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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE ZOOM SECURITIES LITIGATION

Case No. [20-cv-02353-JD](#)

ORDER RE MOTION TO DISMISS

Re: Dkt. No. 78

This is a securities fraud class action against Zoom Video Communications, Inc., and its CEO, Eric Yuan, and CFO, Kelly Steckelberg. Court-appointed lead plaintiff Adam Butt filed a consolidated complaint on behalf of “all who purchased or acquired Zoom securities from April 18, 2019 through April 6, 2020.” Dkt. No. 63 (Compl.) ¶ 2. Butt alleges that defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, “by making false and misleading statements and omissions concerning the Company’s operations; the security capabilities, including the ability to use AES 256-bit end-to-end encryption, available in its main product offering, Zoom Meetings; and its collection and use of its users’ personal data.” Compl. ¶ 3. The consolidated complaint challenges fifteen statements and omissions identified in plaintiff’s summary chart attached to the complaint. *Id.*, Ex. A.

Defendants ask to dismiss the complaint under the Private Securities Litigation Reform Act of 1995 (PSLRA), 15 U.S.C. § 78u-4, and Federal Rule of Civil Procedure 12(b)(6), for

failure to state a claim. Dkt. No. 78. The parties’ familiarity with the record is assumed, and the

1 motion is granted and denied in part. Plaintiff's Section 10(b)/Rule 10b-5 claim against Yuan and
 2 Zoom for Statement No. 1 was adequately alleged and will go forward. All of the other statements
 3 and claims are dismissed with leave to amend.

4 DISCUSSION

5 I. LEGAL STANDARDS

6 Under Section 10(b) of the Securities Exchange Act of 1934, it is unlawful for any person
 7 "[t]o use or employ, in connection with the purchase or sale of any security registered on a
 8 national securities exchange . . . any manipulative or deceptive device or contrivance in
 9 contravention of such rules and regulations as the Commission may prescribe as necessary or
 10 appropriate in the public interest or for the protection of investors." 15 U.S.C. § 78j(b). One of
 11 those rules prescribed by the U.S. Securities and Exchange Commission is Rule 10b-5, which
 12 makes unlawful for any person to, *inter alia*, "make any untrue statement of a material fact or to
 13 omit to state a material fact necessary in order to make the statements made, in the light of the
 14 circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5(b).

15 "To plead a claim under [S]ection 10(b) and Rule 10b-5, [plaintiff] must allege: (1) a
 16 material misrepresentation or omission; (2) scienter; (3) a connection between the
 17 misrepresentation or omission and the purchase or sale of a security; (4) reliance; (5) economic
 18 loss; and (6) loss causation." *Or. Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598, 603
 19 (9th Cir. 2014) (citing *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157
 20 (2008)). A complaint alleging claims under Section 10(b) and Rule 10b-5 must also "satisfy the
 21 dual pleading requirements of Federal Rule of Civil Procedure 9(b) and the PSLRA." *Zucco*
 22 *Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 990 (9th Cir. 2009).

23 Under FRCP 9(b), the circumstances constituting the alleged fraud must be stated with
 24 particularity. "Rule 9(b) applies to all elements of a securities fraud action." *Or. Pub. Emps. Ret.*
 25 *Fund*, 774 F.3d at 605. The PSLRA further imposes specific pleading requirements on securities
 26 fraud plaintiffs for falsity and scienter. *Zucco Partners*, 552 F.3d at 990-91. For falsity, the
 27 complaint must "specify each statement alleged to have been misleading, the reason or reasons

1 on information and belief, . . . state with particularity all facts on which that belief is formed.” 15
 2 U.S.C. § 78u-4(b)(1). For scienter, the complaint must “state with particularity facts giving rise to
 3 a strong inference that the defendant acted with the required state of mind.” *Id.* § 78u-4(b)(2)(A).
 4 “To adequately demonstrate that the ‘defendant acted with the required state of mind,’ a complaint
 5 must ‘allege that the defendants made false or misleading statements either intentionally or with
 6 deliberate recklessness.’” *Zucco Partners*, 552 F.3d at 991 (quotations and citation omitted).

7 Section 20(a) of the Act makes certain “controlling persons” also liable for violations of
 8 Section 10(b) and its underlying regulations. Specifically, the statute provides that “[e]very
 9 person who, directly or indirectly, controls any person liable under any provision of this chapter or
 10 of any rule or regulation thereunder shall also be liable jointly and severally with and to the same
 11 extent as such controlled person to any person to whom such controlled person is liable . . . ,
 12 unless the controlling person acted in good faith and did not directly or indirectly induce the act or
 13 acts constituting the violation or cause of action.” 15 U.S.C. § 78t(a).

14 **II. CLAIMS AGAINST DEFENDANT STECKELBERG**

15 Defendant Kelly Steckelberg is barely mentioned at all in the complaint. This means that
 16 plaintiff has not adequately alleged scienter for the Section 10(b) claim against Steckelberg. The
 17 PSLRA requires that “the complaint shall, with respect to each act or omission alleged to violate
 18 this chapter, state with particularity facts giving rise to a strong inference that the defendant acted
 19 with the required state of mind.” 15 U.S.C. § 78u-4(b)(2)(A). Scienter must be alleged on a
 20 statement-by-statement, defendant-by-defendant basis.

21 The complaint makes just one factual allegation against Steckelberg. Plaintiff says that
 22 “Defendant Steckelberg has served as the Company’s CFO since November 2017. Since
 23 becoming Zoom’s CFO, Steckelberg had the power to authorize or approve publicly disseminated
 24 information about the Company, regularly spoke on Zoom’s quarterly earnings calls with Wall
 25 Street analysts and investors, made live presentations at analyst-sponsored investor conferences
 26 and signed or authorized filings for Zoom with the SEC.” Compl. ¶ 23. This is little more than a
 27 generic job description that comes nowhere close to pleading scienter with the level of

1 claim against Steckelberg by not individually naming her even once in the “scienter” column.
 2 Dkt. No. 63-1. Plaintiff’s opposition brief contains no discussion at all of Steckelberg’s individual
 3 scienter. Dkt. No. 80 at 9-13.

4 Consequently, the Section 10(b) claim against Steckelberg is dismissed. The same goes
 5 for the Section 20(a) claim, which also lacks any allegations establishing Steckelberg’s control
 6 person liability. The Court declines to reach defendants’ other arguments for dismissal of the
 7 claims against Steckelberg.

8 **III. SECTION 10(b) CLAIM AGAINST YUAN AND ZOOM FOR STATEMENT NO. 1**

9 For plaintiff’s 10(b) claim against defendants Yuan and Zoom, dismissal is denied for
 10 Statement No. 1 in plaintiff’s summary chart. Dkt. No. 63-1 at 1-3. Plaintiff challenges this
 11 statement, which appeared in Zoom’s April 18, 2019 Registration Statement and Prospectus:
 12 “*Security and disaster recovery. We offer robust security capabilities, including end-to-end*
 13 *encryption*, secure login, administrative controls and role-based access controls.” *Id.* at 1
 14 (emphasis in original). Defendants do not contest that Yuan “made” this statement by signing the
 15 Registration Statement, Dkt. No. 82 at 3 n.2, and they challenge only the elements of falsity,
 16 scienter, and loss causation. Dkt. No. 78.

17 **A. Falsity**

18 Plaintiff has satisfied the falsity element for Statement No. 1 by alleging that defendants
 19 represented that Zoom offered “end-to-end encryption” when in fact it did not. Plaintiff alleges
 20 that “[w]hereas end-to-end encryption means that not even the company that runs the messaging
 21 service can access the cryptographic keys necessary to decrypt the end users’ communication, here
 22 Zoom secretly maintained access to the cryptographic keys that could allow Zoom to decrypt and
 23 decipher the communications between the end users.” Compl. ¶ 9(a). Among other things,
 24 plaintiff points to an article published on March 31, 2020, on *The Intercept* website titled, “ZOOM
 25 MEETINGS AREN’T END-TO-END ENCRYPTED, DESPITE MISLEADING MARKETING:
 26 The video conferencing service can access conversations on its platform.” *Id.* ¶ 56.

27 Defendants say that plaintiff’s falsity allegations are lacking because the term “end-to-end

1 which are alleged in the complaint, demonstrate otherwise. Plaintiff alleges that on April 1, 2020,
2 “Yuan published ‘A Message to Our Users’ on Zoom’s blog,” stating, “we recognize that we have
3 fallen short of the community’s -- and our own -- privacy and security expectations.”

4 Compl. ¶ 62. This blog post by Yuan further “referred and linked to a post of the same date by
5 Oded Gal, Zoom’s Chief Product Officer, titled, ‘The Facts Around Zoom and Encryption for
6 Meetings/Webinars.’” *Id.* ¶ 63. That linked post included these statements: “we want to start by
7 apologizing for the confusion we have caused by incorrectly suggesting that Zoom meetings were
8 capable of using end-to-end encryption. . . . While we never intended to deceive any of our
9 customers, we recognize that there is a discrepancy between the commonly accepted definition of
10 end-to-end encryption and how we were using it.” *Id.*

11 These statements make this case very different from *Wochos v. Tesla, Inc.*, 985 F.3d 1180,
12 1194 (9th Cir. 2021), in which the circuit found that plaintiffs had failed to “plead sufficient facts
13 to establish that the actual term used had the distinctive, and false, meaning that plaintiffs claim.”
14 There, plaintiffs “pleaded no facts to support their premise that ‘production car’ would be
15 understood as referring exclusively to the *fully automated* production of identical vehicles.” *Id.*
16 (emphasis in original). That is not the situation here. Plaintiff has identified defendants’ express
17 acknowledgement that they had “incorrectly suggest[ed] that Zoom meetings were capable of
18 using end-to-end encryption,” and they had used the term “end-to-end encryption” differently
19 from “the commonly accepted definition.” Compl. ¶ 63. Plaintiff has adequately alleged that
20 defendants’ Statement No. 1 gave an “impression of a state of affairs that differs in a material way
21 from the one that actually exist[ed].” *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985 (9th
22 Cir. 2008) (quotations and citation omitted).

23 **B. Scierter**

24 Scierter is also satisfied by plaintiff’s allegations that Yuan -- who made the statement on
25 April 18, 2019, that Zoom offers “end-to-end encryption” -- issued a public statement on April 1,
26 2020, linking to a post that acknowledged and apologized for Zoom’s “incorrect” use of the term.
27 Defendants’ suggestion that the later statement does not qualify as “a statement similar to ‘I knew

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