UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES -- GENERAL

Case No. **CV 07-02544-JFW (VBKx)** Date: December 31, 2008

Title: In Re: International Rectifier Corporation Securities Litigation

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS):

ORDER DENYING DEFENDANT ERIC LIDOW'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED CONSOLIDATED COMPLAINT [filed 11/10/2008; Docket No. 151];

ORDER DENYING DEFENDANT MICHAEL P. McGEE'S MOTION TO DISMISS SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT [filed 11/10/2008; Docket No. 153];

ORDER DENYING DEFENDANT ALEXANDER LIDOW'S MOTION TO DISMISS THE SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS [filed 11/10/2008; Docket No. 155];

ORDER GRANTING IN PART, DENYING IN PART DEFENDANT INTERNATIONAL RECTIFIER CORPORATION'S MOTION TO DISMISS AND STRIKE PLAINTIFFS' SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT [filed 11/10/2008; Docket No. 156];

ORDER GRANTING DEFENDANT ROBERT GRANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT [filed 11/10/2008; Docket No. 158]

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On November 10, 2008, Defendant Eric P. Lidow ('Eric Lidow") filed a Motion to Dismiss Plaintiffs' Second Amended Consolidated Complaint. On November 10, 2008, Defendant Michael P. McGee ("McGee") filed a Motion to Dismiss Second Amended Consolidated Class Action Complaint. On November 10, 2008, Defendant Alexander Lidow ("Alex Lidow") filed a Motion to Dismiss the Second Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws. On November 10, 2008, Defendant International Rectifier Corporation ("International Rectifier") filed a Motion to Dismiss and Strike Plaintiffs' Second Amended Consolidated Class Action Complaint. On November 10, 2008, Defendant Robert Grant ("Grant") filed a Motion to Dismiss Second Amended Complaint. On November 17, 2008, Lead Plaintiffs, the General Retirement System of the City of Detroit and the Massachusetts Laborers' Pension Fund filed their Opposition to Defendants' Motions for Dismissal. On November 24, 2008, McGee, Alex Lidow, International Rectifier, and Grant filed Replies. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's December 1, 2008 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background[1]

Plaintiff Edward R. Koller Jr. filed a class action complaint against International Rectifier and certain of its current and former officers and directors on April 17, 2007. Subsequently, plaintiff Manuel Levine filed a separate action. On May 17, 2007, the Court consolidated the two actions, and on July 23, 2007, appointed the General Retirement System of the City of Detroit and the Massachusetts Laborers' Pension Fund (collectively, "Plaintiffs") as lead plaintiffs, and appointed lead counsel. On January 14, 2008, Plaintiffs filed their Consolidated Class Action Complaint for Violations of the Federal Securities Laws. On May 23, 2008, the Court dismissed Plaintiffs' Consolidated Class Action Complaint without prejudice. On October 17, 2008, Plaintiffs filed their Second Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws ("Second Amended Complaint").

Plaintiffs' Second Amended Complaint alleges that International Rectifier and certain of its former officers and directors committed securities fraud by violating the Securities Exchange Act of 1934 ("Exchange Act"). Specifically, the Second Amended Complaint alleges one claim for relief for violation of Section 10(b) and Rule 10b-5 against all defendants except Eric Lidow, and another claim for relief for violation of Section 20(a) against all defendants. The plaintiff class encompasses investors who purchased the publicly traded securities of International Rectifier between July 31, 2003 and February 11, 2008 (the "Class Period").

Like the previous Complaint, Plaintiffs' Second Amended Complaint is primarily based on a series of disclosures by International Rectifier, acknowledging fraudulent practices at its Japan

[1]The Court's previous Order dated May 23, 2008 extensively summarized the allegations in the previous Complaint, and the Court does not repeat them here. To the extent that any additional facts alleged in the Second Amended Complaint are necessary to the disposition of the current motions, the Court includes them in this Order.

subsidiary and various accounting errors and "irregularities"[2] that were discovered by an independent investigation conducted at the request of the Audit Committee. As a result of these disclosures, Plaintiffs allege that, throughout the Class Period, International Rectifier issued financial statements that were materially misstated and not presented in accordance with Generally Accepted Accounting Principles ("GAAP").

In their Second Amended Complaint, Plaintiffs include information provided by ten new confidential witnesses, and include additional disclosures made by International Rectifier in SEC filings, in press releases, and in International Rectifier's restatement filed with the SEC on August 1, 2008 ("Restatement").

In the five Motions to Dismiss, defendants argue that Plaintiffs' Section 10(b) claim should be dismissed in relevant part because: (1) Plaintiffs have not adequately pled that Grant substantially participated or was intricately involved in the preparation of the fraudulent statements, and (2) Plaintiffs have not adequately pled scienter. In addition, Defendants argue that Plaintiffs' Section 20(a) claim should be dismissed because Plaintiffs have not pled a primary violation under Section 10(b). Finally, Defendant International Rectifier moves to strike plaintiffs' allegations' extending the class period to a date earlier than April 29, 2005 or a date later than May 11, 2007 for failure to plead loss causation with respect to two of International Rectifier's disclosures.

II. Legal Standard

Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act ("PSLRA") govern the pleading requirements for claims under 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. *See Yourish v. California Amplifier*, 191 F.3d 983, 993 (9th Cir. 1999); *Cooper v. Pickett*, 137 F.3d 616, 628 n.2 (9th Cir. 1997); *see also* William W. Schwarzer, A. Wallace Tashima, & James M. Wagstaffe, California Practice Guide, *Federal Civil Procedure Before Trial* § 8:45.10.

Rule 9(b) provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). The heightened pleading requirements of Rule 9(b) are designed "to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). In order to provide this required notice, "the complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity." *Id*. at 672. Further, "a pleader must identify the individual who made the alleged representation and the content of the alleged representation." *Glen Holly Entertainment, Inc. v. Tektronix, Inc.,* 100 F. Supp. 2d 1086, 1094 (C.D. Cal. 1999).

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[2]The use of the term "irregularities" is significant because it refers to "intentional misstatements or omissions of amounts or disclosures in financial statements. Irregularities include fraudulent financial reporting undertaken to render financial reporting statements misleading sometimes called management fraud." *See* Generally Accepted Auditing Standards ("GAAS"), AU § 316.03 (1997).

The PSLRA requires a heightened pleading standard for allegations regarding misleading statements and omissions that is similar to the heightened pleading standard required by Rule 9(b). "The purpose of this heightened pleading requirement was . . . to put an end to the practice of pleading 'fraud by hindsight.'" *In re Vantive Corp. Sec. Litig.,* 283 F.3d 1079, 1084-85 (9th Cir. 2002) (quoting *In re Silicon Graphics Inc. Sec. Litig.,* 183 F.3d 970, 988 (9th Cir. 1999)). The PSLRA specifically provides:

> [T]he complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.

15 U.S.C. § 78u-4(b)(1).

In addition, the PSLRA requires a heightened pleading standard for state of mind: "the complaint shall, with respect to each act or omission alleged to violate this chapter, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2); *see also Silicon Graphics*, 183 F.3d at 974 ("We hold that a private securities plaintiff proceeding under the PSLRA must plead, in great detail, facts that constitute strong circumstantial evidence of deliberately reckless or conscious misconduct"). "To allege a 'strong inference of deliberate recklessness,' [Plaintiffs] 'must state facts that come closer to demonstrating intent, as opposed to mere motive and opportunity.'" *DSAM Global Value Fund v. Altris Software, Inc.,* 288 F.3d 385, 389 (9th Cir. 2002) (quoting *Silicon Graphics,* 183 F.3d at 974). "[R]ecklessness only satisfies scienter under § 10(b) to the extent it reflects some degree of intentional or knowing misconduct." *Silicon Graphics,* 183 F.3d at 976-77.

III. Discussion

A. Violation of Section 10(b) and Rule 10b-5

Section 10(b) makes it unlawful:

> [t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b). Rule 10b-5 makes it unlawful for any person to use interstate commerce:

> (a) To employ any device, scheme, or artifice to defraud,
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5. In a typical section 10(b) or Rule 10b-5 private action, a plaintiff must prove: (1) a material misrepresentation or omission, (2) scienter, (3) a connection with the purchase or sale of a security, (4) reliance, (5) economic loss, and (6) loss causation. *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005); *Stoneridge Investment Partners, LLC. v. Scientific-Atlanta, Inc.*, 128 S. Ct. 761, 768 (2008).

1. Plaintiffs fail to plead that Grant substantially participated or was intricately involved in the preparation of the alleged fraudulent statements.

The Court dismissed the previous Complaint against Grant because not a single misrepresentation or omission was attributed to Grant, and there were no allegations that Grant substantially participated or was intricately involved in the preparation of the fraudulent statements. *See In re International Rectifier Corp. Securities Litigation*, 2008 WL 4555794, at *10-12 (May 23, 2008).

Although the Second Amended Complaint consists of almost 100 pages, Plaintiffs again fail to allege any misrepresentations or omissions attributable to Grant. Instead, Plaintiffs attempt to plead that Grant substantially participated or was intricately involved in the preparation of International Rectifier's financial statements. Specifically, Plaintiffs rely on the statements of one confidential witness, CW17, who was an Area Sales Manager for the Southeast territory of International Rectifier from 2000 until April 2007 and reported to the Vice President of North America Sales. CW17 participated in conference calls once a month with Grant, as well as quarterly sales calls with Grant. According to CW17:

> Grant kept his fingers on the detailed numbers every quarter and reported the figures to McGee, who rolled them up into the public financial filings. . . . Robert was the numbers guy. He was in charge of sales. He knew what the targets were and what Wall Street expected to see. He is a finance guy by background. He was an accountant and came from one of the Big Eight Accounting Firms . . . . Grant had a hand in putting together the filings. I'm absolutely sure Grant was involved in putting together the final numbers for the reports to the public.

Second Amended Complaint ¶ 110(l). As the Court held in its previous Order, the mere furnishing of sales figures to be included in the financial statements is insufficient to show substantial participation or the intricate involvement in the preparation of the financial statements. *See In re International Rectifier Corp. Securities Litigation*, 2008 WL 4555794, at *11-12. The only allegations that could possibly be interpreted to mean that Grant did more than furnish sales figures are: "Grant had a hand in putting together the filings. I'm absolutely sure Grant was involved in putting together the final numbers for the public." However, when relying on allegations by confidential sources, Plaintiffs must describe the source "'with sufficient particularity to support the probability that a person in the position occupied by the source would possess the information alleged.'" *See In re Daou Systems, Inc.,* 411 F.3d 1006, 1015 (9th Cir. 2005) (quoting *Nursing Home Pension Fund, Local 144 v. Oracle Corp.*, 380 F.3d 1226, 1233 (9th Cir. 2004)). Although Plaintiffs describe CW17 with sufficient particularity, CW17's job description and responsibilities do not support the probability that he or she was in a position to know that "Grant had a hand in putting together the filings." Moreover, CW17's statements are merely conclusory, with no

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supporting detail. *See In re Hypercom Corp. Sec. Litig.*, 2006 WL 1836181, at *5 (D. Ariz. Jul. 5, 2006)("confidential witnesses' unreliable or conclusory allegations will not be considered . . . .").

Aside from relying on CW17's statements, Plaintiffs primarily recycle the arguments previously considered and rejected by the Court in its Order dated May 23, 2008.[3]

Accordingly, Grant's motion to dismiss the Section 10(a) and Rule 10b-5 claim alleged against him is **GRANTED without leave to amend.**

2. Plaintiffs adequately plead scienter as to Alex Lidow and McGee.[4]

To survive a motion to dismiss, Plaintiffs must "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2). The "required state of mind" is "scienter," i.e., "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976); *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 975 (9th Cir. 1999). Plaintiffs must plead "at a minimum, particular facts giving rise to a strong inference of deliberate or conscious recklessness." *Silicon Graphics*, 183 F.3d at 979. To satisfy this pleading requirement, "the complaint must contain allegations of specific contemporaneous statements or conditions that demonstrate the defendants knew or were deliberately reckless of the false or misleading nature of the statements when made." *Ronconi v. Larkin*, 253 F.3d 423, 432 (9th Cir. 2001). In addition, the Supreme Court recently described the appropriate method for determining if the "strong inference" requirement for alleging scienter had been met:

> It does not suffice that a reasonable factfinder plausibly could infer from the complaint's allegations the requisite state of mind. Rather, to determine whether a complaint's scienter allegations can survive threshold inspection for sufficiency, a court governed by § 21D(b)(2) must engage in a comparative evaluation; it must consider, not only inferences urged by the plaintiff, . . . but also competing inferences rationally drawn from the facts alleged. An inference of fraudulent intent may be plausible, yet

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[3]For example, Plaintiffs again attempt to rely on the group pleading doctrine, which the Court held did not survive the PSLRA. In addition, Plaintiffs again argue that even if Grant did not make any misleading statements, that he is primarily liable under Section 10(b) for illegally selling $7.1 million of International Rectifier stock while in possession of material non-public information. In the Court's previous Order, the Court warned Plaintiffs that the previous Complaint was deficient in alleging insider trading under Section 10(b). Specifically, the Court stated: "Plaintiffs' Complaint is clearly not based on a claim for insider trading under Section 10(b), and even disavows reliance on insider trading to establish scienter." *In re International Rectifier Corp. Securities Litigation*, 2008 WL 4555794, at *12 n.8. The Second Amended Complaint does not cure this deficiency. Aside from failing to adequately plead insider trading as a theory of liability, Plaintiffs fail to plead contemporaneous trading with particularity. *See Neubronner v. Milken*, 6 F.3d 666, 670 (9th Cir. 1993). Plaintiffs were clearly aware of this pleading requirement, as Grant raised it, citing *Neubronner*, in his briefing on the previous Motion to Dismiss.

[4]Defendants do not dispute that the vast majority of the alleged misleading representations or omissions were made by Alex Lidow and McGee.

> less cogent than other, nonculpable explanations for the defendant's conduct. To qualify as "strong" within the intendment of § 21D(b)(2), we hold, an inference of scienter must be more than merely plausible or reasonable-it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 127 S. Ct. 2499, 2504-2505 (2007). In deciding if scienter has been adequately pled, "[t]he 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." *Id.* at 2509.

In their Opposition to the motions to dismiss the previous Complaint, Plaintiffs argued that they met the heightened pleading requirement for scienter for Alex Lidow and McGee based on, in relevant part: (1) the number, extent, and nature of the GAAP violations and the magnitude of the impending restatement; (2) alleged knowledge of contrary facts obtained from internal reports; (3) the dismissal of an employee who sought to investigate the wrongdoing at the Japan subsidiary; (4) the resignation of Alex Lidow at International Rectifier's request, and the termination of McGee; (5) corroboration of the fraud by confidential witnesses; (6) SOX certifications; and (7) insider stock sales and the receipt of incentive bonuses. In finding those factual allegations insufficient, the Court stated:

> Plaintiffs' alleged facts, taken collectively, do not give rise to a strong inference of scienter as to Alex Lidow and McGee. The allegations are simply insufficient to link Alex Lidow and McGee to the fraudulent practices at the Japan subsidiary or other accounting errors. Moreover, the allegations fail to demonstrate that the fraud was sufficiently widespread to infer Alex Lidow's and McGee's scienter. An inference of fraudulent intent is plausible, yet less cogent than other, nonculpable explanations for Alex Lidow's and McGee's conduct. At most, the alleged facts give rise to a strong inference of negligence.

In re International Rectifier Corp. Securities Litigation, 2008 WL 4555794, at *21. In their Second Amended Complaint, Plaintiffs have alleged additional facts that, taken collectively along with certain facts previously alleged by Plaintiffs, give rise to a strong inference of scienter as to Alex Lidow and McGee.

For example, Plaintiffs added the following facts in the Second Amended Complaint that are probative of Alex Lidow's and McGee's scienter:

- International Rectifier disclosed in its Restatement that: "We did not maintain an environment that consistently emphasized an attitude of integrity, accountability and strict adherence to GAAP. This control deficiency resulted in an environment in which **accounting adjustments were viewed at times as an acceptable device to compensate for operational shortfalls**, which in certain instances led to inappropriate accounting decisions and entries that resulted in **desired accounting and income tax reporting results** and, in some instances, involved

management override of controls."[5]

- International Rectifier disclosed in its Restatement that: "We did not maintain effective control and corporate oversight over the financial accounting and reporting of our subsidiary in Japan. Established controls and processes were circumvented, including in some instances with the knowledge of our **senior management.**"

- International Rectifier disclosed in its Form 12b-25 filed with the SEC on February 11, 2008 and in its Restatement that the premature recognition of revenue was not limited to the Japan subsidiary, but more widespread. For example, International Rectifier disclosed that it identified practices in its Aerospace & Defense Segment involving (1) shipment of products to customers in an earlier quarter than agreed by International Rectifier and our customer, (2) shipment of product to distributors prior to quarter ends with an agreement to accept unlimited returns of the product in subsequent quarters, and (3) shipment of product manufactured specifically for direct customers to distributor customers and subsequently reacquiring these products in later quarters. International Rectifier also identified sales transactions, not specific to a particular segment or subsidiary, that were prematurely recognized as revenue through the adjustment of customer acceptable shipping dates to an earlier reporting period without acknowledgment from the customer.

- International Rectifier alleged in a Complaint filed against Alex Lidow in a separate action that: "Alex Lidow "[r]ecogniz[ed] that] he could not stop the Committee's investigation and that it was likely that his longevity as CEO would be affected, [thus] Lidow had to consider other options." A reasonable inference arises that Alex Lidow attempted to interfere or stop the Audit Committee's investigation.[6]

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[5]International Rectifier identified several errors in its income tax accounting including errors in its intercompany transfer pricing adjustments. According to CW3, McGee (and Vice President of Tax, Chip Morgan) compiled the transfer pricing matrix that allocated profits between International Rectifier's various manufacturing and selling entities for International Rectifier's different products. In its previous Order dated May 23, 2008, the Court found that "[n]othing in CW3's account suggests . . . that McGee possessed any contemporaneous information that the matrix was flawed in any way, or that McGee knew of any errors in International Rectifier's tax accounting or reporting." *In re International Rectifier Corp. Securities Litigation*, 2008 WL 4555794, at *13 n.9. However, given International Rectifier's new disclosure that inappropriate accounting decisions were used to compensate for operational shortfalls, resulting in desired income tax reporting results, and its acknowledgment that management was sometimes responsible for the override of controls, the Court finds McGee's compilation of the transfer pricing matrix probative of McGee's scienter.

[6]This inference is corroborated by International Rectifier's disclosure in its Restatement that: "[M]isrepresentations, including falsified and/or incomplete information, were provided to the external auditors and others, including the Board of Directors, and efforts were made to initially curtail and impede the Investigation."

- International Rectifier described the termination of McGee as a "disciplinary" action.[7]

The facts in this case are almost identical to the facts found sufficient to support a strong inference of scienter in *Communications Workers of America Plan for Employees' Pensions and Death Benefits v. CSK Auto Corp.*, 525 F. Supp. 2d 1116 (D. Ariz. 2007). There, the court relied on the following facts to find a strong inference of scienter as to the CEO and CFO: (1) the restatement admitted "irregularities" in the prior financial results; (2) the restatement admitted the irregularities were known by "senior management"; (3) the "extensive and systemic nature of the accounting irregularities would not likely have escaped the attention of the CEO and CFO;" (4) the defendants signed certifications attesting to the accuracy of the financial statements; (5) "when CSK first announced that its Audit Committee had discovered the errors and irregularities, it also announced that Defendant Watson had left the company and Defendant Jenkins would retire;" and (6) "although somewhat lacking in detail, the confidential witnesses confirm the widespread nature of accounting irregularities within the company."[8] *Id.* at 1124.

Here, given the (1) widespread nature of the accounting "irregularities," (2) the admission by International Rectifier that senior management (of which a CEO and CFO are a part) knew that established process and controls were being circumvented, (3) the resignation of Alex Lidow at International Rectifier's request and the termination of McGee as a result of International Rectifier's investigation,[9] (4) the alleged interference of Alex Lidow with the investigation, (5) the significance

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[7]Specifically, the 2007 Proxy filed with the SEC on September 26, 2008 stated, "The Audit Committee, based upon information presented to it, recommended to the Board, and the Board concurred, that disciplinary actions be taken with respect to certain employees. In June 2007, the Company's Chief Financial Officer was terminated, its Executive Vice President of Sales and Marketing resigned. . . ."

[8]The court in *CSK Auto Corp.* also relied on the fact that "[s]ome of the witnesses attribute knowledge directly to Defendant Watson, and one describes a meeting in which Watson became incensed when suspicious accounts were identified." *CSK Auto Corp.*, 525 F. Supp. 2d at 1124. However, the court also stated: "Most of the[] witnesses do not allege direct knowledge by Defendant Jenkins and Watson, and those who do provide little or no supporting detail. In fact, the Second Amended Complaint generally fails to allege particular facts that show knowledge on the part of these defendants." *Id.* at 1124. Similarly, in this case, although some of the witnesses attribute knowledge directly to Defendants Alex Lidow and McGee, most of those witnesses provide little or no supporting detail. *See, e.g.,* Second Amended Complaint ¶¶ 99(c) (CW1 attributing knowledge to Alex Lidow of reclassification of expenses as restructuring costs); 109(g) (CW20 attributing knowledge to Alex Lidow that International Rectifier was "parking its products in warehouses around the world"); 110(n) (CW6 attributing knowledge to McGee on how the Japan subsidiary would manipulate revenue); 114(b) (CW21 "believed the decision to pull in orders [from future periods] ultimately came from Alex Lidow and McGee").

[9]In its Order dated May 23, 2008, the Court found only minimal evidence of scienter from the resignation and termination of Alex Lidow and McGee, stating that "[a] resignation or termination provides evidence of scienter only when it is accompanied by additional evidence of the defendant's wrongdoing." Plaintiffs have now included additional allegations of Alex Lidow's

of the GAAP violations, (6) Alex Lidow's and McGee's daily review of the Vision system at the end of quarters, which included data regarding global sales forecasts, sales forecasts for each subsidiary, and early shipments, and (7) McGee's compilation of the transfer pricing matrix, the Court finds that the inference of scienter as to Alex Lidow and McGee is more than merely plausible or reasonable -- it is cogent and at least as compelling as any opposing inference of nonfraudulent intent.

Accordingly, Alex Lidow's and McGee's motions to dismiss the Section 10(a) and Rule 10b-5 claim alleged against them are **DENIED.**

3. Plaintiffs adequately plead a Section 10(b) or Rule 10b-5 claim against International Rectifier.

Because Plaintiffs adequately plead scienter as to Alex Lidow and McGee, Plaintiffs adequately plead scienter as to International Rectifier. *See Nordstrom, Inc. v. Chubb & Son, Inc.,* 54 F.3d 1424, 1435-36 (9th Cir. 1995) (internal quotations and citations omitted) ("[C]orporate scienter relies heavily on the awareness of the directors and officers, who . . . are necessarily aware of the requirements of SEC regulations and state law and of the danger of misleading buyers and sellers.").

Accordingly, International Rectifier's motion to dismiss the Section 10(a) and Rule 10b-5 claim alleged against it is **DENIED.**

4. Loss Causation and the Class Period

Defendant International Rectifier moves to strike plaintiffs' allegations' extending the class period to a date earlier than April 29, 2005 or a date later than May 11, 2007 for failure to plead loss causation with respect to two disclosures by International Rectifier.

As explained by the Supreme Court in *Dura Pharmaceuticals, Inc. v. Broudo*, loss causation is the "causal connection between [defendant's] material misrepresentation and the [plaintiff's loss]." 544 U.S. 336, 342 (2005). A complaint fails to allege loss causation if it does not "provide[] [a defendant] with notice of what the relevant economic loss might be or of what the causal connection might be between that loss and the misrepresentation[.]." *Id.* at 347. *See also Metzler Investment GMBH v. Corinthinan Colleges, Inc.*, 540 F.3d 1049,

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and McGee's wrongdoing, including the fact that McGee's termination was described as a "disciplinary" action taken by the Company in response to the Investigation, and that Alex Lidow "had to consider other options" because he "recogniz[ed] that he could not stop the Committee's investigation." *See, e.g., Middlesex Ret. Sys. v. Quest Software Inc.*, 527 F. Supp. 2d 1164, 1188 (C.D. Cal. 2007) (finding support for scienter where officer resigned specifically to avoid cooperating with internal investigation); *In re Impax Laboratories, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 52356, at *9 (N.D. Cal. Jul. 18, 2007) (finding "minimal, non-dispositive supporting evidence of scienter" where defendant interfered with an ongoing investigation and his retirement was announced in close proximity to the news of the company's restatement).

1062 (9th Cir. 2008). "Stated in the affirmative, the complaint must allege that the defendant's 'share price fell significantly after the truth became known.' A plaintiff does not, of course, need to *prove* loss causation in order to avoid dismissal; but the plaintiff must properly allege it." *Metzler*, 540 F.3d at 1062 (quoting *Dura Pharmaceuticals,* 544 U.S. at 347).

International Rectifier argues that Plaintiffs cannot allege loss causation for any alleged conduct before April 25, 2005, the first trading day after International Rectifier released its financial statement for the March 31, 2005 quarter, because (1) there are no allegations that its stock price declined after it disclosed for the first time that its revenue statements for the quarters ended September 30, 2003 to December 31, 2004 should not be relied upon; and (2) International Rectifier's February 11, 2008 disclosure was not corrective, because it disclosed only the possibility but not certainty, of problems with International Rectifier's Aerospace and Defense segment and pre-April 29, 2005 financial statements.

Simply because International Rectifier's stock price did not decline after International Rectifier disclosed for the "first time" that its financials for the quarters ended September 30, 2003 through December 31, 2004 should not be relied upon does not mean that Plaintiffs have failed to allege loss causation for the misrepresentations contained in those financial statements. As the Ninth Circuit stated in *Metzler*, "there is no prohibition against [Plaintiff] alleging loss causation through a series of disclosures by the Defendants. . . . [A]llegations of loss causation premised on [] separate disclosures . . . are, in theory, a permissible means for alleging loss causation." *Metzler*, 540 F.3d at 1063 n.6.

Because Plaintiffs adequately allege that the share price fell significantly after an additional disclosure by International Rectifier further revealing the truth about its financial statements for the quarters ended September 30, 2003 through December 31, 2004, Plaintiffs adequately plead loss causation for the misrepresentations contained in those financial statements. For example, International Rectifier's February 11, 2008 disclosure more extensively described the accounting errors related to income taxes for the fiscal years 2001 to 2007, and announced for the first time that it anticipated its effective tax rate to be "significantly" higher than previously reported. International Rectifier also disclosed for the first time that it identified practices within its Aerospace and Defense segment that resulted in early recognition of revenue, and was reviewing the effect of these practices on its reported results in the periods of fiscal year 2003 through the second quarter of fiscal year 2008. As a result, Plaintiffs plead that International Rectifier's stock price dropped from a close of $27.27 on February 11, 2008 to $25.88 on February 12, 2008.

International Rectifier argues its February 11, 2008 disclosure cannot be considered "corrective" because it disclosed only the possibility, but not certainty of problems with its Aerospace and Defense Segment and its pre-April 29, 2005 financial statements, relying on *Metzler Investment GMBH v. Corinthinan Colleges, Inc.*, 540 F.3d 1049 (9th Cir. 2008). International Rectifier reads *Metzler* too broadly. In *Metzler*, the plaintiff alleged that defendant Corinthian's colleges were pervaded by fraudulent practices designed to maximize the amount of federal Title IV funding - a major source of the defendant's revenue. *Id.* at

1055. In alleging loss causation, the plaintiff relied on, in relevant part,[10] a news story, revealing a Department of Education investigation at a single campus and the placement of that campus on "reimbursement status" as a result of improper financial aid practices. *Id.* at 1063. The story simultaneously noted that the investigation at that campus "d[id] not affect the status of other Corinthian schools." *Id.* And, the complaint itself did not "allege that all, or even some appreciable number, of Corinthian school's were being investigated or placed on reimbursement status." *Id.* The Ninth Circuit found that loss causation is not properly pled "where a defendant's disclosure reveals a 'risk' or 'potential' for widespread fraudulent conduct." *Id.* at 1064. Here, unlike *Metzler*, International Rectifier's February 11, 2008 disclosure revealed more than a "risk" or "potential" for widespread fraudulent conduct when read in the context of the fraudulent practices and accounting irregularities already disclosed to investors.

Because the Court finds that the February 11, 2008 disclosure was "corrective," the Court also rejects International Rectifier's argument that the Class Period should end no later than May 11, 2007. Accordingly, International Rectifier's motion to strike and redefine the Class Period is **DENIED.**

B. Violation of Section 20(a)

To state a claim under Section 20(a), a plaintiff must allege (1) a primary violation of federal securities laws; and (2) that the defendant exercised actual power or control over the primary violator. *Howard v. Everex Systems, Inc.*, 228 F.3d 1057, 1065 (9th Cir. 2000).

Alex Lidow, McGee, and Eric Lidow's sole argument is that Plaintiffs have failed to allege a primary violation of federal securities laws. This argument fails, as Plaintiffs have adequately alleged a primary violation of federal securities laws as to Alex Lidow, McGee, and International Rectifier. Accordingly, Alex Lidow's, McGee's, and Eric Lidow's motions to dismiss Plaintiffs' second claim for relief for violation of Section 20(a) of the Exchange Act are **DENIED.**

Grant argues that he did not exercise actual power or control over a primary violator. The Court agrees. As the Court stated previously, his position as Executive Vice President, Global Sales and Marketing does not establish that he had control. *See In re Metawave Communications Corp. Sec. Litig.*, 298 F. Supp. 2d 1056, 1091 (W.D. Wash. 2003) ("Liang's titles of President of World Trade and Vice President for Worldwide operations do not establish that Liang had control."); *Middlesex Retirement System v. Quest Software, Inc.*, 527 F. Supp. 2d 1164, 1194 (C.D. Cal. 2007) ("[I]t is difficult for the Court to determine how, as a Vice President, Garn was able to exercise control over the other 10b-5 Defendants when the other 10b-5 Defendants held positions of Vice President or higher."). Moreover, aside from the conclusory statements of CW17 and boilerplate allegations, Plaintiffs have not adequately alleged that Grant had authority over the preparation of the financial statements or press releases or conference calls containing the misleading statements – just that he had authority

[10]In *Metzler,* the only other disclosure relied on by the plaintiff to allege loss causation was an earnings announcement that did not directly refer to the alleged fraudulent practices.

or control over global sales and marketing. Accordingly, Grant's motion to dismiss the Section 20(a) claim is **GRANTED without leave to amend.**

International Rectifier argues that Plaintiffs have not adequately alleged a Section 20(a) claim against it, because Plaintiffs have not adequately alleged a primary violation by the Japan subsidiary. As the Court stated in its previous Order: "Given the heightened pleading requirements of the PSLRA, the Court concludes that International Rectifier cannot be held liable under Section 20(a) where Plaintiffs have not attempted to allege a primary violation committed by the Japan subsidiary." *In re International Rectifier Corp. Securities Litigation*, 2008 WL 4555794, at *21 n.16. Plaintiffs have not cured this deficiency. Although Plaintiffs do not need to name the Japan subsidiary as a defendant, the Court is not required to divine based on the factual allegations with respect to named defendants how the Japan subsidiary violated the securities laws. For example, no where in the Second Amended Complaint does Plaintiff allege that the Japan subsidiary made a material misrepresentation or omission or how the Japan subsidiary's deceptive conduct was relied on by investors or specify that the Japan subsidiary's scienter is established by a particular officer's scienter, or by collective scienter. In fact, Plaintiffs' Second Amended Complaint does not even generally allege that the Japan subsidiary violated the securities laws. Clearly, Plaintiffs do not allege with sufficient particularity a primary violation of the securities laws with respect to the Japan subsidiary. Accordingly, International Rectifier's motion to dismiss the Section 20(a) claim is **GRANTED.**

C. Leave to Amend is DENIED as to the claims alleged against Grant and the Section 20(a) claim alleged against International Rectifier.

Plaintiffs, in their Second Amended Complaint, failed to cure the deficiencies specifically pointed out to them in the Court's previous Order dated May 23, 2008. Moreover, Plaintiffs have not presented any additional facts that they would allege if allowed to amend their Complaint. Such a failure is a strong indication that the plaintiffs have no additional facts to plead. *See Silicon Graphics*, 183 F.3d at 991 (denying leave to amend where plaintiff failed to offer additional facts which might cure defects in complaint); *In re VeriFone Sec. Litig.*, 11 F.3d 865, 872 (9th Cir.1993) (same).

Accordingly, the Court **DENIES** leave to amend as to the claims alleged against Grant and the Section 20(a) claim alleged against International Rectifier.

IV. Conclusion

For the foregoing reasons, Defendant Eric P. Lidow's Motion to Dismiss Plaintiffs' Second Amended Consolidated Complaint is **DENIED**. Defendant Michael P. McGee's Motion to Dismiss Second Amended Consolidated Class Action Complaint is **DENIED.** Defendant Alexander Lidow's Motion to Dismiss the Second Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws is **DENIED**. Defendant International Rectifier Corporation's Motion to Dismiss and Strike Plaintiffs' Second Amended Consolidated Class Action Complaint is **GRANTED in part, DENIED in part**. Plaintiffs' second claim for relief for violation of Section 20(a) of the Exchange Act against Defendant

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International Rectifier Corporation is **DISMISSED with prejudice.** Defendant Robert Grant's Motion to Dismiss Second Amended Complaint is **GRANTED.** The Second Amended Complaint against Defendant Robert Grant is **DISMISSED with prejudice.**

IT IS SO ORDERED.

The Clerk shall serve a copy of this Minute Order on all parties to this action.

Initials of Deputy Clerk sr