

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF HOLLYWOOD FIREFIGHTERS
PENSION FUND, et al.,

Plaintiffs,

v.

ATLASSIAN CORPORATION, et al.,

Defendants.

Case No. [3:23-cv-00519-WHO](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 43

In this putative securities class action, the investor-plaintiffs sued the defendants—corporate entities as well and individual officers—for making at least nine false and misleading statements about the strength of the financial outlook. The plaintiffs say that this overinflated the stock, and when the truth was revealed and the stock dropped, investors collectively lost billions of dollars. The defendants moved to dismiss. Because the plaintiffs fail to plausibly allege that most of the statements were false or misleading and fail to allege any plausible theory of scienter, among the other reasons discussed below, the defendants’ motion is granted with leave to amend.

BACKGROUND

I. FACTUAL BACKGROUND

This is a putative securities class action filed by lead plaintiffs, City of Hollywood Firefighters Pension Fund and Oklahoma Firefighters Pension and Retirement Systems (“the plaintiffs”). Amended Complaint (“AC”) [Dkt. No. 40]. The lead plaintiffs assert that they collectively hold \$3.64 billion in assets for the benefit of their participants and beneficiaries. *Id.* ¶¶ 16-17. They filed this lawsuit against defendants Atlassian Corporation, Atlassian Corporation PLC, Atlassian’s co-founder and co-CEO Michael Cannon-Brookes, Atlassian’s other co-founder and co-CEO Scott Farquhar, Atlassian’s current President and former Chief Operating Officer

1 Anu Bharadwaj, and Atlassian’s Chief Revenue Officer Cameron Deatsch. *Id.* ¶¶ 18-19, 21, 23,
2 26-27.

3 Atlassian is a software company that sells various software products. *Id.* ¶¶ 4, 18-19, 33.
4 It does not have a traditional sales team. *Id.* ¶ 36. Rather, its sales and growth strategy is
5 grounded in providing free versions of its software products for up to ten users, and then charging
6 customers for the eleventh and subsequent users. *Id.* ¶¶ 36-37. Given this strategy, Atlassian has
7 two main growth metrics: “Free to Paid Conversions,” which consist of customers that used the
8 free version of its software and then upgraded to a paid version; and “Paid User Expansion,”
9 which consists of customers using a paid version of the products that add “seats” or “heads”—for
10 example, a customer had 50 paid users at its company and then added 10 more paid users. *Id.*
11 ¶¶ 37-39. About ninety percent of Atlassian’s revenue comes from “Paid User Expansion.” *Id.*
12 ¶ 39.

13 Atlassian has regularly touted that it has a nontraditional “linear sales cycle” that
14 differentiates it from other software companies. *Id.* ¶¶ 41-45. This is because it relies heavily on
15 growth from current customers instead of growth through a sales or marketing team. *See id.* It
16 also regularly advertises that as a company, it values and practices open communication and “no
17 bullshit” with respect to communicating with shareholders, investors, and the public. *See id.*
18 ¶¶ 34-35. One of the ways it does this is through intra-quarter updates to shareholders. *See id.*

19 Atlassian’s fiscal year (“FY”) 2022 ended on June 30, 2022. *Id.* 2 n.1. The first quarter
20 (“Q1”) of FY23 began on July 1. *See id.* According to the plaintiffs, by mid-July Atlassian was
21 seeing a slowdown in growth for its Free to Paid Conversions and its Paid User Expansion. *Id.*
22 ¶¶ 9, 66-73.

23 On August 4, Atlassian held an earnings call with investors and analysts. *Id.* ¶ 47-48.
24 Atlassian addressed several questions about the impact of the turbulent 2022 macroeconomic
25 environment on the company. *See id.* ¶¶ 47-48, 51., 55, 88-89. Atlassian said that it saw a
26 decrease in Free to Paid Conversions but that was a “slight thing” because it was a very small
27 portion of the business. *Id.* ¶ 92. It did not mention a slowdown or any change to Paid User
28 Expansions.

1 On August 19, Atlassian published its FY22 Annual Report with the Securities Exchange
2 Commission (“SEC”). *Id.* ¶ 94. According to the plaintiffs, the report said that Atlassian was not
3 aware of any trends, including in the macroeconomic environment, that affected its business. *see*
4 *id.* ¶¶ 94-95.

5 On September 14, Bharadwaj attended a conference hosted by Goldman Sachs. *Id.* ¶ 96.
6 At that conference she said that Atlassian was experiencing a “bit of softness” in Free to Paid
7 Conversions but emphasized that metric was “really a very small part of our business.” *Id.* ¶ 97.
8 The plaintiffs say that Bharadwaj also said that there were no trends affecting upgrades or other
9 parts of the business. *Id.* ¶¶ 97-98. She did not specifically address Paid User Expansions. *See id.*

10 On October 4, the defendants filed a Post-Effective Amendment to its Form S-8
11 Registration Statements with the SEC. *See id.* ¶ 100. That form incorporated the statements made
12 in the August 19 Annual Report. *Id.*

13 The first quarter of FY23 ended on September 30, 2022. On November 3, the defendants
14 announced their results from Q1. *Id.* ¶¶ 9, 66. They affirmed that Free to Paid Conversions
15 slowed down. *Id.* ¶ 67. They also announced that Paid User Expansion had experienced a
16 slowdown. *Id.* Analysts announced that they were “surprise[d]” by these “unexpected” results,
17 which “took us and investors by surprise.” *See id.* ¶¶ 11, 75-76. The price of Atlassian’s stock
18 fell from \$174.17 per share on November 3 to \$121.73 per share on November 4, 2022. *Id.* ¶ 10.

19 The plaintiffs say that Atlassian knew of the slowdown to Paid User Expansion by mid-
20 July 2022 but that during its public statements in August and September 20202, the company
21 falsely denied any trend to its business and materially omitted that the slowdown existed. *See id.*
22 ¶¶ 66-71. The lead plaintiffs assert that shareholders collectively lost \$7 billion due to this fraud.
23 *Id.* ¶ 10.

24 The plaintiffs filed this putative class action for all buyers or sellers of Atlassian’s stock
25 from August 5 to November 3, 2022. *Id.* ¶ 121. They bring two causes of action: first under
26 Section 10(b) of the Securities Exchange Act, and second under 20(a) of the Act. *Id.* ¶¶ 127-42.

27 **II. PROCEDURAL BACKGROUND**

28 I appointed City of Hollywood Firefighters Pension Fund and the Oklahoma Firefighters

1 Pension and Retirement Systems as lead plaintiff under the guidelines of the Private Securities
2 Litigation Reform Act (“PSLRA”). [Dkt. No. 37].

3 The defendants filed this motion to dismiss the Amended Complaint. (“Mot.”) [Dkt. No.
4 43]. Attached to the motion were nine documents they say were incorporated into the AC, [Dkt.
5 Nos. 43-3-11], as well as a Request for Judicial Notice of those documents, [Dkt. No. 43-12].
6 Plaintiffs filed an opposition to the motion to dismiss. (“Oppo.”) [Dkt. No. 49]. The defendants
7 replied. [Dkt. No. 50]. I held a hearing at which counsel for both parties appeared.

8 LEGAL STANDARD

9 Under Federal Rule of Civil Procedure (“FRCP”) 12(b)(6), a district court must dismiss a
10 complaint if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6)
11 motion to dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible
12 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible
13 when the plaintiff pleads facts that “allow the court to draw the reasonable inference that the
14 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
15 (citation omitted). There must be “more than a sheer possibility that a defendant has acted
16 unlawfully.” *Id.* While courts do not require “heightened fact pleading of specifics,” a plaintiff
17 must allege facts sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550
18 U.S. at 555, 570.

19 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
20 court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
21 plaintiff. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court is
22 not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
23 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
24 2008).

25 A complaint alleging a violation of section 10(b) of the Securities Exchange Act “must
26 meet both the heightened pleading requirements for fraud” under FRCP 9(b) and the “exacting
27 pleading requirements” of the PSLRA. *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1140
28 (9th Cir. 2017) (citations omitted). This requires that the complaint “state with particularity the

1 circumstances constituting fraud,” to satisfy Rule 9(b), and “state with particularity facts giving
2 rise to a strong inference that the defendant acted with the required state of mind,” to meet the
3 PSLRA’s standard. *Id.* (citations omitted).

4 With respect to falsity, “the complaint [must] specify each statement alleged to have been
5 misleading, [and] the reason or reasons why the statement is misleading.” 15 U.S.C. § 78u-
6 4(b)(1)(B). With respect to scienter, “the complaint shall, with respect to each act or omission
7 alleged . . . state with particularity facts giving rise to a strong inference that the defendant acted
8 with the required state of mind.” 15 U.S.C. § 78u-4(b)(2)(A). “[F]alsity and scienter in private
9 securities fraud cases are generally strongly inferred from the same set of facts, and the two
10 requirements may be combined into a unitary inquiry under the PSLRA.” *In re Daou Sys., Inc.*,
11 411 F.3d 1006, 1015 (9th Cir. 2005) (citation and internal quotation marks omitted).

12 “To adequately demonstrate that the defendant acted with the required state of mind, a
13 complaint must allege that the defendants made false or misleading statements either intentionally
14 or with deliberate recklessness.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 991 (9th
15 Cir. 2009) (quotation marks and citation omitted). “Facts showing mere recklessness or a motive
16 to commit fraud and opportunity to do so provide some reasonable inference of intent, but are not
17 sufficient to establish a strong inference of deliberate recklessness.” *In re VeriFone Holdings, Inc.*
18 *Sec. Litig.*, 704 F.3d 694, 701 (9th Cir. 2012) (citation omitted). Accordingly, “a court must
19 consider plausible, nonculpable explanations for the defendant’s conduct, as well as inferences
20 favoring the plaintiff.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 324 (2007).
21 “[A]n inference of scienter must be more than merely plausible or reasonable—it must be cogent
22 and at least as compelling as any opposing inference of nonfraudulent intent.” *Id.* at 314. “The
23 inference that the defendant acted with scienter need not be irrefutable, i.e., of the ‘smoking-gun’
24 genre, or even the ‘most plausible of competing inferences.’” *Id.* at 324 (citation omitted). “The
25 inquiry . . . is whether *all* of the facts alleged, taken collectively, give rise to a strong inference of
26 scienter, not whether any individual allegation, scrutinized in isolation, meets that standard.” *Id.*
27 at 322-23 (citations omitted).

28 If the court dismisses the complaint, it “should grant leave to amend even if no request to

1 amend the pleading was made, unless it determines that the pleading could not possibly be cured
 2 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making
 3 this determination, the court should consider factors such as “the presence or absence of undue
 4 delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments,
 5 undue prejudice to the opposing party and futility of the proposed amendment.” *Moore v. Kayport*
 6 *Package Express*, 885 F.2d 531, 538 (9th Cir. 1989).

7 DISCUSSION

8 I. JUDICIAL NOTICE AND INCORPORATION BY REFERENCE

9 The defendants filed nine documents with their motion, asserting that each was
 10 incorporated by reference into the complaint or is subject to judicial notice. [Dkt. Nos. 43-3-11].
 11 The plaintiffs neither responded nor opposed.

12 I have previously discussed the Ninth Circuit’s recognition of the “concerning pattern in
 13 securities cases” regarding incorporation by reference and judicial notice: parties “exploit[] these
 14 procedures improperly to defeat what would otherwise constitute adequately stated claims at the
 15 pleading stage.” *Weston v. DocuSign, Inc.*, No. 22-CV-00824-WHO, 2023 WL 3000583, at *9
 16 (N.D. Cal. Apr. 18, 2023) (quoting *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th
 17 Cir. 2018)). Therefore, “courts must examine such requests carefully, and determine ‘when it is
 18 proper to take judicial notice of facts in documents, or to incorporate by reference documents into
 19 a complaint, and when it is not.’” *Id.* (quoting *Khoja*, 899 F.3d at 999).

20 A court may take judicial notice of a fact “that is not subject to reasonable dispute because
 21 it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately
 22 and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.
 23 Evid. 201(b).

24 “Although mere mention of the existence of a document is insufficient to incorporate the
 25 contents of a document, the document is incorporated when its contents are described and the
 26 document is integral to the complaint.” *Tunac v. United States*, 897 F.3d 1197, 1207 n.8 (9th Cir.
 27 2018) (internal quotation marks and citation omitted). This doctrine “prevents plaintiffs from
 28 selecting only portions of documents that support their claims, while omitting portions of those

1 very documents that weaken—or doom—their claims.” *Khoja*, 899 F.3d at 1002 (citation
2 omitted). But this “is not a tool for defendants to short-circuit the resolution of a well-pleaded
3 claim,” for example, by attempting to use a document that is not mentioned in the complaint “to
4 insert their own version of events into the complaint to defeat otherwise cognizable claims.” *Id.* at
5 1002-03 (citations omitted). Although a court may assume the contents of an incorporated
6 document are true for the purposes of a motion to dismiss (unlike judicial notice), “it is improper
7 to assume the truth of an incorporated document if such assumptions only serve to dispute facts
8 stated in a well-pleaded complaint.” *Id.* at 1003 (citations omitted).

9 With this guidance in mind, I turn to the defendants’ requests. As I did in *Weston*, here too
10 I will take judicial notice of the earnings call transcripts, (Exs. B, G); Form 20-F, (Ex. A); and
11 Form S-8/A, (Ex. H), because they are “sources whose accuracy cannot reasonably be questioned”
12 as the defendants filed these documents with the SEC and are otherwise publicly available.
13 *Weston*, 2023 WL 3000583, at *10 (first quoting *Khoja*, 899 F.3d at 999-1000; and then citing
14 *Wochos v. Tesla, Inc.*, No. 17-CV-05828-CRB, 2019 WL 1332395, at *2 (N.D. Cal. Mar. 25,
15 2019) (taking notice of documents filed with the SEC and earnings call transcripts because they
16 were publicly filed). For the same reasons I will take notice of the shareholder letters from August
17 4 and November 3, (Exs. C, F), both of which were filed with the SEC, are publicly available, and
18 form the basis for integral allegations in the complaint. And, as in *Weston*, here “I will only take
19 notice of facts within these documents that show what representations [the defendants] made to the
20 market. I will not consider them for the truth of any of the facts asserted.” 2023 WL 3000583, at
21 *10 (citing *Wochos*, 2019 WL 1332395, at *2 (drawing the same distinction)).

22 Also as in *Weston*, here I will take notice of the transcripts from the September 14
23 conference, (Ex. D), because it is mentioned in the AC as the source of some of the alleged
24 misstatements. *See Weston*, 2023 WL 3000583, at *10. For the same reason I will take notice of
25 the November 3 press release, (Ex. E), as it is mentioned in and integral to the allegations in the
26 AC, as one source in which the alleged fraud was revealed. *See, e.g.*, AC ¶¶ 9, 66, 114.

27 Finally, Exhibit I is Atlassian’s May 27, 2022 press release “discussing Rule 10b5-1
28 trading plans entered into by Michael CannonBrookes and Scott Farquhar.” [Dkt. No. 43-12].

1 Though it is apparently publicly available and filed with the SEC, it is not mentioned directly in
 2 the AC. Addressing those documents now is akin to allowing the defendants “to insert their own
 3 version of events in the complaint,” which is not an appropriate reason to take judicial notice.
 4 *Khoja*, 899 F.3d at 1002-03. Additionally, the defendants seek judicial notice of this document so
 5 that they can argue against allegations of scienter for Cannon-Brookes and Farquhar, but as
 6 discussed below, those allegations are not relevant at this point and insufficient to state a claim. I
 7 decline to take notice at this point.

8 Accordingly, the request for judicial notice and for incorporation by reference is
 9 GRANTED in part and DENIED in part.

10 **II. STATING A CLAIM**

11 To plead a violation of the securities laws,¹ a plaintiff must adequately allege: “(1) a
 12 material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between
 13 the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the
 14 misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Lloyd v. CVB Fin.*
 15 *Corp.*, 811 F.3d 1200, 1206 (9th Cir. 2016) (quoting *Erica P. John Fund, Inc. v. Halliburton Co.*,
 16 563 U.S. 804 (2011)).

17 The plaintiffs point to multiple statements that they say were false or misleading and so are
 18 actionable as material misrepresentations or omissions under the securities laws. In turn, the
 19 defendants contend that the plaintiffs fail to allege falsity for any statement, and they insist that the
 20 plaintiffs selectively and misleadingly highlighted portions of statements out of context in the AC.
 21 They also assert that the plaintiffs have failed to plead scienter. I address these arguments in turn.

22 **A. Material Misrepresentations or Omissions**

23 The plaintiffs group the alleged misrepresentations and omissions into four categories
 24 based on when and how they were made: (1) statements made during a shareholders call with
 25 analysts and investors on August 4, 2022, AC ¶¶ 88-93; (2) statements made in Atlassian’s 2022

26
 27 ¹ The plaintiffs bring claims under Sections 10(b) and 20(a) of the Securities Exchange Act and
 28 Rule 10b-5, which implements the former. The defendants assert and the plaintiffs do not disagree
 that both claims rise or fall together according to the standards laid out in this Order. *See Howard*
v. Everex Sys., Inc., 228 F.3d 1057, 1065 (9th Cir. 2000).

1 Annual Report Form 20-F filed with the SEC on August 19, 2022, *id.* ¶¶ 94-95; (3) statements
 2 made by Bharadwaj during the “Goldman Sachs Communacopia + Technology Conference” on
 3 September 14, 2022, *id.* ¶¶ 96-99; and (4) statements made in Atlassian’s Post-Effective
 4 Amendment to its Form S-8 Registration Statements, filed with the SEC on October 4, 2022, *id.*
 5 ¶ 100.

6 “Falsity is alleged when a plaintiff points to defendant’s statements that directly contradict
 7 what the defendant knew at that time.” *Khoja*, 899 F.3d at 1008 (citing *In re Atossa Genetics Inc.*
 8 *Sec. Litig.*, 868 F.3d 784, 794-96 (9th Cir. 2017)). “To be misleading, a statement must be capable
 9 of objective verification.” *Id.* (quoting *Retail Wholesale & Dep’t Store Union Local 338 Ret.*
 10 *Fund v. Hewlett-Packard Co.*, 845 F.3d 1268, 1275 (9th Cir. 2017)).

11 “[T]o properly allege falsity” of affirmative representations, “a securities fraud complaint
 12 must now specify each statement alleged to have been misleading, the reason or reasons why the
 13 statement is misleading, and, if an allegation regarding the statement or omission is made on
 14 information and belief, state with particularity all facts on which that belief is formed.” *In re Rigel*
 15 *Pharms., Inc. Sec. Litig.*, 697 F.3d 869, 877 (9th Cir. 2012) (internal quotation marks, citation, and
 16 alteration omitted). But “[e]ven if a statement is not false, it may be misleading if it omits
 17 material information.” *Khoja*, 899 F.3d at 1008-09 (citing *In re NVIDIA Corp. Sec. Litig.*, 768
 18 F.3d 1046, 1054 (9th Cir. 2014)). An omission is misleading if it “affirmatively create[s] an
 19 impression of a state of affairs that differs in a material way from the one that actually exists.”
 20 *Brody v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002) (citation omitted).

21 The securities laws “do not create an affirmative duty to disclose any and all material
 22 information. Disclosure is required . . . only when necessary ‘to make . . . statements made, in the
 23 light of the circumstances under which they were made, not misleading.’” *Matrixx Initiatives, Inc.*
 24 *v. Siracusano*, 563 U.S. 27, 44-45 (2011) (first quoting 17 C.F.R. § 240.10b-5(b); and then citing
 25 *Basic Inc. v. Levinson*, 485 U.S. 224, 239 n.17 (1988)). “As such, ‘companies can control what
 26 they have to disclose under these provisions by controlling what they say to the market.’” *Khoja*,
 27 899 F.3d at 1009 (quoting *Matrixx Initiatives*, 563 U.S. at 45). “But once defendants [choose] to
 28 tout positive information to the market, they [are] bound to do so in a manner that wouldn’t

1 mislead investors, including disclosing adverse information that cuts against the positive
2 information.” *Id.* (quoting *Schueneman v. Arena Pharms., Inc.*, 840 F.3d 698, 705-06 (9th Cir.
3 2016)).

4 “[O]nly if the adequacy of the disclosure or the materiality of the statement is so obvious
5 that reasonable minds could not differ are these issues appropriately resolved as a matter of law.”
6 *Fecht v. Price Co.*, 70 F.3d 1078, 1081 (9th Cir. 1995) (internal quotation marks, citations, and
7 alteration omitted).

8 1. August 4 Shareholders Call—Statements 1-4

9 The first four statements that the plaintiffs cite were made during a call with shareholders
10 and analysts on August 4, 2022. I address each statement in turn, though the plaintiffs make most
11 of the same arguments about each statement.

12 a. Statement 1

13 The first challenged statement was made by Deatsch:

14 The good news as of to date is we have yet to see any specific trend geographically
15 or even in industry segments or in customer size that gives us pause or worry to
16 date. So, something we continue to watch like a hawk, but there is no new news to
share today.

17 AC ¶ 89; Ex. B at 6.

18 Reading this statement in context, Deatsch was responding to a question about “demand
19 . . . from a geographic perspective in terms of weaknesses or relative strength.” Ex. B at 6. He
20 replied that the company had “yet to see any specific trend geographically or even in industry
21 segments or in customer size that gives us pause or worry.” *Id.* A few minutes later, he said:

22 And the one thing that’s worth calling out that we’ve seen literally just in the last
23 month is that the cohort of customers that came in, in the April, May, and June
24 timeframe are converting to those paid plans at a slightly slower rate than what
25 we’ve seen in previous quarters. Now, I’d love to say that’s specific to a product or
a geography or an industry. There’s no specific customer segment there. It just
seems that, in general, those cohort of customers that are signing up in the last
quarter . . . simply just haven’t put those credit cards and hit those paid walls yet.

26 *Id.* at 9.

27 Turning to the statement itself, the plaintiffs’ theory seems to focus on the middle of the
28 statement, about customer size. *See Oppo*. 12:13-13:12. As best I can tell, the plaintiffs believe

1 that it was false or misleading to say that the defendants had yet to see a specific trend with respect
2 to customer size, while in November they said they had seen a trend starting in the second half of
3 that quarter. It is true that the defendants' November statement provided that they "saw a more
4 pronounced continuation of the trend discussed last quarter, where fewer Free instances converted
5 to paid plans continuation of the trend." Ex. F at 11. But the plaintiffs do not sufficiently plead
6 that this rendered Statement 1 false. Statement 1 did not "directly contradict" what Atlassian
7 knew in August, *Khoja*, 899 F.3d at 1008, because it confirms what Atlassian knew and told
8 shareholders *in August*: there was a slowdown in Free to Paid Conversions, *see* Ex. B at 9. The
9 plaintiffs do not contest that the defendants informed shareholders of this slowdown. And though
10 the plaintiffs seem to allege that it was false or misleading to not label this slowdown as a "trend"
11 in August, *see* Oppo. 13:1-12, that theory ignores the context of the statement, which was given in
12 response to a question about geography, and further contextualized a few minutes later with more
13 information about the slowdown.

14 The plaintiffs also seem to argue that Statement 1 was false or misleading because the
15 defendants knew about a "trend" in the Paid User Expansion as of July or August 2022. *See*
16 Oppo. 13:13-14:6. But to demonstrate this, they point to the following statement made by Deutsch
17 in the November earnings call, which does not show that there was any trend in Paid User
18 Expansion at that time:

19 [W]hat we were seeing in the August timeframe was the net new customers, the
20 free customers converting to paid was slowing down going into August. We
21 normally, through our summer season, the July and August, tend to see user growth
22 slowdown across our customer base, largely due to seasonality, vacations and
23 holidays. It just tends to be a normal seasonal trend where July and August are
24 slower, as people are not upgrading instances, adding more users.

25 Ex. G at 12.

26 The first sentence of the statement concerns the slowdown of Free to Paid Conversions, not
27 Paid User Expansion. This was communicated to shareholders in August and does not render
28 Statement 1 false or misleading. The second part discussing the "gradual slowdown across our
customer base" and the "normal seasonal trend" of "people not upgrading instances, adding more
users" also does not show that there was a trend in Paid User Expansion starting in July. Rather, it

1 states that the company “tend[s] to see” a slowdown in those months. Indeed a few minutes
2 before making this November statement, Deatsch specifically said that the company “saw the
3 growth of paid users from existing customers [Paid User Expansion] slow *in the second half of*
4 *Q1*,” Ex. G at 10 (emphasis added), meaning the slowdown to Paid User Expansion began mid-
5 August, *see* AC at 2 n.1 (noting that Atlassian fiscal year begins July 1). As pleaded, then, the
6 slowdown to Paid User Expansion began after Statement 1 was made on August 4. Saying there
7 was “no specific trend . . . in customer size” on August 4 did not contradict “what the defendant[s]
8 knew at that time.” *See Khoja*, 899 F.3d at 1008. Nor did it create any impression that the state of
9 affairs differed “in a material from the one that actually exists.” *Brody*, 280 F.3d at 1006. The
10 plaintiffs therefore do not plead falsity.

11 The plaintiffs’ final argument is that Statement 1 was misleading when combined with the
12 defendants’ pronouncements that their sales cycle was linear because the statement omitted that
13 seasonality might affect the defendants’ performance. *See* Oppo. 14:19-15:4. But in the same call
14 where Statement 1 was made, the defendants specifically warned investors and shareholders that
15 they would likely see “seasonality . . . over the next four quarters” and that growth would
16 “moderat[e]” throughout the next fiscal year. Ex. B at 8. On November 3, the defendants
17 confirmed exactly that: they had seen “the growth of paid users from existing customers slow in
18 the second half of Q1.” Ex. G at 10. I take the plaintiffs’ point that the defendants regularly
19 emphasized the competitive advantage of their linear sales cycle and so it would make sense that,
20 should the linear cycle shift at all, the defendants might know of any changes right away. But the
21 pleadings and exhibits show, at most, that the linear sales cycle shifted in mid-August, so there
22 was nothing for the defendants to warn about on August 4.

23 Accordingly, the plaintiffs do not plead that Statement 1 was false or misleading.

24 **b. Statement 2**

25 The second challenged statement from the August 4 call was: “[W]e have not seen any
26 significant shift in customer demand across our product lines.” AC ¶ 89; Ex. B at 7.

27 Again, this statement must be read in context. It was made in response to the question,
28 “Has there been any change to the mix of products sold over the last few months? Anything

1 different with regard to customer prioritization?” Ex. B at 7. Deatsch responded, “As far as the
2 overall mix, no, we have not seen any significant shifts in customer demand across our product
3 lines.” *Id.* Notably, the plaintiffs do not assert that there *was* a significant shift in demand for any
4 particular product line, so they do not plead Statement 2 was false or misleading on its face.

5 Instead, they say that the statement was false or misleading because the defendants later
6 admitted to a slowdown “across our customer base” beginning in July, including customers “*not*
7 *upgrading instances, adding more users.*” Oppo. 14:2-6 (emphasis added). This is the same
8 language that I addressed above and for the same reasons, it fails to show falsity or
9 misrepresentation. At most, it shows that there was a slowdown in *Free to Paid Conversions* in
10 early Q1, and the defendants told investors of this on August 4. The rest of the November 3
11 transcript shows that the Paid User Expansion slowdown began in the second half of Q1, after the
12 August 4 call. Ex. G at 10. Because that would mean that shift in customer demand occurred after
13 Statement 2 was made, the plaintiffs fail to plead that Statement 2 contradicted anything that the
14 defendants knew at the time.

15 I note too that the exhibits show that the defendants told investors on November 3 that they
16 were “*not* seeing any changes in our competitive position or in the inherent demand for our
17 products.” Ex. F at 2. This apparently aligns exactly with what they told investors on August 4.
18 Accordingly, the plaintiffs fail to plead that Statement 2 was false or misleading.

19 **c. Statement 3**

20 The third challenged statement from August 4 was: “We continue to see demand for
21 collaboration products continue [sic] to be strong.” AC ¶ 89; Ex. B at 7.

22 The plaintiffs again repeat the same arguments as those made for Statements 1 and 2. For
23 the same reasons as above—including that the plaintiffs fail to allege that there was any change in
24 Paid User Expansion before Statement 3 was made—the plaintiffs do not allege that this was false
25 or misleading. And importantly for this statement, the plaintiffs fail to ever allege that demand
26 was not “strong”; rather, the falsity argument about Statement 3 is hindered by the defendants’
27 November confirmation that they were “not seeing any changes . . . in the inherent demand for our
28 products. Looking across our customer base of 249,000+, there has been no overall decrease in

1 usage or change in churn.” Ex. F at 2; *see also id.* at 7-8 (showing charts of new users). It is not
 2 clear, at least as pleaded, what else the defendants could have told investors in August with respect
 3 to this statement.

4 **d. Statement 4**

5 The final challenged statement from August 4 was that the decrease in Free to Paid
 6 Conversions was a “slight thing” that “does not take away from the continued growth we see in
 7 our existing customer base. That also drives more than 90% of our revenue in the existing year.”
 8 AC ¶ 92; Ex. B at 9.

9 The context and full statements were:

10 As far as that **slight thing** that we’ve mentioned in the shareholder letter, just so
 11 you all realize that we land all of our net new customers in Free plans. . . . And the
 12 one thing that’s worth calling out that we’ve seen literally just in the last month is
 13 that the cohort of customers that came in, in the April, May, and June timeframe
 14 are converting to those paid plans at a slightly slower rate than what we’ve seen in
 15 previous quarters. . . . There’s no specific customer segment there. . . . [T]hose
 16 cohort of customers that are signing up in the last quarter are using the products,
 17 . . . but they simply just haven’t put those credit cards and hit those paid walls yet.
 18 So that’s one of those areas that we continue to be vigilant. We have multiple
 19 analytics teams, multiple growth teams, as well as our onboarding and R&D teams
 20 that are focused on ensuring that those customers remain active, and that gives us
 21 more chances to convert them to paid plans in the future. **That does not take**
 22 **away from the continued growth we see in our existing customer base. That**
 23 **also drives more than 90% of our revenue in existing year.**

24 Ex. B at 9 (emphases added). Later in the same call, the defendants stated:

25 As mentioned earlier, we are not insulated from broader macroeconomic impacts.
 26 **We are seeing a modest decrease in the conversion rates of Free instances**
 27 **upgrading to paid plans, but nothing we are seeing right now is changing our**
 28 **outlook.** As a reminder, over 90% of our revenue in FY22 was derived from
 existing customers, and this dynamic has been consistent in our business over the
 years. We will remain vigilant and continue to inspect all aspects of our business
 relying on our well refined analytics and understanding of our funnels.

Ex. C at 14 (emphasis added).

The plaintiffs do not seem to allege that anything in Statement 4 was false—nor can they
 when they concede that Free to Paid Conversions constituted only 10 percent of Atlassian’s
 revenue. And because the earnings call transcript shows that the defendants made clear that they
 were experiencing a slowdown in Free to Paid Conversions, the plaintiffs fail to allege that the

1 defendants were aware of the slowdown but did not inform investors—the transcript itself directly
2 contradicts this assertion. *See* Oppo. 13:6-8.

3 Instead, the plaintiffs seem to say Statement 4 was misleading because the defendants
4 downplayed the severity of the slowdown in this metric. *See* Oppo. 12:4-12. But the plaintiffs do
5 not plead that the severity was worse than the defendants provided; indeed the plaintiffs do not
6 allege facts that slowdown in Free to Paid Conversions was anything more than “slight” in
7 August. Rather, they fall back on the argument that the defendants later referred to this slowdown
8 as a “trend” and so should have called it out as a trend in August, too. *See* Oppo. 11-12. But the
9 plaintiffs do not sufficiently allege why omitting the “trend” label “affirmatively create[d] an
10 impression of a state of affairs that differs in a material way from the one that actually exists,”
11 *Brody*, 280 F.3d at 1006, especially when the information the defendants provided was apparently
12 accurate.

13 Accordingly, they fail to plead that Statement 4 was false or misleading.

14 * * *

15 Because the plaintiffs fail to plead that any of the August 4 statements were false or
16 misleading, I need not address the defendants’ argument that the statements were “non-actionable
17 corporate optimism.” Mot. 12:26-13:7. They may reraise that argument on a subsequent motion,
18 if they wish. The motion is otherwise GRANTED as to the August 4 statements, with leave to
19 amend.

20 2. August 19 Annual Report—Statement 5

21 Next, the plaintiffs argue that Atlassian’s annual report for FY 22, published on August 19,
22 2022, contained the following misleading statement:

23 Other than as disclosed elsewhere in this Annual Report, we are not aware of any
24 trends, uncertainties, demands, commitments or events for the current fiscal year
25 that are reasonably likely to have a material effect on our revenues, income,
26 profitability, liquidity or capital reserves, or that caused the disclosed financial
information to be not necessarily indicative of future results of operations or
financial conditions.

27 AC ¶ 94; Ex. A at 66.

28 Again, context is key. This statement constituted the final paragraph in the “Trend

1 Information” section of the defendants’ 150+ page annual report. A few paragraphs above, the
2 report discusses how macro-economic conditions did not materially impact Atlassian’s “financial
3 conditions or results of operations during the fiscal year ended on June 30, 2022,” but noted that
4 the future risks posed by the changing macro-economic environment were “uncertain and cannot
5 be predicted at this time.” Ex. A at 66.

6 The plaintiffs argue that Statement 5 is misleading because it states that the defendants saw
7 no trends for “the current fiscal year,” meaning FY23. *See* Oppo. 16:3-17:13. Though the parties
8 debate whether “current fiscal year” referred to FY22, the year assessed by the report, or FY23,
9 the year in which the report was published, it does not matter to my analysis. Regardless of which
10 year the report refers to, the plaintiffs fail to allege that the defendants knew of *any* trend to Paid
11 User Expansion by the time the report was published on August 19. *Cf. Weston*, 2023 WL
12 3000583, at *17 (noting that risk disclosures concerning “entirely of as-yet-unrealized risks and
13 contingencies” are plausibly misleading if they “do not alert the reader that some of these risks
14 may already have come to fruition” (quoting *In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687, 703 (9th
15 Cir. 2021)). As addressed above, the AC and the exhibits show that the Paid User Expansion
16 slowdown trend began mid-quarter, so about August 16 at the earliest. The plaintiffs do not plead
17 that any slowdown between August 16 and August 19 was a trend or that the defendants could
18 plausibly have added it to the published materials so quickly. *Cf. Azar v. Yelp, Inc.*, No. 18-CV-
19 00400-EMC, 2018 WL 6182756, at *17 (N.D. Cal. Nov. 27, 2018) (finding that the plaintiffs
20 alleged that the defendants knew of the slowdown “in January” before they made contradictory
21 statements “halfway through the quarter” on February 9).

22 The plaintiffs do not argue that this statement was false or misleading based on the
23 defendants’ knowledge of a trend to Free to Paid Conversions at that time. *See* AC ¶¶ 94-95;
24 Oppo. 16:3-18:1. To the extent that this is their basis for their theory of liability, they must clearly
25 identify why Statement 5 contradicted the defendants’ knowledge or the state affairs at that time.
26 *See Khoja*, 899 F.3d at 1008; *Brody*, 280 F.3d at 1006. The plaintiffs must also address the
27 context of Statement 5, including its qualification that they were unaware of trends and
28 uncertainties “[o]ther than as disclosed elsewhere in this Annual Report,” as well as the discussion

1 of the macroeconomic impacts two paragraphs earlier. Ex. A at 66.

2 As pleaded, then, this statement did not “directly contradict” anything the defendants
3 knew, *Khoja*, 899 F.3d at 1008, nor did affirmatively represent the state of Atlassian that
4 materially differed from the one that “actually exist[ed],” *Brody*, 280 F.3d at 1006. It was
5 therefore not false or misleading and the motion is GRANTED on this basis with leave to amend.

6 3. September 14 Conference—Statements 6-8

7 Next, the plaintiffs allege that Bharadwaj made three misleading statements at a conference
8 on September 14, 2022—Statements 6, 7, and 8. AC ¶¶ 96-99. The three challenged statements
9 were made in response to two questions, posed in a row and on the same subject. *See* Ex. G at 8-
10 10. The statements provide context for each other and contain mostly the same information, and
11 the parties assert essentially the same arguments about each statement, so I address them together.
12 *See also* Repl. 9:5-19 (collecting cases and arguing that courts must consider the statements in
13 order and context). The statements are:

14 Statement 6:

15 [With respect to] overall macroeconomic conditions, . . . no company is immune to
16 it. But some of the attributes of our product set give us a few advantages in
Atlassian.

17 AC ¶ 96; Ex. G at 9.

18 Statement 7:

19 Just in the last shareholder letter, we talked about conversion of users from free to
20 paid. We are seeing a bit of softness over the past couple of months. But it’s
21 important to illustrate that point in the overall picture as over 90% of our revenue
22 comes from existing customers. So the conversion from free to paid is really a very
23 small part of our business. And also, the number of free users that are coming in
that create new free instances continues to grow steadily. We’re not seeing any
24 trends there. So across the board, across existing and new, that’s overall what we
are seeing in different parts of the business.

25 AC ¶ 97; Ex. G at 9.

26 Statement 8:

27 So to address your question, the way our pricing model works is the first 10 users
28 are free and then the 11th user onwards, it’s paid. So in year 1, you can imagine the
impact is pretty low. Going from 10th user to the 11th user is really just adding a
paid user there. So the overall quantum looks pretty low in year 1, but it builds up
and compounds over time. So we think of upsell as really across free to standard,
standard to premium, premium to enterprise. And we’ve seen some very
encouraging progress there over the last 4 quarters, and I haven’t really seen any

discernible trend there in terms of the macroeconomic impact.
Ex. G at 10.

To the extent that the plaintiffs assert that these statements were misleading because they did not fully convey the slowdown to Free to Paid Conversions, they fail to plausibly allege this. *See* *Oppo*. 18:2-20. The plaintiffs concede that the defendants told the market about the Free to Paid slowdown in August, and Bharadwaj’s statements in September convey essentially the same information. The plaintiffs do not plead that the Free to Paid Conversion metric worsened between August 4 and September 14 in a way that would render the “bit of softness” comment in Statement 7 misleading, false, or inaccurate. They also agree that Paid User Expansion was 90 percent of Atlassian’s business, so that too is not misleading or inaccurate.

But I agree that the three statements together were misleading because they provided no commentary on the Paid User Expansion slowdown that began in mid-August. The defendants say this was not misleading because Bharadwaj only discussed Free to Paid Conversions and Subscription Upgrades and did not purport to speak about Paid User Expansion. *See* *Mot.* 17:1-18:4. But that argument fails for two reasons.

First, the AC does not distinguish between Free to Paid Conversions and Paid User Expansion on the one hand and Subscription Upgrades on the other. *See* AC ¶¶ 37-39 (defining and explain Free to Paid Conversion and Paid User Expansions). Given the allegations, Subscription Upgrades are plausibly a sub-category of one of the first two metrics because the AC alleges Paid User Expansion constitutes 90 percent of revenue, *id.* ¶ 39, and Free to Paid Conversions are the remaining 10 percent, so it would make sense that upgrades are part of one of those categories to total 100 percent. More importantly, though, by asserting that Subscription Upgrades are separate from Paid User Expansion—and by extension that comments about Subscription Upgrades did not relate to Paid User Expansion—the defendants ask me to look beyond the corners of the complaint or even the exhibits they attached. And I cannot do that on a motion to dismiss.

Second, even if Subscription Upgrades were an entirely different metric from Paid User Expansion, it was—as pleaded—misleading for the defendants to provide positive statements

1 about Subscription Upgrades and Free to Paid Conversions without discussing the new slowdown
2 in Free to Paid Conversions. The defendants argue that they did not know of the slowdown by
3 September 14, but above I addressed the facts alleging that they knew it began mid-August. The
4 defendants also contend that they had no duty to disclose the slowdown in September, outside of
5 their regular reporting cycle and before Q1 had ended, so long as they did not affirmatively
6 disclose positive results about the metric. *See* Mot. 17:1-22; Repl. 9:20-10:2. But even if they had
7 no affirmative duty to disclose the beginning signs of the slowdown before the quarter ended, they
8 created the duty to disclose by “tout[ing] positive information to the market” about the rest of their
9 business at that time. *Khoja*, 899 F.3d at 1009. By telling the market that there was “very
10 encouraging progress” and “no discernible trend” from the macroeconomic environment for some
11 small parts of business, but failing to tell the market that there was a slowdown to the key majority
12 of their business, the defendants plausibly omitted material information that would make their
13 disclosures “not misleading.” *See Matrixx Initiatives*, 563 U.S. at 44; *see also Khoja*, 899 F.3d at
14 1009 (noting that, under the securities laws, companies can control what they must disclose “by
15 controlling what they [affirmatively] say to the market” (citation omitted)). The defendants fail to
16 address this well-settled case law and show the statements were not misleading.

17 Finally, the defendants argue that the four weeks between mid-August, when the Paid User
18 Expansion slowdown began, and September 14, when the statements were made, was not enough
19 to show a “trend.” *See* Mot. 18:5-23. But that argument misses the forest for the trees. According
20 to the plaintiffs, the defendants knew that a slowdown to Paid User Expansion—90 percent of
21 their business—began in mid-August yet failed to communicate that to investors in mid-
22 September. That was misleading (according to the AC) not only because they otherwise
23 communicated positive business information, but also because of the way that the defendants held
24 themselves out to investors as vigilant monitors and open communicators. In other words,
25 because the defendants specifically and repeatedly told investors over the years that they closely
26 monitored metrics throughout the year, and they told investors that they were closely monitoring
27 these metrics, it was misleading to not communicate relevant information about this specific
28

1 metric a month after a change began, even if it was not yet a full-blown “trend.”² That is plausible
2 and specific.

3 Accordingly, the plaintiffs sufficiently allege that Bharadwaj’s September 14 statements
4 misleading omitted material information about the Paid User Expansion slowdown. The motion is
5 DENIED on this basis.

6 4. October 4 Amendment—Statement 9

7 Finally, on October 4, 2022, the defendants filed a Post-Effective Amendment to its Form
8 S-8 Registration Statements with the SEC. *See* AC ¶ 100. The plaintiffs say that the amendment
9 incorporated the August 19 Annual Report and so was misleading for the same reasons. *Id.* The
10 defendants say that they were legally required to incorporate the Annual Report into the Post-
11 Effective Amendment and that doing so merely affirms that the statements were accurate when
12 made. Mot. 19:4-16. In turn the plaintiffs assert that the defendants were required to update
13 inaccurate information because it “was false when it was filed,” and that incorporated documents
14 must be updated “if no longer accurate.” *Oppo.* 21:6-20.

15 As addressed above, *supra* Part II.A.2, the plaintiffs do not plead that the August 19
16 statements were false when made, so to the extent that their argument relies on that theory, it fails.

17 With respect to the plaintiffs’ second argument about required updates, that is not clearly
18 alleged in the AC. The AC simply asserts that “the same misstatements” from August 19 were
19 made in the Post-Effective Amendment and so were “materially false and misleading for the same
20 reasons.” AC ¶ 100. If the plaintiffs want to assert a new theory that the October 4 statements
21 were false or misleading because they failed to update the August 19 statements, they can amend
22 their complaint to make that allegation. I note that if they make an amendment, they should
23 address the law that requires filers of S-8 Registration Statements to make such updates if the
24 incorporated document was not false or misleading when the document was made. The plaintiffs’
25

26 ² For those reasons, the defendants’ citations to cases that purport to define the time period
27 necessary to establish a “trend” are unavailing. *See* Mot. 18:13-23. And importantly, the
28 plaintiffs do not plead that the change in Paid User Expansion was a “singular occurrence,” *see*
Sanders v. Realreal, Inc., No. 19-CV-07737-EJD, 2021 WL 1222625, at *22 (N.D. Cal. Mar. 31,
2021), but rather that it was a “slow down” beginning in mid-August 2022.

1 citation to 17 C.F.R § 230.412 provides only that documents incorporated into registration
2 statements are modified or superseded by the information in the registration statement itself, and
3 that incorporated documents *can* be modified or superseded by later filed incorporated documents.
4 But the regulation does not appear to create an affirmative duty for filers to update information
5 that was accurate when stated.

6 Accordingly, the plaintiffs do not plead the October 4 statements were false or misleading.
7 The motion is GRANTED on this argument, with leave to amend.

8 **B. Scier**

9 Finally, the defendants argue that the AC should be dismissed because the plaintiffs failed
10 to adequately allege scier. Mot. 19:17-25:22. They make three arguments: failure to plead a
11 motive to defraud; failure to plead any defendant acted with intent to deceive or deliberate
12 recklessness; and, the “non-fraudulent inference is more compelling.” *See id.*

13 The PSLRA requires that plaintiffs “state with particularity facts giving rise to a strong
14 inference that the defendant acted with the required state of mind.” 15 U.S.C. § 78u-4(b)(2)(A).
15 With respect to false or misleading statements or omissions, “the complaint must plausibly allege,
16 with the particularity required by the PSLRA, that the maker of the statements” knew about the
17 material information and “intentionally or recklessly” failed to disclose it. *In re Alphabet, Inc.*, 1
18 F.4th at 705.

19 The requisite mental state “not only covers intent to deceive, manipulate, or defraud, but
20 also deliberate recklessness.” *In re Quality Sys., Inc.*, 865 F.3d at 1144 (internal quotation marks
21 and citation omitted). “[D]eliberate recklessness” requires plaintiff to show that a defendant made
22 “a reckless omission of material facts . . . reflect[ing] some degree of intentional or conscious
23 misconduct.” *In re Alphabet, Inc.*, 1 F.4th at 701 (citations omitted). This means that the
24 misrepresentations or omissions were “an *extreme* departure from the standards of ordinary care,
25 which presents a danger of misleading buyers or sellers that is either known to the defendant or is
26 so *obvious* that the actor must have been aware of it.” *Id.* (internal citations and quotation marks
27 omitted).

28 To evaluate scier, “the court’s job is not to scrutinize each allegation in isolation but to

1 assess all the allegations holistically.” *Tellabs*, 551 U.S. at 326. The court “must consider
2 plausible, nonculpable explanations for the defendant’s conduct, as well as inferences favoring the
3 plaintiff.” *Id.* at 324. The inference of scienter “need not be irrefutable,” but “must be more than
4 merely ‘reasonable’ or ‘permissible’—it must be cogent and compelling, thus strong in light of
5 other explanations.” *Id.* The question is: “When the allegations are accepted as true and taken
6 collectively, would a reasonable person deem the inference of scienter at least as strong as any
7 opposing inference?” *Id.* at 326; *see also Weston*, 2023 WL 3000583, at *19.

8 The plaintiffs’ main argument is that they sufficiently pleaded scienter because they
9 sufficiently pleaded falsity and misleading omissions. *See Oppo*. 22:11-23. But cases that found
10 that pleading *falsity* is enough to plead scienter are inapplicable here, where the plaintiffs do not
11 plausibly allege falsity but rather allege *misleading* statements and omissions. *Supra* Part II.A.3.
12 Their theory of misleading statements and omissions requires the plaintiffs to plead that
13 Bharadwaj knew that there was a slowdown to Paid User Expansion on September 14 but
14 recklessly chose not to reveal that information. *See In re Alphabet, Inc.*, 1 F.4th at 701. The
15 plaintiffs do not make these allegations. Even assuming Bharadwaj knew of the slowdown,³ there
16 are no allegations that she knew or must have been aware that withholding the information would
17 present a danger of misleading buyers or sellers. *See id.*

18 In part the allegations fail because, as the defendants argue, the plaintiffs fail to plead a
19 logical motive. Though pleading scienter does not necessarily require the plaintiffs to plead
20 motive, *see Tellabs*, 551 U.S. at 325, in this case it is not clear how the complaint shows that
21 Bharadwaj was deliberately reckless in making her statements without any allegation about *why*
22 she made those statements. The most that the plaintiffs allege regarding motive is that two other
23 defendants sold stocks during the putative class period and “collectively reap[ed] more than \$222
24 million,” AC at 39 n.19 (emphasis omitted), but in the same breath the plaintiffs concede this was
25

26 _____
27 ³ Because the plaintiffs fail to plead that Bharadwaj recklessly chose to withhold information
28 about the slowdown, I do not need to address the parties’ arguments about whether the plaintiffs
alleged that she knew about the slowdown. This includes their arguments about “core operations.”
See Mot. 24:3-18; *Oppo*. 24:17-26.

1 “not dramatically out of line with these Defendants’ prior trading practices,” *id.*⁴ “[S]tock sales by
2 corporate insiders are suspicious only when they are dramatically out of line with prior trading
3 practices at times calculated to maximize the personal benefit from undisclosed inside
4 information.” *Weston*, 2023 WL 3000583, at *22 (quoting *City of Dearborn Heights Act 345*
5 *Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605, 621 (9th Cir. 2017)). The stock sales
6 are therefore not sufficient to show that the other defendants had motive to defraud, and without
7 more, it is not logical that these individual defendants would tell Bharadwaj—who did not, as
8 alleged, personally benefit from the misrepresentations—to affirmatively omit the full picture
9 about the status of the company when talking to investors and analysts, and instead reveal the
10 details eight weeks later in a letter to shareholders. Without more, the plaintiffs do not plead
11 scienter.

12 For similar reasons, the plaintiffs’ reliance on my order in *In re QuantumScape Securities*
13 *Class Action Litigation*, 580 F. Supp. 3d 714 (N.D. Cal. 2022), is unconvincing. In that case, the
14 defendant “had spent a decade developing its product,” “went public just before the class period,”
15 “raised hundreds of millions of dollars” during the period it allegedly made misrepresentations
16 about the development progress of its product, and “personally reported facts about the company
17 that are alleged to be completely at odds with reality.” *Id.* at 741. I found that the plaintiffs’
18 allegations about falsity and motive were more than sufficient to plausibly and specifically allege
19 that the defendants intended to deceive investors. *See id.* at 741-42 & n.4. But as discussed, here
20 the plaintiffs allege neither falsity nor motive. That case is inapplicable.

21 The plaintiffs also assert that specific statements made in response to analysts’ and
22 investors’ questions can contribute to the strong inference of scienter. *Oppo*. 24:3-9. But in their
23 cited case, the Honorable Edward M. Chen found that the defendants had provided “[s]uch
24 specific answers to specific questions” about certain margins and analyses that “suggest[ed] . . .
25 Defendants knew their importance yet consciously attempted to give a favorable impression while
26 hiding their manipulation and unfavorable analyses.” *In re Fibrogen, Inc.*, No. 21-CV-02623-

27
28 ⁴ I declined to take judicial notice of the documents that the defendants say are relevant to this theory. *Supra* Part I.

1 EMC, 2022 WL 2793032, at *24 (N.D. Cal. July 15, 2022). There simply are no parallel
 2 allegations in this case. The plaintiffs do not assert that anyone at Atlassian manipulated results or
 3 hid unfavorable analyses, or that Bharadwaj specifically answered an investor’s question in a way
 4 that intentionally hid this misinformation. Indeed, the questions that she was answering when she
 5 made the alleged omissions were not “specific[ally]” about the Paid User Conversion metric, nor
 6 do the plaintiffs plead that she was “consciously attempt[ing]” to give positive news about
 7 Atlassian while hiding the slowdown. *See id.*⁵ At most, the AC asserts that Bharadwaj
 8 misleadingly failed to inform investors that one month prior to their call, a “slowdown” began in
 9 Atlassian’s Paid User Expansion metric. *Supra* Part II.A.3. This argument, too, fails to show that
 10 the plaintiffs pleaded scienter.

11 Additionally, the plaintiffs seem to assert that they pleaded scienter by including
 12 allegations about the defendants’ linear sales cycle. *See* Oppo. 23:13-24:2. They cite no case law
 13 in support of this argument, and it is not entirely clear how they believe this affects their scienter
 14 allegations. They do not allege, for example, that any defendant intentionally or recklessly
 15 withheld information that the linear sales cycle had changed to one with more seasonality. Nor
 16 could they, it seems—the August 4 earnings call shows that the defendants warned the public that
 17 their sales would likely experience seasonality. *See* Ex. B at 8.

18 The plaintiffs also argue that the failure to disclose any trends in the August 19 Annual
 19 Report and the October 4 update contributes to the inference of scienter because it violated the
 20 defendants’ obligations under Item 303. *See* Oppo. 25:6-12. Item 303, like SEC Form 20-F,
 21 requires disclosure of known material events and uncertainties “that are reasonably likely to cause
 22 reported financial information not to be necessarily indicative of future operating results or of
 23 future financial condition . . . [or] are reasonably likely . . . to have a material impact on future
 24 operations,” 17 C.F.R. § 229.303—in other words, as the plaintiffs frame it, Item 303 requires

25
 26
 27 ⁵ The plaintiffs also cite this case to assert that they pleaded scienter because they alleged that that
 28 the defendants repeatedly touted their close monitoring of and real-time visibility into Atlassian’s
 business and operations. *See* Oppo. 22:24-23:12. But those allegations also differ from those in
In re Fibrogen, where the plaintiffs alleged that the defendants manipulated results and hid the real
 information from the public. 2022 WL 2793032, at *24. The argument is unconvincing.

1 disclosure of known material trends. But as discussed at length above, the plaintiffs do not
 2 plausibly allege that the defendants failed to disclose known material trends in the August 19 or
 3 October 4 reports. *Supra* Part II.A.1. Reframing the same argument as a violation of Item 303
 4 does not save their deficient allegations. This argument also fails.

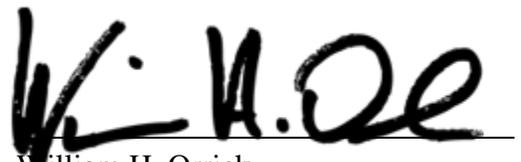
5 Finally, as the defendants note, there is a “plausible, nonculpable explanation” for the
 6 defendants’ conduct. *See Tellabs*, 551 U.S. at 326. The defendants say that by holding
 7 Bharadwaj’s call mid-quarter on top of required end-of-quarter updates, they were trying to
 8 provide open and regular communication to their shareholders during uncertain economic times.
 9 *See* Mot. 25:6-22. There is far more support for this inference in the AC and exhibits than there is
 10 any support for an inference of scienter, even accepting all of the plaintiffs’ allegations as true and
 11 taking them collectively. *See Tellabs*, 551 U.S. at 324-26. It is not a “tie” or even a “close
 12 question.” *See* Oppo. 22:1-8. The plaintiffs fail to plead scienter. For that reason, the complaint
 13 is DISMISSED with leave to amend.⁶

14 CONCLUSION

15 For those reasons, the motion is GRANTED and the complaint is DISMISSED. The
 16 plaintiffs shall file any amended complaint within 21 days of this Order.

17 **IT IS SO ORDERED.**

18 Dated: January 22, 2024

19
 20
 21 
 22 William H. Orrick
 23 United States District Judge

24
 25
 26
 27 ⁶ The parties agree that if the plaintiffs fail to plead a Section 10(b) claim, they also fail to
 28 plead a Section 20(a) claim. *See* Mot. 25:24-25; Oppo. 25 n.15. For the same reasons, then, the
 Section 20(a) claim is DISMISSED with leave to amend.