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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 IN RE THE HONEST COMPANY
11 SECURITIES LITIGATION

Case No. 2:21-cv-07405-MCS-PLA

12 **ORDER RE: MOTION TO DISMISS**
13 **(ECF NO. 60)**
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17 In this putative securities class action, Defendant The Honest Company
18 (“Honest”) and its officers and directors, Nikolaos Vlahos, Kelly Kennedy, Jessica
19 Warren (also known as Jessica Alba), Katie Bayne, Scott Dahnke, Eric Liaw, Jeremy
20 Liew, and Avik Pramanik (together, “Individual Defendants,” and with Honest,
21 “Movants”), move to dismiss the Consolidated Class Action Complaint of Lead
22 Plaintiff Kathie Ng. (Mot., ECF No. 60; *see* Mem., ECF No. 60-1.) Lead Plaintiff filed
23 a brief opposing the motion, (Opp’n, ECF No. 63), and Movants filed a reply, (Reply,
24 ECF No. 65). Morgan Stanley & Co. LLC; J.P. Morgan Securities LLC; Jefferies LLC;
25 BofA Securities, Inc.; Citigroup Global Markets, Inc.; William Blair & Company,
26 L.L.C.; Guggenheim Securities, LLC; Telsey Advisory Group LLC; C.L. King &
27 Associates, Inc.; Loop Capital Markets LLC; Penserra Securities LLC; and Samuel A.
28 Ramirez & Company, Inc. (together, “Underwriter Defendants”) joined Movants’

1 motion and reply. (Mot. Joinder, ECF No. 62; Reply Joinder, ECF No. 68.) The Court
2 deems the motion appropriate for decision without oral argument. Fed. R. Civ. P. 78(b);
3 C.D. Cal. R. 7-15.

4 **I. BACKGROUND**

5 According to the Consolidated Complaint, Honest describes itself as a brand
6 focused on developing clean, sustainable, effective, and thoughtfully designed products
7 primarily in the diapers and wipes, skin and personal care, and household and wellness
8 categories. (Consol. Compl. ¶¶ 45–52, ECF No. 59.) In support of its May 2021 initial
9 public offering (“IPO”), Honest submitted a registration statement and prospectus
10 (“offering documents”) to the Securities and Exchange Commission (“SEC”) that Lead
11 Plaintiff alleges contained false and misleading statements and material omissions. (*Id.*
12 ¶¶ 76–110.) First, the offering documents failed to disclose that customers panned one
13 of Honest’s recently launched products, the Clean Conscious Diaper. (*Id.* ¶¶ 53–63, 85–
14 91.) Second, the offering documents failed to disclose the negative impact to the
15 company of consumers’ stock-up of Honest products in response to the COVID-19
16 pandemic. (*Id.* ¶¶ 64–75, 92–95.) Third, the offering documents failed to disclose and
17 misrepresented risks associated with the offering, including the potential impact
18 customer dissatisfaction with the Clean Conscious Diaper and COVID-19 stock-up of
19 Honest products could have on the company. (*Id.* ¶¶ 96–110.) Shortly after the IPO,
20 Honest reported a loss in the first quarter of 2021, and its stock price fell thereafter. (*Id.*
21 ¶¶ 111–23.)

22 Lead Plaintiff alleges that Individual Defendants prepared and executed the
23 registration statement; reviewed, edited, and approved the offering documents; and
24 solicited the purchase of Honest’s common stock in the IPO. (*Id.* ¶ 25.) She alleges that
25 Underwriter Defendants participated in planning the IPO and caused the offering
26 documents to be filed with the SEC, and that they “were negligent in not knowing of
27 the materially untrue statements and omissions contained in the Offering Documents.”
28 (*Id.* ¶¶ 39–44.)

1 Lead Plaintiff seeks to represent a class of purchasers of Honest’s common stock
2 who were damaged by the misrepresentations and omissions in the offering documents.
3 (*Id.* ¶¶ 124–29.) She asserts two claims: (1) against all Defendants, violation of Section
4 11 of the Securities Act, 15 U.S.C. § 77k, and (2) against Individual Defendants,
5 violation of Section 15 of the Securities Act, 15 U.S.C. § 77o. (*Id.* ¶¶ 130–47.)

6 **II. LEGAL STANDARD**

7 Federal Rule of Civil Procedure 12(b)(6) allows an attack on the pleadings for
8 “failure to state a claim upon which relief can be granted.” “To survive a motion to
9 dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a
10 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
11 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
12 plausibility when the plaintiff pleads factual content that allows the court to draw the
13 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556
14 U.S. at 678.

15 The determination of whether a complaint satisfies the plausibility standard is a
16 “context-specific task that requires the reviewing court to draw on its judicial
17 experience and common sense.” *Id.* at 679. Generally, a court must accept the factual
18 allegations in the pleadings as true and view them in the light most favorable to the
19 plaintiff. *Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017); *Lee v. City of Los*
20 *Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). But a court is “not bound to accept as true
21 a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting
22 *Twombly*, 550 U.S. at 555).

23 **III. DISCUSSION**

24 **A. Section 11**

25 “Section 11 of the Securities Act creates a private remedy for purchasers of a
26 security if the registration statement ‘contained an untrue statement of a material fact or
27 omitted to state a material fact required to be stated therein or necessary to make the
28 statements therein not misleading.’” *In re Rigel Pharms., Inc. Sec. Litig.*, 697 F.3d 869,

1 885 n.14 (9th Cir. 2012) (quoting 15 U.S.C. § 77k(a)). “The plaintiff in a § 11 claim
 2 must demonstrate (1) that the registration statement contained an omission or
 3 misrepresentation, and (2) that the omission or misrepresentation was material, that is,
 4 it would have misled a reasonable investor about the nature of his or her investment.”
 5 *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403–04 (9th Cir. 1996) (internal quotation
 6 marks omitted). Movants assert four grounds for dismissal of the Section 11 claim.

7 1. Actionable Misstatements or Omissions

8 Movants offer scattershot arguments why Lead Plaintiff has not pleaded any
 9 actionable misstatements or omissions. (Mem. 7–19.)

10 a. *Clean Conscious Diaper Allegations*

11 Lead Plaintiff asserts that Defendants misrepresented or materially omitted facts
 12 about the Clean Conscious Diaper product by failing to disclose:

- 13 (a) According to customers experiencing chemical
 14 irritations and rashes, leaking and blowouts, Honest’s
 15 Clean Conscious Diaper reformulation was neither safe
 16 nor effective;
- 17 (b) Honest’s Clean Conscious Diaper was not achieving
 18 the pillars of Honest’s “costovation” strategy, which
 19 emphasizes safety, sustainability, efficacy and design
 20 profile;
- 21 (c) Honest was not capturing the benefits of its Diapers as
 22 a “strategic customer acquisition tool”; and
- 23 (d) As a result of the Clean Conscious Diaper’s new
 24 technology and defective design, Honest would—and
 25 did—lose customers and revenue.

26 (Consol. Compl. ¶ 89; *accord id.* ¶¶ 91, 98, 100, 102, 104, 107.)

27 Movants argue that the allegations supporting Lead Plaintiff’s contention that
 28 “customers did not view its new Clean Conscious Diaper as either safe or effective” are

1 implausible. (Mem. 7 (quoting Consol. Compl. ¶ 7); *see id.* at 7–9.) The Court
2 disagrees. Lead Plaintiff provides dozens of examples of customers expressing negative
3 sentiment about the product online and statements by a former employee indicating
4 Honest internally acknowledged the negative sentiment. (Consol. Compl. ¶¶ 57–63.)
5 Lead Plaintiff plausibly alleges that consumers viewed the Clean Conscious Diaper as
6 neither safe nor effective. The Court declines Movants’ invitation to weigh the
7 reliability of Lead Plaintiff’s allegations at the pleadings stage.

8 Movants’ puffery arguments concerning the diaper-related allegations are
9 unavailing. A court may grant a motion to dismiss on the basis that offered “statements
10 are ‘puffery’ only if it concludes that the statement is ‘so obviously unimportant to a
11 reasonable investor that reasonable minds could not differ on the question of their
12 unimportance.’” *Mulligan v. Impax Labs., Inc.*, 36 F. Supp. 3d 942, 967 (N.D. Cal.
13 2014) (quoting *In re Ford Motor Co. Sec. Litig.*, 381 F.3d 563, 570 (6th Cir. 2004)).
14 Movants contend the phrase “strategic consumer acquisition tool,” as used in the
15 offering documents, is nonactionable puffery. (Mem. 9–10.) Movants overlook a
16 nuance in the Consolidated Complaint: Lead Plaintiff does not claim that the phrase
17 itself was false or misleading; instead, she uses the phrase to advance a theory that
18 Defendants misrepresented or omitted material facts concerning the *efficacy* of Honest
19 diapers as a vehicle for customer acquisition given customers’ negative response to
20 Honest’s new diaper product. (Consol. Compl. ¶ 89(c) (“Honest was not capturing the
21 benefits of its Diapers as a ‘strategic customer acquisition tool’”); *see id.* ¶¶ 88–
22 89.) Similarly, Lead Plaintiff submits that Honest mischaracterized its Clean Conscious
23 Diaper as an exemplar of its commitment to “continuous improvement in [Honest’s]
24 existing products’ safety, sustainability, efficacy and design profile” given customer
25 sentiment about the product’s safety and effectiveness. (*Id.* ¶ 86 (emphasis removed).)
26 That Honest used an invented term, “costovation,” to describe this strategy does not
27 render its statements linking its strategy with a lambasted product mere puffery. (*Contra*
28 Mem. 10–11.) In short, Lead Plaintiff adequately tethers customers’ efficacy and safety

1 concerns with the Clean Conscious Diaper to statements and omissions in the offering
2 documents.

3 Movants contend that the pleaded facts do not support the inference that Honest
4 “would—and did—lose customers and revenue” “[a]s a result of the Clean Conscious
5 Diaper’s new technology and defective design.” (Mem. 11 (alteration in original)
6 (quoting Consol. Compl. ¶¶ 89(d), 91(d)).) The Court agrees with Movants that
7 Honest’s financial results from the first quarter of 2021, which appears to show positive
8 diaper growth,¹ does not support Lead Plaintiff’s theory. (*Id.* at 12 (citing Consol.
9 Compl. ¶ 112).) But Movants take a myopic view of the theory by pointing exclusively
10 to net revenue growth in the general product category in a single financial quarter—
11 different in scope from Lead Plaintiff’s general allegation of “los[t] customers and
12 revenue” over an unconstrained period of time due to a specific product. Lead Plaintiff
13 provides facts from which one can infer that customer dissatisfaction with the Clean
14 Conscious Diaper led to a decline in customers and revenue beyond the limited financial
15 snapshot Movants highlight. For example, the online reviews excerpted in the
16 Consolidated Complaint suggests that customers canceled subscriptions and stopped
17 purchasing Honest products after the first quarter of 2021. (*E.g.*, Consol. Compl. ¶ 60
18 (stating “I will be cancelling our subscription and going with another company” in May
19 2021 review); *id.* (setting forth negative review from October 2021).) Lead Plaintiff’s
20 theory would be more appropriately challenged upon a more developed record.

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24 ¹ The Court notes some ambiguity in the allegations concerning the financial results.
25 Defendant Kennedy noted that “the category decreased 2%,” that “diaper growth was
26 positive in Q1,” and that the diaper business “was up 13%” “[b]ased on consumption
27 data for the last 12 weeks ending May 16.” (Consol. Compl. ¶ 112 (emphasis removed).)
28 The statement leaves uncertain, for example, whether revenue from the Clean
Conscious Diaper, as opposed to all Honest products in the diaper category, went up or
down, and whether the 13% figure measured between February and May 2021 marks
the same period of time as Honest’s first quarter results.

1 The Court defers decision on whether the bespeaks caution doctrine applies here.
2 (*See* Mem. 12–13 (arguing for application of the doctrine).) The doctrine allows courts
3 to determine as a matter of law “that defendants’ forward-looking representations
4 contained enough cautionary language or risk of disclosure to protect the defendant
5 against” Section 11 claims. *In re Atossa Genetics Inc. Sec. Litig.*, 868 F.3d 784, 798
6 (9th Cir. 2017) (internal quotation marks omitted); *see In re Worlds of Wonder Sec.*
7 *Litig.*, 35 F.3d 1407, 1415 n.3 (9th Cir. 1994) (extending doctrine to Section 11 claims).
8 To apply the doctrine to bar a claim at the pleadings stage requires a “stringent showing”
9 that “the language bespeaking caution . . . relate[s] directly to that to which plaintiffs
10 claim to have been misled.” *In re Atossa Genetics*, 868 F.3d at 798 (internal quotation
11 marks omitted). Movants do not make this stringent showing in the two pages they
12 devote to the argument in their moving brief. The offering documents identified general
13 risks associated with negative customer sentiment on social media, (Consol. Compl.
14 ¶ 101), but on this limited briefing, the Court declines to conclude this warning is
15 specific enough to the issues of concern with the Clean Conscious Diaper to warrant
16 application of the doctrine. *Cf. In re Atossa Genetics*, 868 F.3d at 798 (rejecting
17 application of the doctrine where language bespeaking caution about FDA’s concerns
18 with Atossa’s diagnostic tool “is vague enough to cover any concern the FDA might
19 have had related to Atossa, and obscures the issue of concern to reasonable investors”).
20 Further, the doctrine does not apply to the extent Lead Plaintiff rests her theory on
21 Defendants’ failure to disclose past loss of customers or revenue due to dissatisfaction
22 with the Clean Conscious Diaper technology and design. *See Livid Holdings Ltd. v.*
23 *Salomon Smith Barney, Inc.*, 416 F.3d 940, 948 (9th Cir. 2005) (“[E]xtension of the
24 bespeaks caution doctrine to statements of historical fact is inappropriate.”). (*See*
25 Consol. Compl. ¶ 102 (contending risk disclosures were inadequate because Defendants
26 cast them as potential risks rather than “*then-existing* material events and adverse trends
27 or uncertainties that Honest *had already been* facing”).)

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b. *COVID-19 Stock-Up Allegations*

Lead Plaintiff asserts that Defendants improperly touted increased consumer demand for Honest products due to COVID-19 without disclosing the following:

- (a) Contrary to the Offering Document’s claim that the COVID-19 pandemic was good for Honest’s business, retailers were destocking COVID-19 products and Honest’s sales for those products were decreasing;
- (b) Honest produced daily reports detailing the Company’s inventory and monitored inventory on a monthly basis;
- (c) Despite Honest’s products being available “wherever customers shop,” Honest’s omnichannel strategy failed to account for changing customer needs as the pandemic lessened;
- (d) As Defendant Vlahos would later admit, Honest’s COVID-19 stock up began as early as August 2020—nine months before the IPO; and
- (e) As a result, Honest was *already* seeing a decline in demand for COVID-19 related products at the time of the IPO.

(Consol. Compl. ¶ 95; *accord id.* ¶¶ 105, 108, 110.)

Movants complain that Lead Plaintiff has not articulated how Honest’s representations about consumer demand were false or misleading, and they assert that Lead Plaintiff cannot maintain a claim based on Defendants’ failure to predict the future impact of COVID-19 on Honest’s business. (Mem. 14–15.) Again, Movants misconstrue the thrust of Lead Plaintiff’s claim. The Consolidated Complaint provides that, contrary to what Defendants led potential investors to believe through the offering documents, COVID-19 related product demand was declining at the time Defendants published the offering documents due to consumers’ stockpiling of those products. (*See*

1 Consol. Compl. ¶¶ 95, 105, 108, 110.) For reasons similar to the reasons why the Court
2 declines to apply the bespeaks caution doctrine outlined above, the Court will not
3 dismiss this component of the claim on the basis that Defendants adequately cautioned
4 potential investors of the risks associated with consumer behavior in an unpredictable
5 pandemic market environment. (*See* Mem. 14–16.)

6 Movants argue that Lead Plaintiff’s allegations that Defendants knew about a
7 present decline in consumer demand are insufficiently supported. (*Id.* at 16–18.) The
8 Consolidated Complaint includes facts from which it may be inferred that Honest
9 management knew demand was easing at the time of the IPO. For example, Honest
10 issued a press release citing product stock-up “in the prior year period” to explain losses
11 and stagnating growth in the second quarter of 2021. (Consol. Compl. ¶ 116; *accord id.*
12 ¶ 92 (attributing to Defendant Vlahos statement that COVID-19 stock-up occurred
13 “over the prior year period”).) Given the company’s daily inventory reporting and
14 monthly inventory trend tracking, (*see id.* ¶¶ 72–73), Lead Plaintiff raises a plausible
15 inference that consumer stock-up of COVID-19 related products was observable at the
16 time of the offering documents. Lead Plaintiff adequately pleads that Defendants should
17 have disclosed such information in the offering documents.

18 Finally, Movants submit that Lead Plaintiff fails to describe how statements
19 regarding Honest’s “omnichannel approach” to making its products available in
20 multiple retail formats and locations, which Movants describe as puffery, were false or
21 misleading. (Mem. 18–19.) The Court agrees that Lead Plaintiff has not adequately
22 explained how COVID-19 product stockpiling renders Defendants’ representations
23 about the omnichannel retail strategy misleading. The Consolidated Complaint neither
24 logically connects the purportedly undisclosed facts about consumer stock-up behavior
25 with the representations about Honest’s retail strategy nor establishes an inference that
26 consumers’ purchasing behavior demonstrates how Honest’s strategy “failed to account
27 for changing customer needs as the pandemic lessened.” (Consol. Compl. ¶ 95(c).) For
28 example, the Consolidated Complaint does not provide facts raising an inference that

1 Honest could have mitigated the impact of customers’ stockpiling if it had prioritized
2 certain retail formats over others instead of pursuing its omnichannel approach. In her
3 brief, Lead Plaintiff argues that the omnichannel approach “did not insulate the
4 Company from changing consumer preferences in the way the Offering Documents
5 claimed.” (Opp’n 16 (citing Consol. Compl. ¶¶ 49–52, 94–96).) Lead Plaintiff does not
6 expressly advance this insulation theory in the Consolidated Complaint, so the Court
7 declines to address its merits. *See Schneider v. Cal. Dep’t of Corr.*, 151 F.3d 1194, 1197
8 n.1 (9th Cir. 1998).

9 In sum, Lead Plaintiff failed to plead enough facts to show Defendants’
10 representations about Honest’s “omnichannel approach” were false or misleading, but
11 the rest of the misrepresentations and omissions are adequately pleaded.

12 2. Materiality

13 Movants assert that the alleged misstatements and omissions were not material.
14 (Mem. 19–23.) Generally, questions of materiality are inappropriate for resolution on a
15 motion to dismiss. *See, e.g., In re Facebook, Inc. Sec. Litig.*, 405 F. Supp. 3d 809, 834
16 (N.D. Cal. 2019); *Mulligan*, 36 F. Supp. 3d at 966. Lead Plaintiff alleges that
17 Defendants’ misstatements and omissions about the Clean Conscious Diaper product
18 and COVID-19 related product stockpiling obscured the negative impact these issues
19 could pose to Honest’s business and led investors to believe that the potential risks of
20 investment identified in the offering documents had not yet manifested. (Consol.
21 Compl. ¶¶ 85–110.) Although Movants offer persuasive arguments why the
22 misstatements and omissions identified in the Consolidated Complaint would not have
23 misled a reasonable investor about the risks of investing in Honest, the Court declines
24 to find Lead Plaintiff’s allegations supporting the materiality of Defendants’
25 misstatements and omissions implausible.

26 3. Regulation S-K

27 Movants argue that Lead Plaintiff does not adequately allege a violation of Items
28 105 and 303 of Regulation S-K. (Mem. 23–24 & 23 n.19.) Omitting facts required to

1 be stated under Regulation S-K produces liability under Section 11. *See Steckman v.*
 2 *Hart Brewing, Inc.*, 143 F.3d 1293, 1296 (9th Cir. 1998). Item 105 requires disclosure
 3 of “the material factors that make an investment . . . speculative or risky,” 17 C.F.R.
 4 § 229.105, and Item 303 requires disclosure of “any unusual or infrequent events or
 5 transactions or any significant economic changes” affecting reported income and “any
 6 known trends or uncertainties” that have had or are likely to have a material impact on
 7 net sales or revenues or income, *id.* § 229.303(b)(2)(i)–(ii). A violation of these
 8 disclosure duties occurs when the event, transaction, trend, or uncertainty was
 9 “[1] presently known to management and [2] reasonably likely to have material effects
 10 on the registrant’s financial condition or results of operation.” *Steckman*, 143 F.3d at
 11 1296 (alterations in original) (internal quotation marks omitted).

12 Movants assert that Lead Plaintiff offers no allegations supporting Honest
 13 management’s knowledge of the issues she identifies. (Mem. 23–24.) As Movants
 14 tacitly concede in another section of their brief, Lead Plaintiff alleges Defendants “were
 15 aware of undisclosed facts that plaintiffs allege rendered statements contained in the
 16 Offering Documents misleading.” (*Id.* at 24 (citing Consol. Compl. ¶¶ 72, 75, 92).)
 17 Through witness testimony recounted in the Consolidated Complaint, Lead Plaintiff
 18 raises an inference that Honest management knew of the issues concerning the Clean
 19 Conscious Diaper product and consumer stockpiling of Honest products. (Consol.
 20 Compl. ¶¶ 59, 72–75, 92.) Lead Plaintiff sufficiently pleads Honest management’s
 21 knowledge.

22 4. Rule 9(b)

23 Finally, in a one-paragraph argument, Movants contend the claim sounds in fraud
 24 and must be dismissed for failure to meet the heightened pleading requirements of Rule
 25 9(b). (Mem. 24–25.) Movants fail to identify any allegations in the Consolidated
 26 Complaint that do not meet Rule 9(b) and would require dismissal of the claim. The
 27 Court will not scour the pleading to develop Movants’ argument on their behalf. *See*
 28 *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003). The Court

1 rejects the Rule 9(b) challenge and declines to decide whether Rule 9(b) applies here.
 2 *See Hibbs v. Dep’t of Human Res.*, 273 F.3d 844, 873 n.34 (9th Cir. 2001) (declining to
 3 address an “argument . . . too undeveloped to be capable of assessment”).²

4 For the reasons discussed above, the Court dismisses the Section 11 claim only
 5 to the extent it rests on statements made in the offering documents about Honest’s
 6 “omnichannel approach.”

7 **B. Section 15**

8 Movants contend the Section 15 claim should be dismissed because Lead
 9 Plaintiff has not alleged a primary violation of Section 11. (Mem. 25.) The Section 15
 10 claim survives Movants’ challenge to the extent it rests on the well-pleaded components
 11 of the Section 11 claim.

12 **C. Leave to Amend**

13 As a general rule, leave to amend a dismissed complaint should be freely granted
 14 unless it is clear the complaint could not be saved by any amendment. Fed. R. Civ. P.
 15 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.
 16 2008). Lead Plaintiff may be able to plead additional facts to support her “omnichannel
 17 approach” theory. Given the Ninth Circuit policy of granting leave to amend with
 18 “extreme liberality,” *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir.
 19 2020) (internal quotation marks omitted), the Court gives Lead Plaintiff leave to amend.

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 27 ² The Court notes, however, that Lead Plaintiff elected to limit the Section 11 count by
 28 expressly disavowing any allegations or claims sounding in fraud. (Consol. Compl.
 ¶ 132.)

1 **IV. CONCLUSION**

2 The motion is granted in part and denied in part. The Court dismisses part of Lead
3 Plaintiff's Section 11 claim. Within 14 days, Lead Plaintiff shall file either (1) an
4 amended complaint or (2) a statement indicating she will proceed on the basis of the
5 Consolidated Complaint without the theory of the Section 11 claim dismissed in this
6 Order. Failure to file a timely amended complaint or statement will result in dismissal
7 under Rule 41(b). Leave to add new defendants or claims must be sought by a separate,
8 properly noticed motion.

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10 **IT IS SO ORDERED.**

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12 Dated: July 18, 2022



MARK C. SCARSI
UNITED STATES DISTRICT JUDGE