UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:24-cv-3282-AB	Date: April 18, 2025

Title: *Lisa Marie Barsuli, et al. v. GoodRx Holdings, Inc., et al.*

Present: The Honorable	**ANDRÉ BIROTTE JR., United States District Judge**
Daniel Tamayo Deputy Clerk	N/A Court Reporter
Attorney(s) Present for Plaintiff(s): None Appearing	Attorney(s) Present for Defendant(s): None Appearing

Proceedings: [In Chambers] ORDER GRANTING DEFENDANT'S MOTION TO DISMISS WITHOUT PREJUDICE [Dkt. No. 77]

Before the Court is a motion to dismiss filed by Defendants GoodRx Holdings, Inc. ("GoodRx"), Douglas Hirsch, Trevor Bezdek, and Karsten Voermann (collectively, "Defendants"). ("Motion" or "Mot.," Dkt. No. 77.) Defendants move to dismiss Plaintiff Lisa Barsuli's First Amended Class Action Complaint (Dkt. No 76.). Plaintiff Lisa Barsuli ("Plaintiff") filed an opposition ("Opp.," Dkt. No. 80.) Defendant filed a reply. (Dkt. No. 84.) The Court determined it would resolve the Motion without oral argument and vacated the hearing set for February 28, 2025. *See* Fed. R. Civ. P. 78, C.D. Cal. L.R. 7-15. For the foregoing reasons, Defendants' Motion is **GRANTED**.

I. BACKGROUND

A. GoodRx's Business Model

Defendant GoodRx Holdings, Inc. operates as a healthcare technology platform and provides a prescription price comparison tool that enables consumers to compare prices negotiated by Pharmacy Benefit Managers ("PMBs") at various

retail pharmacies. (Mot. at 3-4.) Consumers can visit the GoodRx website or mobile application, search for a drug, and find available GoodRx prices and coupons for that drug at a nearby pharmacy. (*Id*. at 4.) For most prescriptions on its platform, GoodRx can use its technology to compare price points provided by over a dozen PBMs to find a competitive price for the consumer. (*Id.*)

PBMs receive a portion of the price the consumer pays the pharmacy for a given drug, and GoodRx receives part of the PBMs' share in exchange for using its technology platform to guide customers to the pharmacies with the best prices. (Mot. at 1.) Essentially, PBMs are GoodRx's "customers" as GoodRx generates revenue from fees paid by PBMs. (*Id.*)

In September 2020, GoodRx conducted its initial public offering ("IPO"). (Mot. at 4.) The Registration Statement filed in connection with the IPO provided a "detailed overview of GoodRx's business model, including information about its customers, revenue concentration, and subscription offerings, along with associated risks." (*Id.*) GoodRx disclosed: "As we have agreements with PBMs to market their negotiated rates through our platform, our ability to present discounted prices is dependent upon the arrangements that PBMs have negotiated with pharmacies." (*Id.*) Further, GoodRx outlined the risks posed by this model of having no direct contractual relationships with pharmacies: "[i]f one or more of these pharmacy chains terminates its cash network contracts with PBMs that we work with or enters into cash network contracts with PBMs that we work with at less competitive rates, our business may be negatively affected." (*Id.* at 4-5.)

GoodRx relies on a limited number of pharmacy chains and PBMs. (Mot. at 5.) GoodRx advertised that its discount codes could be used at over 70,000 pharmacies but acknowledges that "it was dependent on a limited number of key industry players." (*Id.*) In the IPO prospectus, in a paragraph specific listing Kroger as one of the pharmacy chains, GoodRx disclosed that a "significant portion of our discounted prices are used at a limited number of pharmacy chains and, as a result, a significant portion of our revenue is derived from transactions processed at a limited number of pharmacy chains." (*Id.*)

At the time of the IPO, GoodRx's revenue has been "primarily derived from prescription transaction fees generated when pharmacies fill prescriptions for consumers," while "other revenue," including subscriptions, advertising, and telehealth services, comprised a smaller fracture of GoodRx's overall revenue. (Mot. at 6.) GoodRx had two main subscription offerings, Gold and Kroger Rx Savings Club, both of which "address the same consumer need and generally offer

greater savings on prescription medication than our prescription offerings does." (*Id.*)

B. Kroger Enters a Contract Dispute with PBMs

On May 9, 2022, GoodRx disclosed that a "grocery chain had taken actions late in the first quarter of 2022 that impacted acceptance of discounted pricing for a subset of drugs from PBMs." (Mot. at 6.) During an earnings call, co-CEO of GoodRx, Mr. Bezdek, explained, "[w]hile we do not have all the facts…the grocer's recent actions are related to the contract dispute the grocer is having with certain PBMs and relates to pharmacy economics… This is limiting acceptance of many programs at this grocer's pharmacy." (*Id.*) Mr. Bezdek explained, a retailer typically negotiates and changes pricing with one or two PBMs at a time, but "[i]n this case, this grocer negotiated with almost all PBMs at the same time." (*Id.* at 7.)

Following these events, GoodRx informed shareholders that revenue could drop by $30 million in the second quarter of 2022 alone. (Mot. at 7.) GoodRx withdrew its guidance for the fiscal year 2022. (*Id.*) Mr. Bezdek explained, "[w]hile this grocer represents less than 5% of the pharmacies in [the] GoodRx network, it made up almost a quarter of our prescription transaction revenue in the first quarter." (*Id.*)

On August 8, 2022, during the Q3 FY2022 earnings call, in regard to the Kroger-PBM issue, GoodRx announced that it expected "GoodRx discounts to be consistently welcomed at the point-of-sale." (Mot. at 8.) Mr. Bezdek noted that the second quarter results were in line with the expected $30 million revenue hit and anticipated that the revenue impact would continue into the third quarter and beyond, likely estimating a $35-40 million impact in Q3. (*Id.*) GoodRx continued to without FY2022 guidance. (*Id.*) After this earnings call, the stock price increased. (Mot. at 9.)

On November 8, 2022, during the Q3 FY2022 earnings call, GoodRx announced that the third quarter impact of the Kroger-PMB issue was $40 million. (Mot. at 9.) GoodRx noted "an expected $45-50 million revenue headwind from the Kroger-PBM issue in Q4, and that Kroger would likely remain a much smaller portion of its revenue going forward." (*Id.*) Further, GoodRx announced a new strategic "hybrid model," which would start contracting directly with pharmacies to create more "network stability." (*Id.*)

On September 20, 2024, Plaintiffs filed the Amended Complaint against

GoodRx and individual defendants Douglas Hirsch and Trevor Bezdek, who were GoodRx's Co-Chief Executive Officers, and Karsten Voermnan, who was GoodRx's Chief Financial Officer. (*See* Dkt. No. 76.) Plaintiffs challenge nineteen statements made about pharmacy acceptance, partnerships, and historical financial results, across an eighteen-month period. (*Id.*) Plaintiff's' claims arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and the rules and regulations promulgated thereunder, including SEC Rule 10b-5. (Compl. ¶ 20.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8 requires a plaintiff to present a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

To defeat a Rule 12(b)(6) motion to dismiss, the complaint must provide enough factual detail to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must also be "plausible on its face," that is, it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). A plaintiff's "factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* Labels, conclusions, and "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Instead, the inquiry into plausibility is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679.

A complaint may be dismissed under Rule 12(b)(6) for the lack of a cognizable legal theory, or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). When ruling on a Rule 12(b)(6) motion, "a judge must accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The court must make all reasonable inferences in the plaintiff's favor. *Nordstrom v. Ryan*, 762 F.3d 903, 906 (9th Cir. 2014). But a court

is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted).

The Federal Rules of Civil Procedure impose unique pleading requirements in derivative actions. Under Federal Rule of Civil Procedure 23.1, a shareholder seeking to vindicate the interests of a corporation may bring a derivative action on the corporation's behalf only if the shareholder pleads with particularity that a demand was made on the board or the reasons why a demand would have been futile. *See* Fed. R. Civ. P. 23.1(b)(3).

III. DISCUSSION

A. Request for Judicial Notice

Defendants requests the Court take judicial notice of eleven exhibits. (*See* Dkt. No. 78, "RJN.") Specifically, Defendants requests the Court take notice of the following:

1. GoodRx's Form S-1/A Registration Statement filed with the Securities Exchanges Commission ("SEC") on September 22, 2020 (RJN; Ex. 1);
2. Transcript from GoodRx's First Quarter 2022 earnings call on May 9, 2022 (RJN; Ex. 2);
3. Transcript from GoodRx's Second Quarter 2022 earnings call on August 8, 2022 (RJN; Ex. 3);
4. Transcript from GoodRx's Third Quarter 2022 earnings call on November 8, 2022 (RJN; Ex. 4);
5. GoodRx's Form 10-K for the period ended December 31, 2022 filed with the SEC on March 1, 2023 (RJN; Ex. 5);
6. GoodRx's stock price during the class period from September 24, 2020 to November 11, 2022 from Yahoo! Finance (RJN; Ex. 6);
7. Evercore ISI analyst report entitled, "Heath is Wealth: Initiating GDRX with an OP and $65 Target Price," published on October 18, 2022 (RJN; Ex. 7);
8. Credit Suisse analyst report entitlted, "A Good Rx for Everyone; Initiate with an Outperforming Rating and a $60 TP," published on October 19, 2020 (RJN; Ex. 8);
9. TD Cowen analyst report entitled "1Q22 Results: Decent Results, But Outlook Takes Major (Collateral) Damage," published on May 10, 2022 (RJN; Ex. 9);

10. A Morningstar analyst report entitled, "Grocer-Pharmacy Benefit Managers Dispute to Hit 2022 Operating Results," published on May 10, 2022 (RJN; Ex. 10);
11. A SVB Securities analyst report entitled, "1Q22 Recap: No NT Prescription for Investor Sentiment; DG to MP, $10 PT," published on May 10, 2022 (RJN; Ex. 11).

Plaintiffs do not object to the admission of Exhibits 1 through 5. However, Plaintiffs objects to Exhibits 6-11 (Exhibits 7-11 being analyst reports), alleging it is improper to judicially notice documents when the substance of the document is "subject to varying interpretations, and there is a reasonable dispute as to what the [document] establishes." (Plaintiff's Opposition to Defendants' Request for Judicial Notice, "RJN Opp.," at 1, Dkt. No. 81.) Further, Plaintiff argues that Defendants offer these analyst reports for the truth of the matters described there in, which is improper under Ninth Circuit precedent. (*Id.* at 2-3.)

In its Reply, Defendants argue that Exhibits 1 through 5 should be admitted as they are incorporated by reference in Plaintiff's Complaint. (Defendants' Reply in Support of Request for Judicial Notice, "Reply ISO RJN," at 1-4, Dkt. No. 85.) Further, Defendants argue that Exhibit 6, Stock Price Date, should be admitted because "stock price data is routinely considered by courts in a motion to dismiss in a securities case." (*Id.* at 4.)

Although the scope of review on a motion to dismiss is generally confined to the contents of the complaint, a court may consider "certain materials—documents attached to the complaint, documents incorporated by reference in the complaint or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *Lacayo v. Seterus, Inc.*, No. CV 17-02783-AB (JEMx), 2017 WL 8115535, at *3 (C.D. Cal. Aug. 2, 2017) (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)). All of Defendants' exhibits are judicially noticeable as matters of public record. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.")

Though Defendants' Exhibits 7-11 are judicially noticeable, that does not compel the court to take judicial notice. *Nguyen v. City of Buena Park*, No. 8:20-CV-00348-JLS-ADS, 2020 WL 5991616, at *2 (C.D. Cal. Aug. 18, 2020) (citing *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1410 n.2 (9th Cir. 1990)) ("If an exhibit is irrelevant or unnecessary to deciding the matters at issue, a request for judicial notice may be denied."). As such, the Court **GRANTS** Defendant's

Request for Judicial Notice for Exhibits 1 through 6 and **DENIES** Defendant's Request for Exhibits 7 through 11 because the Court does not find the existence of the analyst reports necessary to resolve this Motion.

B. Motion to Dismiss Pursuant to 12(b)(6) for Failure to State a Claim for a Violation of Section 10(b) and Section 20(a)

Under the Private Securities Litigation Reform Act and Rule 9(b), a plaintiff seeking to plead securities fraud under § 10(b) of the Exchange Act must allege with particularity "(1) a material misrepresentation or omission; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation." *Nguyen v. Endologix, Inc*., 962 F.3d 405, 413 (9th Cir. 2020); *see also Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1008 (9th Cir. 2018); *see also* 15 U.S.C. § 78u-4(b)(1) & § 78j(b); 17 C.F.R. § 240.10b-5. These heightened standards "present no small hurdle." *Macomb Cnty. Emps.' Ret. Sys. v. Align Tech., Inc*., 39 F.4th 1092, 1096 (9th Cir. 2022). Under the heightened pleading standards of the Private Securities Litigation Reform Act ("PSLRA"), a securities fraud complaint must identify each alleged misrepresentation, specify the reasons it is misleading, and state with particularity facts giving rise to a strong inference that the defendant who made the misrepresentation acted with fraudulent intent. *Tellabs Inc. v. Makor Issues & Rights Ltd*., 551 U.S. 308, 321 (2007).

Plaintiffs challenge fourteen statements about "pharmacy acceptance" consisting of "seven instances in which Defendants stated that GoodRx codes could be used at '70,000 pharmacies'; three identical statements on GoodRx's 'Find a Pharmacy Near Me' page; statements on GoodRx's Pharmacy FAQ page; a statement that the app 'works just like a coupon'; a statement that 'prescription pricing can be used to save money at every major retail pharmacy'; and a statement that codes could be presented 'at the chosen pharmacy'." (Mot. at 10; *see generally* FAC.) Further, Plaintiffs challenge four statements that relate to GoodRx's subscription programs, including references in the IPO prospectus to the Kroger Savings Club, and three other general statements about GoodRx's partner relationships. (Mot. at 10.)

Plaintiffs allege that these statements misled investors by omitting information that GoodRx lacked direct contracts with pharmacies mandating the acceptance of GoodRx codes and that twenty-five percent of GoodRx's pharmacy transactions revenue came from Kroger transactions. (Opp. at 11-12.)

A statement is misleading, and therefore actionable, when it gives a reasonable investor the "impression of a state of affairs that differs in a material way from the one that actually exists." *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985 (9th Cir. 2008). A representation can be actionable either because it affirmatively misrepresents material facts or because it omits material facts rendering it misleading. *Khoja*, 899 F.3d at 1008-09. Importantly, "whether a public statement is misleading, or whether adverse facts were adequately disclosed is a mixed question to be decided by the trier of fact," and "only if the adequacy of the disclosure or the materiality of the statement is so obvious that reasonable minds [could] not differ are these issues appropriately resolved as a matter of law." *Fecht v. Price Co.*, 70 F.3d 1078, 1081 (9th Cir. 1995) (internal quotation marks omitted).

1. Statements Regarding the Number of Pharmacies That Accept GoodRx Codes

Plaintiffs allege that, during the Class Period, GoodRx misrepresented pharmacy acceptance of GoodRx codes and omitted that GoodRx had not secured acceptance by the listed retail pharmacies. (Opp. at 12; Compl. ¶¶ 55, 64, 66, 68, 74, 77, 86.) Specifically, Plaintiffs challenge seven instances in which Defendants stated that GoodRx codes could be used at "70,000 pharmacies." (*Id.*) Plaintiffs argue that these statements gave an "impression of a state of affairs that differs in a material way from one that actually exists" because these statements omitted the fact that GoodRx lacked direct contracts with pharmacies to mandate acceptance of GoodRx codes. (Opp. at 12-13) (citations omitted).

For a statement to be misleading by omission, it must "affirmatively create an impression of a state of affairs that differs in a material way from the one that actually exists." *Brody v. Transitional Hosps. Corp*., 280 F.3d 997, 1006 (9th Cir. 2002). However, GoodRx disclosed multiple times in the IPO that its business model relied on contracts with its customers—the PBMs—and that it did not have control over pharmacy-PBM contracts. (Mot. at 11.) Plaintiffs' omission theory fails because "an omission is materially misleading only if the information has not already entered the market." *In re Convergent Techs. Sec. Litig*., 948 F.2d 507, 513 (9th Cir. 1991). The fact that GoodRx contracted with PBMs "entered the market" through the IPO, and, as such, Plaintiffs fail to plead a material misrepresentation in regard to the statements about the number of pharmacies that accept GoodRx codes.

2. Statements Listing Kroger as a Pharmacy that Accepts GoodRx Codes

Plaintiffs allege that the statements referencing GoodRx codes are accepted at "Kroger pharmacies" is actionable. (Compl. ¶¶ 61, 70, 83.) Plaintiffs argue that the statements saying consumers could save up to eighty percent on prescriptions at "Kroger pharmacies" using GoodRx codes fail to mention that GoodRx had not ensured that GoodRx codes would be accepted at the pharmacies and lacked contracts ensuring that acceptance. (Opp. at 14-15.) Further, Plaintiffs argue that any contracts GoodRx had with PBMs does not secure acceptance at the pharmacies themselves. (*Id.* at 15.) Defendant argues that it disclosed GoodRx contracted with PBMs not retail pharmacies. (Mot. at 2.)

Even true statements are misleading where they "give a reasonable investor the impression of a state of affairs that differs in a material way from the one that actually exists." *Brody*, 280 F.3d at 1006. However, here, Plaintiffs allege no facts indicating that Defendants were aware of Kroger's plans to renegotiate the contracts with the PBMs. This is the critical missing piece of the Complaint: Kroger's existing plans to negotiate the agreement with the PBMs are irrelevant if the Defendants did not know of them. While Plaintiffs allege that GoodRx "had access to inside information" and communicated with Kroger regularly due to its partnerships, Plaintiffs do not allege how or when Defendants learned any insider information from those partnerships or what specific information they learned. Further, the challenged statements did not guarantee the continuation of GoodRx's PBM contracts or numbers and warned they might decrease, so any omitted information about Kroger does not render the statements misleading.

These missing allegations go against "Congress's basic purpose in raising the bar [in the PSLRA] in the first place; namely, ... to put an end to the practice of pleading fraud by hindsight." *Gompper v. VISX, Inc.*, 298 F.3d 893, 897 (9th Cir. 2002). As such, Plaintiff failed to allege a materially misleading statement regarding the statements listing Kroger as a pharmacy that accepts GoodRx codes.

3. Statements About GoodRx's Relationships with Pharmacies

Plaintiffs allege that the statements regarding GoodRx's relationships with pharmacies are also false or misleading. (*See* FAC ¶ 57, 59, 61, 70, 79, 83.) Specifically, Plaintiffs challenge the idea that GoodRx advertised that consumers can save "up to 80% on your prescriptions at pharmacies near you with discounts and coupons from GoodRx…," at "every major retail pharmacy," or "at the chosen pharmacy," while omitting the fact that GoodRx does not have a relationship with the pharmacies, but rather with the PBMs. (*Id.*) Another issue Plaintiffs have is

with Defendant's statement regarding "contractual[] obligiat[ions] to accept GoodRx [codes]." (FAC ¶ 79).

However, GoodRx repeatedly disclosed that it held contracts with the PBMs—not the pharmacies. Even further, Plaintiffs make no allegations that these statements about the falsity of the contracts with PBMs. As such, none of the challenged statements created an "impression of a state of affairs that differs in a material way from the one that actually exited." *Brody v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002). Plaintiffs failed to plead a material misleading statements regarding GoodRx's relationships with pharmacies.

4. Statements Made by GoodRx Executives

Plaintiffs challenge four statements made by executives of GoodRx. Specifically, Plaintiffs challenge Defendant Bezdek's statement that described the Kroger Savings partnership as a "fruitful relationship" (FAC ¶ 63); Defendant Hirsch's statement, "It really is so simple. You just download our app, you present it at the pharmacy, it works just like a coupon does at the grocery store…" (FAC ¶ 72); Defendant Hirch's statement that GoodRx has "incredible relationships and contracts with all the key stakeholders in healthcare." (FAC ¶ 81); and Defendant Voermann's statement that GoodRx has a "really strong" relationship with major pharmacies (FAC ¶ 81). Defendants argue that these statements are "nonactionable corporate puffery and genuinely held opinions." (Mot. at 15-16.) Plaintiffs argue these statements are objective and verifiable, not corporate puffery. (Opp. at 16.)

Statements regarding "goodwill valuations" are opinion statements because they "are inherently subjective and involve management's opinion regarding fair value." *City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605, 613 (9th Cir. 2017) To allege that an opinion statement is misleading, a plaintiff must demonstrate that (1) the speaker did not genuinely hold the belief expressed, and (2) the belief is objectively untrue. *Id.* at 615–16. An opinion statement, however, is not misleading simply because the issuer knows, but fails to disclose, some fact cutting the other way. *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 189 (2015).

Defendants argues that Plaintiffs do not allege with any particularity that "any of these executives did not [] genuinely hold these beliefs." (Mot. at 16.) The Court agrees. Plaintiffs do not allege that the Defendants did not genuinely hold the belief that the relationships were "fruitful," "incredible," or "really strong." Even if Plaintiff alleged that the statements were misleading because they omitted

the fact that Defendants did not have contracts with the pharmacies, but rather with the PBMs, that omission alone is not enough to make the statements misleading, especially considering that Defendants regularly stated that the contracts were in fact with the PBMs. *See Omnicare*, 575 U.S. at 189-90 ("Reasonable investors understand that opinions sometimes rest on a weighing of competing fact…") Further, Plaintiffs fail to allege that, at the time the statements were made, the statements were objectively untrue. As such, the Court concludes that the statements made by GoodRx are non-actionable corporate puffery and opinions.

In sum, Plaintiffs fail to sufficiently allege that any statement made by Defendants was materially misleading and cannot establish the first required element under Section 10(b). The Court holds that, pursuant to the heightened pleading standards imposed by the PSLRA and Rule 9(b), Plaintiff has failed to sufficiently plead claims under § 10(b). None of the statements underlying Plaintiffs' claims are materially misleading. This Court need not, and does not, discuss the Parties' arguments on scienter and loss causation. The Section 20(a) claim fails because Plaintiffs do not plead a primary 10(b) violation. *In re Rigel Pharm., Inc. Sec. Litig.*, 697 F.3d 869, 886 (9th Cir. 2012). Thus, Defendants' Motion to Dismiss is **GRANTED**.

IV. CONCLUSION

Leave to amend a dismissed complaint should be freely granted unless it is clear the complaint could not be saved by any amendment. Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, a "'district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint.'" *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1058 (9th Cir. 2011).

The Court is skeptical that Plaintiffs will be able to cure these deficiencies, but because the Court is ordinarily reluctant to grant a motion to dismiss without leave amend when pleading deficiencies have not been previously addressed, it will provide Plaintiffs an opportunity to re-plead their claims.

As such, Plaintiffs' Complaint is **DISMISSED** without prejudice and with leave to amend. The Court will permit Plaintiff leave to amend that claim if they can do so consistent with this Order and Fed. R. Civ. P. 11. Any amended Complaint must be filed within **45 days** of this Order.

IT IS SO ORDERED.