

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**The Original Sixteen to One Mine, Inc., Michael Miller, Hugh Dan
O’Neill III, Robert Besso, Jonathan Ferrell, Tom Woodfin, and Keith
Robertson v. Quartzview, Inc., Roger Haas, Simon P. Westbrook,
Douglas W. Charlton, and Does 1 through 100**

The Original Sixteen to One Mine · No. 2:23-cv-00376-TLN-SCR · Decided October 27, 2025

OPINION

The Original Sixteen to One Mine, Inc., Michael Miller, Hugh Dan O’Neill III, Robert Besso, Jonathan Ferrell, Tom Woodfin, and Keith Robertson v. Quartzview, Inc., Roger Haas, Simon P. Westbrook, Douglas W. Charlton, and Does 1 through 100

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 THE ORIGINAL SIXTEEN TO ONE

MINE, INC., a California Corporation;

12 MICHAEL MILLER; HUGH DAN No. 2:23-cv-00376-TLN-SCR

O’NEILL III; ROBERT BESSO,

13

JONATHAN FERRELL; TOM

14 WOODFIN; and KEITH ROBERTSON, ORDER

15 Plaintiffs, 16 v. 17 QUARTZVIEW, INC., a California 18 Corporation; ROGER HAAS;
SIMON P. WESTBROOK; DOUGLAS W. 19 CHARLTON; and DOES 1 through 100, inclusive,
20 Defendants. 21 22 23 This matter is before the Court on Defendants Quartzview, Inc.
 (“Quartzview”), Roger 24 Haas (“Haas”), and Simon P. Westbrook’s (“Westbrook”) (collectively,
 “Defendants”) Motion to 25 Dismiss.¹ (ECF No. 38.) Plaintiffs The Original Sixteen to One
 Mine, Inc. (“OSTO”), Hugh Dan 26 1 Defendant Douglas W. Charlton (“Charlton”) filed a notice
 of joinder to the instant 27 motion to dismiss. (ECF No. 39.) When the Court uses “Defendants” in
 this Order, the Court is referring to Defendants Quartzview, Haas, Westbrook, and Charlton. When
 the Court uses 28 “individual Defendants” the Court is referring to Defendants Haas, Westbrook,
 and Charlton. 1 O’Neill III, Robert Besso, Jonathan Ferrell, Tom Woodfin, and Keith Robertson
 filed an 2 opposition. (ECF No. 41.) Plaintiff Michael Miller (“Plaintiff Miller”) also filed an

opposition.² ³ (ECF No. 42.) Defendants filed a reply. (ECF No. 46.) For the reasons set forth below, the ⁴ Court DENIES Defendants' motion.

⁵ I. FACTUAL AND PROCEDURAL BACKGROUND

⁶ The factual background of this case is set forth in full in the Court's March 29, 2024 ⁷ Order granting in part and denying in part Defendants' first motion to dismiss. (ECF No. 11.) On ⁸ February 25, 2025, Plaintiffs filed a Second Amended Complaint ("SAC") alleging claims for the ⁹ following: manipulation of securities to gain control; declaratory relief; violation of California ¹⁰ Corporations Code §§ 25400–25304; breach of contract by OSTO against Quartzview; inducing ¹¹ breach of contract; elder financial abuse; theft in violation of California Penal Code § 484; and ¹² unfair competition in violation of California Business and Professions Code § 17200. (ECF No. 13 ³⁷.) Defendants filed the instant motion to dismiss on March 17, 2025. (ECF No. ³⁸.)

¹⁴ II. STANDARD OF LAW

¹⁵ A motion to dismiss for failure to state a claim upon which relief can be granted under ¹⁶ Federal Rule of Civil Procedure ("Rule") 12(b)(6) tests the legal sufficiency of a complaint. ¹⁷ Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Rule 8(a) requires that a pleading contain ¹⁸ "a short and plain statement of the claim showing that the pleader is entitled to relief." See ¹⁹ Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009). Under notice pleading in federal court, the ²⁰ complaint must "give the defendant fair notice of what the claim . . . is and the grounds upon ²¹ which it rests." Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations omitted). ²² "This simplified notice pleading standard relies on liberal discovery rules and summary ²³ judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." Swierkiewicz ²⁴ v. Sorema N.A., 534 U.S. 506, 512 (2002). ²⁵ ²⁶ ² When the Court uses "OSTO Plaintiffs" in this Order, the Court is referring to Plaintiffs ²⁷ OSTO, Hugh Dan O'Neill III, Robert Besso, Jonathan Ferrell, Tom Woodfin, Keith Robertson. When the Court uses "Plaintiffs" in this Order, the Court is referring to the OSTO Plaintiffs and ²⁸ Plaintiff Michael Miller. ¹ On a motion to dismiss, the factual allegations of the complaint must be accepted as true. ² Cruz v. Beto, 405 U.S. 319, 322 (1972). A court is bound to give the plaintiff the benefit of every ³ reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. Retail ⁴ Clerks Int'l Ass'n v. Schermerhorn, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege ⁵ "specific facts' beyond those necessary to state his claim and the grounds showing entitlement to ⁶ relief." Twombly, 550 U.S. at 570. ⁷ Nevertheless, a court "need not assume the truth of legal conclusions cast in the form of ⁸ factual allegations." U.S. ex rel. Chunie v. Ringrose, 788 F.2d ⁶³⁸, 643 n.2 (9th Cir. 1986). ⁹ While Rule 8(a) does not require detailed factual allegations, "it demands more than an ¹⁰ unadorned, the defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678. A ¹¹ pleading is insufficient if it offers mere "labels and conclusions" or "a formulaic recitation of the ¹² elements of a cause of action." Twombly, 550 U.S. at 555; see also

Iqbal, 556 U.S. at 678 13 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory 14 statements, do not suffice.”). Moreover, it is inappropriate to assume the plaintiff “can prove 15 facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not 16 been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). 18 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough 19 facts to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 697 (quoting 20 *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual 21 content that allows the court to draw the reasonable inference that the defendant is liable for the 22 misconduct alleged.” *Id.* at 680. While the plausibility requirement is not akin to a probability 23 requirement, it demands more than “a sheer possibility that a defendant has acted unlawfully.”

24 *Id.* at 678. This plausibility inquiry is “a context-specific task that requires the reviewing court to

25 draw on its judicial experience and common sense.” *Id.* at 679. 26 In ruling on a motion to dismiss, a court may only consider the complaint, any exhibits 27 thereto, and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201. 28 See *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Isuzu Motors Ltd. v. 1 Consumers Union of U.S., Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998). 2 If a complaint fails to state a plausible claim, “[a] district court should grant leave to 3 amend even if no request to amend the pleading was made, unless it determines that the pleading 4 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 5 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)).

6 III. ANALYSIS

7 Defendants move to dismiss Plaintiffs’ first cause of action. (ECF No. 38.) Plaintiffs’ 8 first cause of action seeks relief for Defendants’ manipulation of securities to gain control in 9 violation of the Securities and Exchange Act of 1934 (“the Act”) § 10(b). (ECF No. 37 at 27–35.) 10 “To state a securities fraud claim under § 10(b) of the Act and Rule 10b-5, a plaintiff must 11 show (1) a material misrepresentation or omission, (2) scienter, (3) in connection with the 12 purchase or sale of a security, (4) reliance, (5) economic loss, and (6) loss causation.” *Mueller v. 13 San Diego Entertainment Partners, LLC*, 260 F. Supp. 3d 1283, 1291 (S.D. Cal. 2017) (citing 14 *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 37 (2011)). Under the Private Securities 15 Litigation Reform Act (“PSLRA”), a heightened pleading requirement requires that falsity and 16 scienter be plead with particularity. *Id.* (citing *Amgen, Inc. v. Conn. Retirement Plans and Trust 17 Funds*, 568 U.S. 455, 476 (2013); *Zucco Partners, LLC v. Digimarc Corp.*, 552 F. 3d 981, 990 18 (9th Cir. 2009)). 19 Defendants argue Plaintiffs fail to sufficiently allege scienter and reliance. (ECF No. 38 20 at 5–6.) The Court will address these elements in turn. 21 i. Scienter 22 To establish scienter, a complaint must allege the defendant intentionally or with 23 deliberate recklessness made false or misleading statements. *Mueller*, 260 F. Supp. 3d at 1291– 24 92. Facts

that show “mere recklessness” or “a motive to commit fraud and opportunity to do so” 25 are insufficient to prove “a strong inference of deliberate recklessness.” *Id.* at 1291. Where a 26 plaintiff has alleged the defendant was an agent of an entity, the entity may have scienter through 27 the defendant. *In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d 471, 475 (9th Cir. 2015). 28 // / 1 Defendants argue, while Plaintiffs have alleged eight instances of Defendants’ 2 misconduct, each one is insufficient from a scienter perspective. (ECF No. 38 at 8.) Defendants 3 specifically contend Plaintiffs have not provided details to link the alleged fraudulent statements 4 to each specific defendant. (*Id.*) In opposition, Plaintiff Miller argues the SAC includes 5 allegations identifying specific defendants who made false representations intended to depress the 6 value of OSTO shares and enable Quartzview to gain control. (ECF No. 42 at 6.) OSTO 7 Plaintiffs argue, taken together, the allegations of the SAC show a calculated campaign of false 8 and misleading statements and omissions committed with overt scienter. (ECF No. 41 at 5.) 9 The Court previously addressed the sufficiency of Plaintiffs’ allegations as to scienter in 10 ruling on Defendants’ Motion to Dismiss Plaintiffs’ First Amended Complaint. (ECF No. 32 at 11 5–9.) There, the Court noted, in at least seven instances of Defendants’ alleged material 12 misrepresentations,³ Plaintiffs stated with particularity sufficient facts to give rise to a strong 13 inference the individual Defendants acted with the required state of mind — namely, that the 14 misrepresentations were made with “conscious recklessness,” “with fraudulent intent,” and 15 “without any regard for the truth of the statement made. (*Id.* at 9.) However, the Court found 16 scienter was not fully established because Plaintiffs had not provided any information on how any 17 individual Defendant was acting on behalf of Quartzview. (*Id.*) Thus, in determining whether 18 Plaintiffs have cured the deficiencies of the FAC, the Court considers whether Plaintiffs alleged 19 any of the individual Defendants were acting on behalf of Quartzview. 20 The Court finds Plaintiffs have sufficiently alleged Defendants Haas and Westbrook were 21 acting on behalf of Quartzview. Specifically, Plaintiffs allege Haas is the President and Director 22 of Quartzview, and Westbrook is a Director of Quartzview. (ECF No. 37 ¶¶ 12, 13.) Plaintiffs 23 further allege Haas and Westbrook, in their capacities as President and Director, made 24 misrepresentations intended to manipulate the price of OSTO’s stock and caused Quartzview to 25 obtain a controlling interest in OSTO. (*Id.* at ¶¶ 40–42.) Because Plaintiffs have alleged Haas 26 and Westbrook were agents of Quartzview and acting within the scope of their apparent authority, 27 3 The eight instances of Defendants’ material misrepresentations are summarized in full in 28 the Court’s January 27, 2025 Order. (ECF No. 32 at 6–8.) 1 the scienter of Haas and Westbrook can be imputed to Quartzview. See *In re Origin Materials, 2 Inc. Sec. Litig.*, 766 F. Supp. 3d 998, 1012 (E.D. Cal. 2025) (citing *In re Alphabet, Inc. Sec. Litig.*, 3 1 F.4th 687, 706 (9th Cir. 2021)). 4 In sum, the Court finds Plaintiffs have adequately established scienter. 5 ii. Reliance 6 “Reliance establishes the causal connection between the alleged fraud and the securities 7 transaction.” *Desai v. Deutsche Bank Securities, Ltd.*, 573 F.3d 931, 939 (9th Cir. 2009). “To 8 say that a plaintiff relied on a defendant’s bad act is to say that the defendant’s actions ‘played a 9

substantial part in the plaintiff's investment decision.'" Id. (citing *Rowe v. Maremont Corp.*, 850 10 F.2d 1226, 1233 (9th Cir. 1988)). This element requires a plaintiff to establish "that he would not 11 have engaged in the transaction in question had he known about the fraud." Id. 12 Defendants argue Plaintiffs fail to allege that they would not have engaged in the 13 transaction had they known about the alleged misrepresentations. (ECF No. 38 at 8.) In 14 opposition, Plaintiff Miller maintains the SAC includes allegations that Plaintiffs relied on 15 Defendants' false and fraudulent misrepresentations. (ECF No. 42 at 8.) Further, Plaintiffs 16 contend Defendants have not disputed the alleged fraudulent misrepresentations were material to 17 whether Plaintiffs agreed to accept Quartzview's tender offer and argue when materiality is 18 established, reliance is presumed. (Id. at 9; ECF No. 41 at 11.) 19 The Court previously addressed the sufficiency of Plaintiffs' allegations as to reliance in 20 ruling on Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint. (ECF No. 32 at 21 9–10.) There, the Court noted Plaintiffs had not alleged facts to show how they became aware of 22 the alleged misrepresentations and what role the alleged misrepresentations played in their 23 decision-making. (Id. at 10.) 24 Here, the Court finds Plaintiffs have sufficiently cured the defects previously identified. 25 For example, with respect to the "manipulation report," Plaintiffs allege OSTO was provided with 26 a copy of the report by a shareholder who had received it from Haas and Westbrook. (ECF No. 27 37 ¶ 25(A)(v).) Plaintiffs also allege the purpose of the report was to get OSTO shareholders to 28 rely on the report and thereby lose confidence in Plaintiff Miller and the then-existing OSTO 1 | management with the intent of inducing existing shareholders to sell their shares to Haas or 2 | Quartzview. Ud. | 25(A)(vi).) Plaintiffs further allege Haas informed Plaintiff Miller that Haas 3 | was purchasing OSTO shares at a depressed price. (U/d.) Additionally, Plaintiffs allege OSTO's 4 | shareholders relied upon the report and false representations contained therein when deciding 5 | whether to agree to sell their stock to Quartzview or vote to remove OSTO's management and 6 | give control of OSTO to Quartzview. (d.at §]25(A)*) The Court finds Plaintiffs have alleged 7 | similarly sufficient facts with respect to the other seven instances. Accordingly, Plaintiffs have 8 | sufficiently alleged reliance.

9 IV. CONCLUSION

10 For the foregoing reasons, the Court DENIES Defendants' motion to dismiss. (ECF No. 11 38.) Defendants shall file an answer not later than twenty-one (21) days from the date of this 12 | Order. 13 IT IS SO ORDERED. 14 || Date: October 24, 2025 7, 15 Let

TROY L. NUNLEY

16 CHIEF UNITED STATES DISTRICT JUDGE

17 18 19 20 21 22 23 24 25 26 27 |_| — 4 Though Plaintiff's Complaint is numbered throughout, the cited paragraph is not 28 | numbered but can be found at ECF No. 37 at 13, lines 12-19.