IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE CLOUDERA, INC. SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS

Case No. 19-cv-03221-MMC

ORDER DISMISSING SECOND AMENDED COMPLAINT

Re: Dkt. No. 234

Before the Court is defendants Cloudera, Inc. ("Cloudera" or "the Company"), Intel Corporation ("Intel"), Thomas J. Reilly ("Reilly"), Jim Frankola ("Frankola"), Michael A. Olson ("Olson"), Ping Li ("Li"), Martin I. Cole ("Cole"), Kimberly L. Hammonds ("Hammonds"),[1] Rosemary Schooler ("Schooler"), Steve J. Sordello ("Sordello"), Michael A. Stankey ("Stankey"), Priya Jain ("Jain"), Robert Bearden ("Bearden"), Paul Cormier ("Cormier"), Peter Fenton ("Fenton"), and Kevin Klausmeyer's ("Klausmeyer") Motion, filed August 5, 2021, to "Dismiss Consolidated Second Amended Class Action Complaint ('SAC')." Plaintiffs Mariusz J. Klin and the Mariusz J. Klin MD PA 401K Profit Sharing Plan, Robert Boguslawski, and Arthur P. Hoffman have filed opposition, to which defendants have replied. In addition, plaintiffs have filed, on four occasions, statements of recent decision, the last on September 9, 2022. The Court, having read and considered the papers filed in support of and in opposition to the motion, rules as follows.[2]

[1] On August 16, 2022, defendants' counsel filed a statement of death, giving notice that Hammonds had passed away.

BACKGROUND[3]

In 2005, Cloudera co-founder Doug Cutting created a "data storage and processing platform" called Hadoop, which "was considered revolutionary" and "quickly became an important technological tool for analyzing enormous amounts of unstructured data." (See SAC ¶¶ 21-22.) In 2008, Cutting, Olson, and others founded Cloudera, and in 2009, the Company released its own version of Hadoop, which peaked in popularity by 2015 as "user demand shifted to cloud." (See SAC ¶¶ 21, 23.) According to plaintiffs, "[u]nlike on-premise Hadoop platforms, cloud services provide on-demand, elastic, scalable and adaptable service models where processing and storage resources can be accessed from any location via the internet." (See SAC ¶ 25.)

In April 2017, Cloudera announced an initial public offering ("IPO"), and the Company's share price closed on April 28, 2017, the first day of trading, at $18.10. (See SAC ¶ 34.) Plaintiffs allege that between April 28, 2017, and June 5, 2019 (the "Class Period"), "the Company repeatedly and misleadingly assured investors that it possessed an 'original cloud native architecture' and 'cloud-native platform.'" (See SAC ¶ 36.) Specifically, in 2018, Cloudera released Altus, which, according to plaintiffs, it "misleadingly touted . . . as a cloud offering," even though "it lacked any of the key features of effective cloud computing." (See SAC ¶ 42.)

On September 27, 2017, Cloudera announced a secondary public offering ("SPO"), which closed on October 2, 2017, and in which Li, "Cloudera's earliest venture capital backer," Accel, Li's venture capital firm, and Olson, Cloudera's co-founder and Chief Strategy Officer, "together sold over $112 million of Cloudera stock" at $15.79 per share. (See SAC ¶¶ 44, 45, 109.)

Over a year later, on October 3, 2018, Cloudera announced it was merging with Hortonworks, Inc. (the "Merger") (see SAC ¶ 55), and, that same day, Reilly, at that time

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the above-titled action previously was assigned, took the matter under submission.

[3] The following facts are taken from the SAC, the operative complaint.

Cloudera's Chief Executive Officer and Chairman of its Board of Directors, along with Frankola, Cloudera's Chief Financial Officer, hosted an investor conference call, in which they promoted the Merger as one that would "unlock powerful synergies" (see SAC ¶ 50). According to plaintiffs, however, "the Merger was consummated not to create 'synergies,' but because the Company's highest-ranking insiders knew that Cloudera was then facing competitive industry forces so severe that they were simply incapable of achieving organic growth," (see SAC ¶ 49), specifically, "the Company's customers were then already moving their workloads to actual cloud providers like Amazon, Google and Microsoft" (see ¶ SAC 51).

In addition, plaintiffs allege, Reilly, Frankola, Olson, and Li (collectively, "Insider Defendants"), along with Cole, Hammonds, Schooler, Sordello, Stankey, Jain, Bearden, Cormier, Fenton, and Klausmeyer (collectively, "Director Defendants"), "planned and participated in the preparation of the statements contained in the Merger Registration Statement" (see SAC ¶¶ 116, 137), effective November 20, 2018 (see SAC ¶ 10 n.7), which contained material misrepresentations and omissions. Plaintiffs further allege that Intel, "a semiconductor technology company[,] . . . held approximately 17.6% of Cloudera's outstanding common stock as of March 31, 2018," (see SAC ¶ 90), and is "thus strictly liable . . . for the materially inaccurate statements contained in the Merger Registration Statement and the failure of the Merger Registration Statement to be complete and accurate" (see SAC ¶ 92).

On January 3, 2019, the Merger closed. (See SAC ¶ 51.) Thereafter, in March 2019, Cloudera announced it was developing a product called Cloudera Data Platform ("CDP") (see SAC ¶¶ 9, 59), which it later released "for the public cloud in September 2019 and for the private cloud in August 2020" (see SAC ¶ 24).[4] According to plaintiffs,

[4] Plaintiffs explain that "[a] company seeking to use cloud computing services can elect between a private cloud (where cloud services are exclusive to the company) and/or a public cloud (where cloud services are owned and managed by a provider who also hosts other tenants), or a combination of the two." (See SAC ¶ 16.)

"CDP was the Company's first ever cloud-native product." (See SAC ¶ 20.)

On June 5, 2019, the last day of the Class Period, Cloudera disclosed what plaintiffs describe as "profoundly negative first quarter results for the period ended April 30, 2019, and drastically reduced fiscal year 2020 guidance," and further announced the departures of Reilly and Olson from the Company. (See SAC ¶ 61.) Also on June 5, 2019, during the Company's earnings call, Reilly stated that "the announcement of [the] [M]erger in October 2018 created uncertainty," and that "[d]uring this period of uncertainty, [Cloudera] saw increased competition from the public cloud vendors." (See SAC ¶ 65.) "The following day, on June 6, 2019, the Company's share price closed at $5.21 per share, a single day drop of approximately 40.8% on unusually massive volume of 57.9 million shares traded." (See SAC ¶ 61.)

Based on the above allegations, plaintiffs assert the following five Claims for Relief: (1) a claim alleging, as against Cloudera, Intel, the Director Defendants, and the Insider Defendants, violations of § 11 of the Securities Act of 1933 ("Securities Act") (Count I), (2) a claim alleging, as against Cloudera, violations of § 12(a)(2) of the Securities Act (Count II), (3) a claim alleging, as against Intel, the Director Defendants, and the Insider Defendants, violations of § 15 of the Securities Act (Count III), (4) a claim alleging, as against Cloudera and the Insider Defendants, violations of § 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder (Count IV), and (5) a claim alleging, as against the Insider Defendants, violations of § 20(a) of the Exchange Act (Count V).

LEGAL STANDARD

Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure "can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). In analyzing a motion to dismiss, a district court must accept as true all material allegations in the complaint and construe them in the light most favorable to the nonmoving party. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986)

"To survive a motion to dismiss, a complaint must contain sufficient factual material, 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 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level[.]" Twombly, 550 U.S. at 555. Courts "are not bound to accept as true a legal conclusion couched as a factual allegation." See Iqbal, 556 U.S. at 678 (internal quotation and citation omitted).

Generally, a district court, in ruling on a Rule 12(b)(6) motion, may not consider any material beyond the complaint. See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). Documents whose contents are alleged in the complaint, and whose authenticity no party questions, but which are not physically attached to the pleading, however, may be considered. See Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994). In addition, a district court may consider matters that are subject to judicial notice, i.e., facts "not subject to reasonable dispute," and the court "must take judicial notice" of such facts "if a party requests it and the court is supplied with the necessary information." See Fed. R. Evid. 201(b)-(c).

DISCUSSION

At the outset, defendants request the Court "consider documents incorporated by reference in the SAC and take judicial notice of certain documents," altogether, thirty-seven exhibits submitted in connection with their motion to dismiss. (See Decl. of Ryan M. Keats, Dkt. No. 234-3; Defs.' Req. for Consideration of Documents Incorporated into Compl. and for Judicial Notice ("RJN"), Dkt. No. 235.) Plaintiffs oppose defendants' request as to Exhibits 2, 10, 19, 24, 26, 28, 31, and 36, and further oppose the request to the extent any exhibit is offered for the truth of the matters stated therein. (See Pls.' Resp. to Defs.' Req. for Consideration of Documents Incorporated into Compl. and for Judicial Notice ("Pls.' Resp.") at 8:19-22, Dkt. No. 242.)

As to the opposed exhibits, although defendants request the Court take judicial notice of Exhibit 10, a "Form 4 filed on behalf of Ping Li with the SEC on December 14

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