closed its IPO selling 12,650,000 shares of  
8 its common stock, including full allotment to underwriters . . . raising over \$162.2 million in net  
9 proceeds.” *Id.* ¶ 57.

10 The complaint alleges that throughout the class period, Zuora and the individual defendants  
11 made numerous false or misleading statements promoting the platform’s functionality. For  
12 example, throughout the class period, Zuora’s website claimed that with “Zuora’s subscription  
13 management technology . . . you can quote, order, bill, recognize revenue, report, and automate the  
14 entire customer lifecycle from a single platform.” *Id.* ¶ 160. “Similarly, throughout the Class  
15 Period, Zuora’s website highlighted how Zuora Central is a ‘single platform, for your order-to-  
16 revenue process and the connective tissue between your CRM and ERP.’ Zuora stated that Central  
17 ‘easily connects the various applications in your order-to-revenue ecosystem.” *Id.* ¶ 162. The  
18 complaint also challenges a tweet from Zuora’s Twitter account on June 5, 2018, which read: “Don’t  
19 underestimate the complexity of revenue recognition. The deep dark depths are very, very complex!  
20 Thank goodness for Zuora + RevPro integration for a seamless order-to-revenue process!  
21 #Subscribed #revrec.” *Id.* ¶ 164 (emphasis removed from all statements quoted in the CACAC,  
22 unless otherwise noted). The complaint quotes numerous similar statements from Zuora’s website,  
23 Facebook page, product press releases, SEC filings, and earnings calls. *See id.* ¶¶ 159-240.

24 Plaintiff alleges that “Zuora’s statements about its platform and products were well-received  
25 by securities analysts,” with analysts noting, *inter alia* that RevPro was a “New Beachhead with  
26 Significant Near-Term Revenue Opportunity,” and the “significant cross-sell opportunity between  
27 over 850 Zuora Billing customers, many of which face ASC 606 compliance challenges, and over  
28 100 RevPro customers at the end of fiscal 2018.” *Id.* ¶ 58; *see also id.* ¶¶ 127-30 (quoting positive

1 coverage about Zuora and its prospects for growth from financial press in June and August 2018).

2  
3 **III. Confidential Witnesses**

4 Plaintiff alleges that defendants materially misrepresented the functionality of the platform  
5 and “omitted to disclose a fundamental technical challenge”: that customers “could not successfully  
6 integrate the data from [Billing and RevPro].” *Id.* ¶ 59. In support of this allegation, plaintiff relies  
7 primarily on statements by four confidential witnesses (the “CWs”) about this challenge, customer  
8 responses, and Zuora’s internal responses.

9 CW-1 worked at Zuora from June 2017 to April 2019 as “Senior Manager Global  
10 Services/Principal Solution Architect and Zuora Integration Architect,” reporting to Vice President  
11 Ramamoorthy (“VP Ramamoorthy”), who in turn reported “to the C-suite executives.” *Id.* ¶¶ 60,  
12 101. The complaint alleges that CW-1 “has extensive knowledge regarding the functionality and  
13 implementation of RevPro, as before Zuora acquired Leeyo Software, Inc., CW-1 was employed at  
14 Leeyo as a senior software engineer from December 2014 to May 2017 and was responsible for  
15 providing product implementation and customization for RevPro.” *Id.* ¶ 61. “While employed at  
16 Zuora, CW-1 worked to assist Zuora’s customers automate their revenue operations and functions  
17 with RevPro to comply with ASC 606 and IFRS 15. This included integrating Zuora RevPro with  
18 customers’ ERP<sup>1</sup> systems.” *Id.* ¶ 62.

19 “CW-1 said that for customers using Zuora Billing and Zuora RevPro there was a huge  
20 friction in reconciling the two systems. CW-1 said the integration failure stemmed from a source  
21 data problem arising from the design of Zuora Billing.” *Id.* ¶ 63. “CW-1 explained that the data  
22 within Zuora was not very robust and had limitations. CW-1 explained that Billing could not  
23 provide ERP information or otherwise come up with the data points needed for proper revenue  
24 recognition in RevPro. CW-1 explained that Zuora needed to come up with a solution that could  
25 transport the Billing data into RevPro transaction lines.” *Id.* ¶ 64.

26  
27 <sup>1</sup> According to the complaint, “legacy Enterprise Resource Planning (‘ERP’) software  
28 systems were built with the old product-based model in mind, working in a very linear fashion—  
(i.e., a customer orders a product, is billed, payment is collected, and the revenue is recognized.)”  
*Id.* ¶ 29.

1 CW-2 worked at Zuora from October 2017 to September 2018 as a “high-ranking project  
2 manager/subject matter expert,” and “reported directly to Zuora’s C-suite executives, including  
3 Chief Information Officer Alvina Antar, who reported to Defendant Sloat.” *Id.* ¶ 65. CW-2  
4 “became aware of the issue with reconciling Zuora Billing and RevPro immediately upon coming  
5 on board at Zuora,” and according to CW-2 “[t]he problem with the RevPro integration was the data  
6 source.” *Id.* “CW-2 said the data within Zuora Billing was not very robust, and ‘There were some  
7 limitations; the data was not structured enough and not uniform.’” *Id.* CW-2 also said that “‘the  
8 Zuora platform is very open for companies to decide how to structure their subscriptions; [but] they  
9 did not integrate an engine to extract data and load it into RevPro.’” *Id.*

10 CW-3 worked at Zuora from June 2018 to July 2019 as an account executive, selling Billing  
11 to enterprise and existing customers on the West Coast. *Id.* ¶ 103. CW-3 worked in the San Mateo  
12 office and reported to a Vice President. *Id.* “CW-3 said that the lack of an integration solution and  
13 the fact that customers were unhappy that their products did not work together ‘came up in team  
14 meetings all the time.’ CW-3 and sales colleagues would inform their supervising Vice-Presidents  
15 of particular customers who were unhappy and needed a workable integration for Zuora Billing and  
16 RevPro.” *Id.*

17 CW-4 worked at Zuora from May 2018 to January 2019 as a Business Development:  
18 Strategic Accounts Group Member, working on “large accounts, particularly Fortune 500 accounts.”  
19 *Id.* ¶ 110. CW-4 was on the Zuora Central team, which was focused on selling the Company’s  
20 subscription order-to-revenue platform to major companies. *Id.* CW-4 became familiar with the  
21 RevPro product particularly in August or September 2018 in connection with an upcoming  
22 DreamForce conference. *Id.* ¶ 111. “CW-4 explained that when the Zuora Central team began to  
23 cross-sell with the RevPro team, CW-4 began to have initial conversations about the products with  
24 potential customers and was constantly hearing customers were unhappy with RevPro. CW-4 said  
25 that the issue with selling RevPro was that it was not working with Zuora Central.” *Id.* ¶ 112.

#### 26 27 **IV. Integration Failures**

28 The complaint alleges that “Defendants knew of the integration failure before and

1 throughout the Class Period based on Zuora’s failure to effectively integrate and implement RevPro  
2 internally.” *Id.* ¶ 67. Zuora began “attempting to implement RevPro for its own internal use in or  
3 around October 2017” in a project called “‘Zuora on Zuora’ or ‘ZoZ.’” *Id.*  
4 “ZoR, which tested RevPro and Zuora’s compatibility, was a further extension of the ‘Zuora on  
5 Zuora’ or ‘ZoZ’ project.” *Id.*

6 “Zuora encountered significant integration challenges in doing the internal implementation  
7 such that it could not connect its platform functions with RevPro.” *Id.* ¶ 71. The project “attempted  
8 to use an integration platform referred to as MuleSoft,” which did not succeed. *Id.* “Zuora  
9 attempted to make the MuleSoft effort work from Fall 2017 until May 2018, but they could not  
10 accomplish what they needed to. According to CW-2, MuleSoft itself was not the failure, per se.  
11 CW-2 said that ‘MuleSoft is only a platform and it’s used by thousands of companies successfully.’  
12 CW-2 added that ‘MuleSoft can only do what you ask it [to] do.’ Rather, Zuora was deficient in its  
13 use of the MuleSoft platform. In particular, CW-2 attributed the problems Zuora experienced using  
14 MuleSoft to integrate RevPro to, ‘the operation, the business goals, the knowledge, the execution,  
15 the planning, and the hard thinking through of the product and the solution.’” *Id.* ¶ 72.

16 The complaint alleges that Zuora’s highest executives were informed of the integration  
17 failure occurring on the ZoZ project. *Id.* ¶ 73. The project held weekly ZoZ review meetings which  
18 included CW-1 and CIO Antar. *Id.* According to CW-1, CIO Antar knew of implementation  
19 difficulties and reported these to defendant Sloat. *Id.* ¶¶ 73-74. CW-1 recalled hearing of executive  
20 briefings on the internal implementation status on two occasions.” *Id.* ¶ 74. CW-2 described  
21 defendant Sloat as the “public sponsor” of the ZoZ project. *Id.* ¶ 76. At a project meeting in early  
22 2018, defendant Sloat told the project team that “the market needed a seamless solution and that  
23 ‘Zuora needed to get its act together with RevPro.’” *Id.* ¶ 75. ZoZ’s status was maintained in  
24 Google Documents and email threads; defendant Sloat “would either be copied on [these] . . . or be  
25 apprised by CIO Antar.” *Id.* ¶ 77.

26 “Although Zuora ultimately implemented RevPro internally, the implementation was  
27 incredibly laborious, time and resource intensive, and anything but ideal,” requiring manual touch-  
28 up work in an Excel data file. *Id.* ¶ 78. According to CW-1, Zuora did not complete manual internal

1 implementation until April 2018. *Id.* Zuora did a two-year retest that continued “into at least March  
2 2019.” *Id.*

3 “Beginning in early 2018, with the internal ZoZ project failing . . . Zuora opened a new  
4 project internally referred to as the ‘Keystone Project,’ which was intended to build a connection  
5 between RevPro and Zuora Billing to apply to clients’ systems.” *Id.* ¶ 79. “Zuora’s engineering  
6 and product teams were running Keystone as a separate project to integrate the two tools using a  
7 different engine” than the ZoZ project. *Id.* ¶ 80. The Keystone Project used another solution called  
8 OrderMetrics, but again “the source data was not robust enough and not flexible enough.” *Id.* ¶¶ 81-  
9 82. CW-1 worked on the initial phase of the Keystone Project and conferred with others working  
10 on it after he was reassigned. *Id.* ¶ 81. “The ‘Keystone Project’ integration failure was not customer  
11 specific, but rather was wide reaching and impacted virtually all of Zuora’s customers that had  
12 adopted Billing and RevPro. According to CW-1, Keystone succeeded in helping two or three Zuora  
13 customers who ‘weren’t using [Billing]’s full functionality,” however, “80 to 90 percent of  
14 customers would not be able to use the Keystone integration,’ as candidates for the ‘Keystone’  
15 integration would only be those limited customers who were not using many features.” *Id.* ¶ 84.  
16 Keystone Project reports were stored centrally as Google Documents “generally available to all  
17 executives.” *Id.* ¶ 86.

18 CW-1 “further confirmed Executive Defendants [Tzuo and Sloat] and other Zuora senior  
19 executives were kept aware of the delays in integrating RevPro and its effects on clients at weekly  
20 executive meetings.” *Id.* ¶ 101. According to CW-1, “the Company’s top executives, including  
21 Defendants Tzuo and Sloat, participated in weekly calls with the Company’s Vice Presidents in  
22 which they were briefed on the latest news during weekly calls . . . CW-1 knew of these meetings,  
23 because CW-1 gave reports on the latest news to his supervising VP Ramamoorthy, who would then  
24 give the information to the executives.” *Id.*

25 In or about February or March 2019, “Zuora’s executives acknowledged the failure of the  
26 ‘Keystone Project’ and decided to scrap it in favor of another approach internally called the K-2  
27 Project.” *Id.* ¶ 119. CW-1 was involved in the initial design of the K-2 project in late 2018 and  
28 “handed it over to start the build” before CW-1 left in April 2019. *Id.* CW-1 completed a “Proof

1 Of Concept” in March 2019, “[a]fter which, according to CW-1, ‘there was a directive that Tien  
2 [Tzuo] gave to [SVP RevPro Product] Jagan [Reddy] to start K-2.’ CW-1 added, ‘[w]e knew and  
3 Tien knew, that OrderMetrics wasn’t working.” *Id.*

#### 4 5 **V. Customer Responses to Integration Challenges and Sales Execution Problems**

6 CW-1 said that during CW-1’s employment at Zuora, customers using both Billing and  
7 RevPro experienced “a huge friction in reconciling the two systems.” *Id.* ¶ 63. There were “bad  
8 test results experienced by new accounts and potential Zuora clients before May 2018.” *Id.* ¶ 90.  
9 “Zuora’s clients testing Billing-RevPro provided Zuora with negative feedback.” *Id.* ¶ 91. Many  
10 Zuora groups had weekly forum meetings, at least some in which defendant Sloat participated. *Id.*  
11 ¶ 93.<sup>2</sup> “As for client-specific issues being discussed, CW-2 said ‘I’m sure if the client was  
12 generating a huge amount of revenue for that particular group, then it would be a top of mind  
13 discussion. If [Defendant Sloat] [was] in the sales group forum, that was the only topic [he] would  
14 care about because that would be his bread and butter.” *Id.* ¶ 93. Minutes and summary reports  
15 from forum meetings were also “circulated for action” by email and as Google documents which,  
16 according to CW-2, “would certainly have been seen by [defendants Sloat and Tzuo] . . . and they  
17 certainly would have been, ‘in the loop for that.”” *Id.*

18 One of Zuora’s most important Billing customers, Zoom Video Communications, “initially  
19 elected to purchase RevPro, but ultimately opted not to implement it fully due to the integration  
20 failure.” *Id.* ¶ 98. CW-1 said that Zoom was testing RevPro but then stopped the project in late  
21 2018. *Id.* CW-1 explained that “the Company had the billing information, but struggled to translate  
22 it into RevPro smoothly.” *Id.* “Zoom’s decision to stop the project was a major blow to Zuora’s  
23 financials because the unsatisfied customer ‘stopped some payments as well,’ CW-1 said. CW-1  
24 emphasized that the Zoom incident was such a significant hit to Zuora that ‘it was material enough  
25 to impact our bonus payments – our bonus was dependent on meeting our revenue target.” *Id.* ¶ 99.

26  
27 <sup>2</sup> “CW-2 said that every group in the Company had a forum, including the product group,  
28 the engineering group, and the RevPro engineering group.” *Id.* Sales also had a forum, and “[t]he  
purpose of the forum was to update management on the integration date, progress, and the weekly  
status report.” *Id.*

1 “CW-1 stated that when Zoom stopped paying Zuora for RevPro, VP Ramamoorthy pulled CW-1  
2 into a couple of executive meetings that VP Ramamoorthy was having with Zuora’s founders toward  
3 the end of 2018 to see if customizations could help.” *Id.* ¶ 101.

4 “The failed Billing-RevPro integration caused a multitude of sales execution issues within  
5 Zuora’s sales groups, including strained customer relationships and lost sales and revenues.” *Id.*  
6 ¶ 102. “Some Billing customers who had been sold on RevPro were actually forced to spend heavily  
7 on customization to get two systems to work together. *Id.* ¶ 104. CW-3 said “[c]ustomers were  
8 spending over \$1 million . . . to get the two systems [Billing and RevPro] to work together” and  
9 “CW-3 said one customer in particular spent millions because they needed to make systems work  
10 in order to successfully go public.” *Id.* In addition, CW-3 said approximately five other major  
11 Zuora customers who were material to Zuora’s financial health were upset about the delayed  
12 integration. *Id.* ¶ 105.

13 “CW-3 said that the lack of an integration solution and the fact that customers were unhappy  
14 that their products did not work together ‘came up in team meetings all the time.’” *Id.* ¶ 106. CW-  
15 3 and sales colleagues would inform their supervising Vice Presidents of particular customers who  
16 were unhappy and needed a workable integration for Zuora Billing and RevPro. *Id.* ¶ 107.  
17 According to CW-3, customers were not happy with Keystone and integration was discussed at  
18 almost every sales team meeting in which he participated. *Id.* “The Vice Presidents and Directors  
19 who attended team meetings communicated what had been discussed at the team meetings to the  
20 Executive Defendants.” *Id.* CW-3 said “[o]ur VP was in constant communication with the CEO  
21 [Defendant Tzuo] about customer feedback.’ CW-3 would hear about the VP’s communications  
22 with Defendant Tzuo through the VP. *Id.*

23 The integration failure adversely impacted revenue. According to CW-3, “some customers  
24 withheld payment due to the failed connectivity between Billing and RevPro.” *Id.* ¶ 108. According  
25 to CW-3, the same company that paid millions to go public withheld payment to Zuora, and in  
26 refusing the pay, CW-3 said the client noted that it “‘had to spend \$1 million outside of us because  
27 it didn’t work.’” *Id.* Defendant Tzuo was informed of the large client’s refusal to pay for Zuora’s  
28 subscription products. *Id.* ¶ 109. CW-3 communicated the collection issue to his VP. *Id.*

1 “Thereafter, CW-3 observed an email thread that took place around November or December 2018,  
2 in which Defendant Tzuo was made aware of the issue about the non-payment. CW-3 gathered  
3 from the email conversation that Defendant Tzuo understood the customer’s viewpoint and did not  
4 push back, but that Defendant Tzuo also understood what the revenue recognition complications for  
5 the customer would be.” *Id.*

6 “The failed RevPro-Billing integration problems ultimately resulted in reputational damage  
7 and reduced demand for all of Zuora’s products, including RevPro, the Central platform, and other  
8 homegrown Zuora products.” *Id.* ¶ 110. CW-4, who worked on the Zuora Central team, “recounted  
9 incidents of failed RevPro demonstrations for existing Billing customers.” *Id.* ¶ 113. RevPro sales  
10 suffered due to the integration issues. *Id.* ¶ 115. CW-4 said that the Zuora Central team met with  
11 the RevPro team twice a week during the Class Period. *Id.* “At those meetings, CW-4 observed  
12 that the RevPro team was falling short of their projected numbers . . . CW-4 stated that the reason  
13 sales were short and the team was struggling was that there were technical issues with integrating  
14 RevPro.” *Id.*

15 In addition, “CW-4 said the RevPro integration challenges was damaging Zuora’s broader  
16 reputation for product quality and that Zuora was missing out on large enterprise sales for all of its  
17 products, including Zuora Central.” *Id.* ¶ 116. CW-4 “confirmed the RevPro technical issues were  
18 making it tougher to sell Zuora Central, stating ‘[i]t was very clear that there were concerns with  
19 companies who had Zuora Central who heard about difficulties.’” *Id.* “CW-4 said that the RevPro  
20 integration issue was a big issue with the Company structure, as bringing RevPro in had resulted in  
21 a lot of Zuora’s consistent clients questioning if they wanted Zuora Central. CW-4 stated, ‘[t]his  
22 idea of a sticky sale, people are very aware of that in software – they pitch on a product that’s hard  
23 to ditch, and you don’t want to be stuck with Zuora Central if some other product doesn’t work.”  
24 *Id.* CW-4 recalled an instance of a very large enterprise company that bought RevPro and decided  
25 not to add Zuora Central because of the integration issues. *Id.* ¶ 117.

26 The individual defendants “could view the status of certain client sales through a proprietary  
27 Salesforce database,” “could look at accounts,” “would be able to see metrics like how much the  
28 customer was paying, any opportunities for new business within the account . . . [and] notations

1 about specific issues related to the RevPro implementation.” *Id.* ¶ 118.

2  
3 **VI. Insider Sales, Disclosure of Challenges, and Decline in Share Price**

4 Defendant Sloat sold almost half of his then-total holdings in March of 2019. *Id.* ¶¶ 138-39.  
5 He allegedly sold 344,009 shares on September 5, 2018; then another 364,528 shares on March 26,  
6 2019; and finally another 35,472 shares on March 28, 2019, for a total value of approximately \$17  
7 million. *Id.* ¶ 138. Former President and Head of Sales Marc Diouane (“Diouane”), who is not  
8 named as a defendant, “eventually unload[ed] over a quarter of his then-total holdings.” *Id.* ¶¶ 138-  
9 39. He allegedly sold 34,200 shares on September 5, 2018; then 130,500 shares on December 6,  
10 2018; then 130,000 shares on March 26, 2019; and finally another 240,000 shares on April 29, 2019,  
11 for a total value of approximately \$11 million. *Id.* Both sets of sales were made pursuant to Rule  
12 10b5-1 trading plans. *Id.* ¶ 142.

13 On May 30, 2019, Zuora announced its Q1 2020 financial results, along with a press release  
14 announcing a decline in large customer growth, a decline in quarterly revenue growth of 18%, and  
15 a loss of \$20.6 million, or 16% year-over-year. *Id.* ¶¶ 143-44. The release also lowered Zuora’s  
16 fiscal year 2020 guidance: total revenue was cut from \$289-293.5 to \$268-278 million; subscription  
17 revenues were cut from \$209-211.5 to \$200-206 million; and subscription annual contract value  
18 would decline for 12% for the year, compared to growth of 60%, 45%, and 30% in each prior year  
19 respectively. *Id.* ¶ 145. The release further announced that Diouane would leave his role as  
20 President while Zuora conducted a search for his replacement. *Id.* ¶ 146. During an earnings call  
21 with investors that same day, defendant Tzuo identified “‘two execution headwinds’ that caused the  
22 poor financial results and reduced guidance: Billing-RevPro integration challenges and sales  
23 execution problems.” *Id.* ¶ 147. He explained that Zuora’s growth was conditioned on its ability to  
24 cross-sell Billing and RevPro, but integration was “taking longer than expected.” *Id.* ¶ 148. He  
25 noted that Zuora had made “a course correction in [its] approach,” and the challenges had “slowed  
26 down our cross-sell motion” and “resulted in lower professional services and subscription revenue  
27 in the quarter as well as tempered expectations going forward.” *Id.* Tzuo said that because Zuora  
28 was focused on getting new RevPro customers to go live before ASC 606 of the previous year,

1 Zuora “didn’t really have time and the resource [sic] to focus on the integration between the 2 until  
2 after the 606 [wave] was complete.” *Id.* ¶ 151. This meant that “we didn’t really start heavy work  
3 on the integration until early last summer, late spring, early last summer. And long story short, we  
4 went down one direction that proved to be a dead end, a false direction.” *Id.*

5 Between May 30 and 31, 2019, Zuora share prices fell from \$19.90 to \$13.99 per share, a  
6 drop of \$5.91 or nearly 30%, “on unusually heavy trading volume.” *Id.* ¶ 261.

7 At a later Investor Session on June 5, defendant Tzuo explained that “the course correction  
8 [Zuora] took out of the gate is we tried to make our billing system produce an order that look[s] like  
9 an ERP [or traditional order-based] system,” and the flaw in the approach “probably could have  
10 [been] caught [] a little bit earlier.” *Id.* ¶ 155. At a technology conference on September 10, 2019,  
11 Zuora’s Vice President of Investor Relations further confirmed that “last year, we actually spent  
12 some time doing the integration” and “had some challenges going through it we highlighted on the  
13 [May 30] call.” *Id.* ¶ 156. As a result of these challenges, “Zuora had to pause RevPro  
14 implementations with its Billing customers.” *Id.*

15 Claiming that defendants committed fraud by making materially false statements and  
16 omissions throughout the Class Period, plaintiff brings this securities fraud claim pursuant to  
17 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule  
18 10b-5 of the Securities Exchange Commission (“SEC”). Defendants move to dismiss for failure to  
19 state a claim.

## 20 21 **LEGAL STANDARD**

22 To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege “enough facts to state  
23 a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
24 This “facial plausibility” standard requires the plaintiff to allege facts that add up to “more than a  
25 sheer possibility that a Defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
26 (2009). In reviewing a Rule 12(b)(6) motion, a district court must accept as true all facts alleged in  
27 the complaint and draw all reasonable inferences in favor of the plaintiff. *See Usher v. City of Los*  
28 *Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, a district court is not required to accept as

1 true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
2 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

3 As a general rule, courts may not consider materials beyond the pleadings when ruling on a  
4 Rule 12(b)(6) motion. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). However,  
5 the incorporation-by-reference doctrine “permit[s] district courts to consider material outside a  
6 complaint” in order to “prevent plaintiffs from selecting only portions of documents that support  
7 their claims, while omitting portions of those very documents that weaken—or doom—their  
8 claims.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998, 1002 (9th Cir. 2018). There are  
9 also instances, albeit rare, where assessing the sufficiency of a claim at the pleading stage requires  
10 review of a document. *Id.* at 1002 (citing *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)  
11 (affirming the incorporation of materials that the complaint did not reference at all because the claim  
12 “necessarily depended on them”).

## 13 **DISCUSSION**

14  
15 Section 10(b) of the Exchange Act prohibits the use or employment, “in connection with the  
16 purchase or sale of any security registered on a national securities exchange . . . any manipulative  
17 or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may  
18 prescribe.” 15 U.S.C. § 78j(b). One such rule promulgated by the Exchange Act is SEC Rule 10b-  
19 5, which prohibits “engag[ing] in any act, practice, or course of business which operates or would  
20 operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”  
21 17 C.F.R. § 240.10b-5(c). A claim under Section 10(b) or Rule 10b–5 must adequately allege six  
22 elements: “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a  
23 connection between the misrepresentation or omission and the purchase or sale of a security; (4)  
24 reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.”  
25 *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157 (2008) (citation  
26 omitted); *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1052 (9th Cir. 2014). The Private  
27 Securities Litigation Reform Act of 1995 (the “PSLRA”) further requires that a Section 10(b)  
28 complaint plead both falsity and scienter with particularity. 15 U.S.C. § 78u-4(b)(2)(A); Fed. R.

1 Civ. P. 9(b); *see Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 990-91 (9th Cir. 2009)  
2 (citation omitted).

3 A claim under Section 20(a), which provides for control person liability, “must demonstrate:  
4 (1) a primary violation of federal securities laws and (2) that the defendant exercised actual power  
5 or control over the primary violator.” *Webb v. Solarcity Corp.*, 884 F.3d 844, 858 (9th Cir. 2018)  
6 (internal quotation marks and citation omitted).

7 In the analysis that follows, the Court discusses only the disputed elements of Section 10(b):  
8 material misrepresentation or omission, and scienter.

9  
10 **I. Material Misrepresentation or Omission**

11 A pleading must state with particularity each statement alleged to have been misleading, the  
12 reason or reasons why the statement is misleading, and all facts on which that belief is formed. 15  
13 U.S.C. § 78u-4(b)(1); *In re Daou Sys.*, 411 F.3d 1006, 1014 (9th Cir. 2005) (citation omitted). For  
14 a statement or omission to be misleading, it must “affirmatively create an impression of a state of  
15 affairs that differs in a material way from the one that actually exists.” *Brody v. Transitional Hosp.*  
16 *Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002) (citation omitted). “[T]o fulfill the materiality  
17 requirement there must be a substantial likelihood that the disclosure of the omitted fact would have  
18 been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information  
19 made available.” *Miller v. Thane Int’l, Inc.*, 519 F.3d 879, 889 (9th Cir. 2008) (internal quotation  
20 marks and citation omitted).

21 Defendants contend that all of the statements that plaintiff identifies as misleading are either  
22 inactionable statements of corporate optimism or forward-looking statements protected from  
23 liability by the “safe harbor” or bespeaks caution doctrine. For example, defendants argue that  
24 statements such as the May 4, 2018 press release that “the Zuora platform was architected  
25 specifically for dynamic, recurring subscription models and acts as an intelligent subscription  
26 management hub that automates and orchestrates the entire subscription order-to-cash process,  
27 including billing and revenue recognition . . .” are simply high-level descriptions of the company’s  
28 products and strategy. Defendants make similar arguments about the other challenged statements

1 about Billing-RevPro functionality and prospects for upselling, cross-selling and growth.

2 Defendants also contend that plaintiff does not plead any contemporaneous facts showing  
3 that any of the actual statements were false or misleading at the time that they were made.  
4 Defendants argue that “[p]laintiff does not dispute, for example, that customers *can* “automate the  
5 entire customer lifecycle from a single platform,” that Zuora offered products that covered the entire  
6 subscription order-to-revenue process, or that Zuora’s growth strategy was not viable or sustainable.  
7 Defendants also assert that nothing in the challenged statements speaks to the company’s ability to  
8 integrate Billing and RevPro, and defendants argue that plaintiff “tries to manufacture a securities  
9 fraud claim out of Zuora marketing slogans, catchphrases and promotional tweets in an effort to  
10 portray Zuora as having promised that its two flagship products could be effortlessly integrated – a  
11 representation that appears nowhere in Zuora’s public statements.” Mtn. at 2 (Dkt. No. 64).  
12 Defendants further argue that plaintiff has “created out of whole cloth” the allegation that the  
13 Billing-RevPro integration failure led to sales problems and diminished demand for Zuora’s  
14 products, and defendants emphasize that Zuora described the sales execution issue as a distinct  
15 “headwind.”

16 Defendants also contend that Zuora expressly advised investors of the risks that plaintiff  
17 claims were concealed, such as that deploying Zuora products was complex and lengthy, that  
18 customers might “not ultimately deploy our solution” because of “unexpected complexities or  
19 delays associated with deployment” and that “incorrect or improper deployment or use of our  
20 solution could result in customer dissatisfaction,” and that deployment failures could negatively  
21 impact the ability to generate revenue from “the upsell of additional products and services.”

22 The Court finds that plaintiff has adequately alleged that defendants’ statements “would give  
23 a reasonable investor the ‘impression of a state of affairs that differs in a material way from the one  
24 that actually exists.’” *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985 (9th Cir. 2008). The  
25 complaint sufficiently alleges that throughout the class period, defendants repeatedly marketed  
26 Zuora’s platform and applications as a functioning, combined solution when in fact Billing and  
27 RevPro only could function as standalone products. *See, e.g.*, CACAC ¶ 164 (June 5, 2018 tweet  
28 by Zuora: “Don’t underestimate the complexity of revenue recognition. The deep dark depths are

1 very, very complex! Thank goodness for Zuora + RevPro integration for a seamless order-to-  
 2 revenue process! #Subscribed #revrec.”); *Id.* ¶ 166 (image on Zuora website illustrating the flow  
 3 from Billing to the Zuora Central Platform to RevPro); *Id.* ¶ 162 ((Zuora’s website stating that Zuora  
 4 Central “is a single platform for your order-to-revenue process and the connective tissue between  
 5 your CRM and ERP” and that Zuora Central “easily connects the various applications in your order-  
 6 to-revenue ecosystem”); *Id.* ¶ 176 (December 2018 press release emphasizing the “automation and  
 7 usability across Zuora Billing, Zuora Collect, and Zuora RevPro”); *Id.* ¶¶ 190, 194 (Zuora’s Q1  
 8 2019 earnings call, during which defendant Tzuo stated, “[W]e continue to offer the only complete  
 9 subscription management solution,” and “[Zuora is] the only company that provides a full  
 10 solution”); *Id.* ¶ 203 (on Zuora’s Q2 2019 earnings call, defendant Sloat stated that Zuora acquired  
 11 RevPro because of “business model complexity that hits both your quote-to-cash solution as well as  
 12 your revenue automation.”

13 Plaintiff alleges that these statements were materially false or misleading because Billing  
 14 and RevPro were not integrated, meaning clients had “to either export the data from [Billing] and  
 15 import it into [RevPro] manually, or build a customized integration that could ingest the required  
 16 data from [Billing] into [RevPro].” *Id.* ¶¶ 160, 200, 205. Plaintiff alleges with particularity that the  
 17 statements are contradicted by the failures of the ZoZ and Keystone Projects as well as the problems  
 18 that Zuora’s customers experienced when they tried to implement both products, including  
 19 significant issues with major customers refusing to pay Zuora due to integrations problems. *Id.*

20 The complaint also links defendants’ representations about the functionality and integration  
 21 of its products with the statements relating to growth and growth strategy. The Registration  
 22 Statement identifies as a “key element” of Zuora’s growth strategy “increasing transaction volume  
 23 and upsells and cross-sells with additional products,” including a “focus on acquiring new customers  
 24 through [its] flagship products, [Billing] and [RevPro].” *Id.* ¶ 187. In the Q1 2019 earnings call,  
 25 defendant Tzuo noted, “[W]e do see a lot of tailwinds in the business . . . in general, we saw a strong  
 26 demand for both products across the board.” *Id.* ¶ 196. Defendant Sloat echoed that “[t]here’s just  
 27 strong demand all the way around for both add-on products, both flagship products.” *Id.* ¶ 198. In  
 28 an article from December of 2018, defendant Sloat stated, “We still have less than 10% overlap of

1 our customer base using both of our flagship products, but we do see a lot of traction starting there.”  
2 *Id.* ¶ 215. In the Q3 2019 earnings call, defendant Tzuo noted that “we also signed on other public  
3 companies like Carbonite and Pivotal who both chose RevPro all because we got the best revenue  
4 automation platform on the market,” and “we have a very sticky product . . . the 2 factors for us that  
5 influence churn are, one, how are [sic] well are we doing bringing customers live, and that’s where  
6 we continue to show improvements year-over-year.” *Id.* ¶¶ 207, 209. The complaint alleges that  
7 these statements were materially false or misleading because the integration failures had resulted in  
8 the withholding of payment by some customers, reputational damage, reduced demand, and a pause  
9 on implementations to customers. *Id.* ¶¶ 108, 110, 155.

10 For the same reasons, the Court cannot conclude that the challenged statements are  
11 inactionable as a matter of law. “[P]rojections and general expressions of optimism may be  
12 actionable under the federal securities laws.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 501 (9th  
13 Cir. 1992); *see also Virginia Bankshares Inc. v. Sandberg*, 501 U.S. 1083, 1088-98 (1991) (holding  
14 knowingly false or misleading statements of opinion or belief, even though conclusory in form, may  
15 be actionable as misstatements of material fact). “In this circuit, a projection or statement of belief  
16 may be actionable to the extent that one of three implied factual assertions is inaccurate: ‘(1) that  
17 the statement is genuinely believed, (2) that there is a reasonable basis for the belief, and (3) that the  
18 speaker is not aware of any undisclosed facts tending to seriously undermine the accuracy of the  
19 statement.’” *Hanon*, 976 F.2d at 501 (quoting *In re Apple Computer Sec. Litig.*, 886 F.2d 1109,  
20 1112 (9th Cir. 1989)).

21 Here, although defendants characterize all of the challenged statements as vague, high-level  
22 statements of corporate optimism or forward looking, plaintiff alleges that defendants did not have  
23 a reasonable basis to believe that the Billing and RevPro products were integrated or would work  
24 “seamlessly” or “easily” with each other because they were aware of undisclosed facts such as the  
25 failed Zoz and Keystone projects and customer integration issues. Similarly, for the same reasons  
26 the challenged statements about growth and cross-selling and upselling, which were predicated on  
27 the successful integration and implementation of RevPro, are actionable.

## II. Scienter

To establish scienter at the pleading stage, a complaint must state with particularity facts giving rise to a strong inference that the defendant made false or misleading statements either intentionally or with deliberate recklessness. 15 U.S.C. § 78u-4(b)(2); *Daou Sys.*, 411 F.3d at 1015. “[T]he inference of scienter must be more than merely ‘reasonable’ or ‘permissible’—it must be cogent and compelling, thus strong in light of other explanations.” *Tellabs, Inc. v. Makor Issues & Rights, Inc.*, 551 U.S. 308, 324 (2007). Moreover, a complaint depending on confidential witness statements must overcome two hurdles: “First, the confidential witnesses whose statements are introduced to establish scienter must be described with sufficient particularity to establish their reliability and personal knowledge . . . Second, those statements which are reported by confidential witnesses with sufficient reliability and personal knowledge must themselves be indicative of scienter.” *Zucco*, 552 F.3d at 995 (citations omitted).

The Supreme Court has explained that the scienter inquiry “is whether all of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard.” *Tellabs*, 551 U.S. at 322-23. In the Ninth Circuit, this “does not materially alter the particularity requirements for scienter claims . . . but instead only adds an additional ‘holistic’ component to those requirements.” *Zucco*, 552 F.3d at 987. “Even if a set of allegations may create an inference of scienter greater than the sum of its parts, it must still be at least as compelling as an alternative innocent explanation.” *Id.* at 1006. Scienter is “a mental state that not only covers ‘intent to deceive, manipulate or defraud,’ but also ‘deliberate recklessness.’” *Schueneman v. Arena Pharm., Inc.*, 840 F.3d 698, 709 (9th Cir. 2016). “Recklessly turning a ‘blind eye’ to impropriety is equally culpable conduct under Rule 10b-5.” *In re VeriFone Holdings, Inc. Sec. Litig.*, 704 F.3d 694, 708 (9th Cir. 2012).

Plaintiff bases scienter primarily on the statements of the four CWs.<sup>3</sup> Defendants challenge the CW statements because the CWs were not employed throughout the Class Period, and

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<sup>3</sup> Plaintiff also contends that scienter is shown through defendants’ stock sales, post-class period “admissions,” and under the theories of corporate scienter and core operations. Because the Court concludes that the CW allegations are sufficient, the Court does not address the parties’ other arguments.

1 defendants contend that the CWs lacked personal knowledge or direct contact with the defendants,  
2 and do not indicate scienter with sufficient particularity in their statements.

3 The Court concludes that plaintiff has sufficiently alleged scienter through the CW  
4 allegations. As an initial matter, the Court is not persuaded by defendants' assertion that the CW  
5 allegations are deficient because the CWs did not work at Zuora for the entire class period. CW-1  
6 left Zuora in April of 2019, one month before the end of the thirteen-month Class Period; CW-2 left  
7 in September of 2018, five months into the Class Period; CW-3 joined in June of 2018, two months  
8 into the Class Period; and CW-4 left in January of 2019, eight months into the Class Period. CACAC  
9 ¶¶ 60, 65, 103, 110. That none of the CWs was employed at Zuora during the *entire* Class Period  
10 does not in itself render their statements unreliable as a matter of law. *See In re Quality Sys., Inc.*  
11 *Sec. Litig.*, 865 F.3d 1130, 1145 (9th Cir. 2017) (accepting statements by CW who was not employed  
12 at company during Class Period but had personal knowledge of defendants' real-time access to  
13 reports).

14 Moreover, the CWs' personal knowledge of integration projects and customer feedback  
15 comes as a direct result of their positions in Zuora. For instance, as Senior Manager Global  
16 Services/Principal Solution Architect, CW-1 "worked to assist Zuora's customers to automate their  
17 revenue operations and functions with RevPro." CACAC ¶¶ 60, 62. CW-1 was also directly  
18 involved in the ZoZ and Keystone Projects. *Id.* ¶¶ 60, 81-87. CW-2 was a project manager and  
19 subject matter expert in a position to comment on the use of MuleSoft to implement and integrate  
20 RevPro, even though Zuora had already "purchased, licensed, on-boarded, implemented, operation  
21 licensed, and had built code" for MuleSoft by the time CW-2 joined. *Id.* ¶¶ 65, 72. CW-3 was an  
22 account executive who worked directly with enterprise customers. *Id.* ¶ 103. And CW-4 was a  
23 member of the Business Development: Strategic Accounts Group who "worked on Zuora's large  
24 accounts, particularly Fortune 500 accounts," at the time when Zuora "started to make RevPro more  
25 visible and emphasized cross-selling it." *Id.* ¶¶ 110-11.

26 The complaint also alleges with particularity that defendants were in possession of  
27 contemporaneous, contradictory information when they made the false and misleading statements,  
28 giving rise to a strong inference of scienter. Plaintiff alleges through the CW statements that

1 defendants knew Zuora's internal ZoZ integration project had failed, knew Keystone failed, that  
2 customers had experienced failed integrations (leading in some instances to major customers  
3 refusing to make payments), were present at meetings reporting on the progress of these integrations,  
4 and had access to minutes, documents, and emails evidencing negative customer feedback due to  
5 integration failures. *See generally* CACAC ¶¶ 60-119.

6 For example, CW-1 confirmed that CIO Antar headed the ZoZ project, that CIO Antar was  
7 aware of the difficulties implementing RevPro internally, that CIO Antar reported those difficulties  
8 to defendant Sloat, and that at a monthly ZoZ project meeting in early 2018, defendant Sloat told  
9 the project team that "Zuora needed to get its act together with RevPro." *Id.* ¶¶ 73-75; *see also id.*  
10 ¶¶ 93-94 (Sloat and Tzuo attended group forum meetings; minutes from those meetings referenced  
11 RevPro-Billing integration issues). According to the complaint, defendants only implemented  
12 RevPro on Zuora's systems by April 2018 after undertaking time and labor-intensive manual input  
13 of Zuora's Billing data into RevPro's system. *Id.* ¶¶ 76-78. As another example, the complaint  
14 alleges with particularity that when a large client refused to pay for Zuora's subscription products  
15 due to failed connectivity between RevPro and Billing, CW-3 communicated that issue to his VP,  
16 and thereafter observed an email thread that took place around November or December 2018 in  
17 which defendant Tzuo was made aware of the issue of non-payment. *Id.* ¶¶ 107-09. Similarly, the  
18 complaint contains detailed allegations about how another major client, Zoom, initially elected to  
19 purchase RevPro but ultimately opted not to implement it due to the integration failure. *Id.* ¶¶ 98-  
20 101. The complaint alleges that CW-1 stated that Zoom's decision to stop the project was a major  
21 financial blow that "was material enough to impact our bonus payments," and that when Zoom  
22 stopped payment, CW-1 was pulled into a couple of executive meetings with Zuora's founders<sup>4</sup>  
23 toward the end of 2018 to see if customizations could help. *Id.* ¶¶ 99, 101. These allegations, taken  
24 together with all of the other numerous detailed CW allegations in the complaint, contribute to a  
25 strong inference of scienter. *See City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr. v. RH,*  
26 *Inc.*, 302 F. Supp. 3d 1028, 1043-44 (N.D. Cal. 2018).

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<sup>4</sup> Defendant Tzuo is one of the Zuora's founders. *Id.* ¶ 24.

United States District Court  
Northern District of California

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**III. Section 20(a)**

A control person claim under Section 20(a) requires a predicate primary violation, *see Webb*, 884 F.3d at 858. Because the Court has found that plaintiff has stated a Section 10(b) claim, the Court further finds that plaintiff has stated a claim under Section 20(a).

**CONCLUSION**

For the foregoing reasons, the Court hereby DENIES defendants' motion to dismiss the complaint for failure to state a claim.

**IT IS SO ORDERED.**

Dated: April 28, 2020



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SUSAN ILLSTON  
United States District Judge