No. 25-

IN THE

Supreme Court of the United States

THE HAIN CELESTIAL GROUP, INC., IRWIN D. SIMON, PASQUALE CONTE, JOHN CARROLL, AND STEPHEN J. SMITH,

Petitioners,

v.

SALAMON GIMPEL, AND ROSEWOOD FUNERAL HOME,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Private Securities Litigation Reform Act of 1995 (PSLRA) requires securities-fraud plaintiffs to "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)(A). Under the PSLRA's heightened pleading standards, "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.*, 551 U.S. 308, 314 (2007). The circuits are sharply divided on two frequently recurring questions of law concerning the PSLRA's standard for pleading scienter.

The questions presented are:

1. Whether a plaintiff may plead scienter based on the "core operations doctrine," under which the alleged significance of an issue supports an inference that defendants must have known about it.

2. Whether a plaintiff may plead scienter by alleging that executives generally receive information through routine corporate communications, such as internal reports or customer calls, without specifying the contents of those communications.

PARTIES TO THE PROCEEDING

Petitioners in this Court are The Hain Celestial Group, Inc., John Carroll, Pasquale Conte, Irwin D. Simon, and Stephen J. Smith.

Respondents are Salamon Gimpel and Rosewood Funeral Home.

CORPORATE DISCLOSURE STATEMENT

Petitioner The Hain Celestial Group, Inc. (NASDAQ: HAIN) has no parent corporation and no publicly held company owns ten percent or more of its stock.

RELATED PROCEEDINGS

United States Court of Appeals for the Second Circuit:

Gimpel v. Hain Celestial Group, Inc., No. 23-7612 (Sept. 29, 2025) (reported at 156 F.4th 121).

United States District Court for the Eastern District of New York:

Gimpel v. Hain Celestial Group, Inc., No. 16-cv-4581 (JS) (LGD) (Sept. 29, 2023) (unreported).

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Petitioners The Hain Celestial Group, Inc., John Carroll, Pasquale Conte, Irwin D. Simon, and Stephen J. Smith respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The Second Circuit's opinion (Pet. App. 1a-53a) is reported at 156 F.4th 121. The Second Circuit's order denying rehearing (Pet. App. 196a-97a) is not reported.

JURISDICTION

The Second Circuit entered judgment on September 29, 2025. Pet. App. la-53a. The court denied rehearing on December 2, 2025. *Id.* at 196a-97a. On February 25, 2026, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including May 1, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provision of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(b), is reproduced at Pet. App. 198a-201a. Federal Rule of Civil Procedure 9(b) is reproduced at Pet. App. 202a.

INTRODUCTION

This case presents critically important questions regarding the standards for pleading scienter under the Private Securities Litigation Reform Act of 1995 (PSLRA). The PSLRA requires securities-fraud plaintiffs to "state with particularity facts giving rise to a strong inference" that each defendant "acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2)(A). But the courts of appeals disagree on how to apply this heightened standard in two recurring contexts. In this case, the Second Circuit—home to more securities cases than any other circuit—deepened both splits, warranting this Court's review.

First, the circuits are now divided five-to-five on whether the so-called "core operations doctrine," under which the sheer importance of an issue supports an inference that executives would have known about it, provides a basis for pleading scienter under the PSLRA. Five circuits have correctly declined to adopt

the doctrine, recognizing that a generalized claim of an issue's importance lacks "particularity," and that speculation about what an executive *would have* known cannot create a "strong inference" of fraudulent intent. In sharp contrast, five other circuits (now including the Second Circuit) have accepted the doctrine in some form—but even they have failed to reach consensus on when to apply it. For years, the Second Circuit expressly declined to take sides, but it abruptly decided to adopt the doctrine in this case—inferring scienter from the alleged "importance" of an issue, even though that issue threw off petitioners' net sales by just 2.4 percent. The core operations doctrine has no place in the scienter analysis under the PSLRA, and the Second Circuit's decision to adopt it deepens a split this Court should resolve.

Second, the courts of appeals disagree about whether allegations that executives generally accessed information through routine corporate communications, such as internal reports or customer calls, support an inference of scienter, absent any specific allegations about *what* those communications conveyed. Six circuits correctly reject this pleading strategy, recognizing that without allegations about the information an executive received, there is no basis to infer he knew anything other than what he told the public. But three circuits—now including the Second Circuit—allow an inference of scienter from such generic allegations. The Second Circuit's analysis was especially stark in this case: allegations that some executives received "weekly reports" about sales and that one "called the general manager of a customer," with no details to fill in the blanks, supported an inference that executives had "actual knowledge" that their statements were false. Pet. App. 42a-43a. This

mature circuit split, too, warrants the Court's intervention.

These questions are exceptionally important. Congress enacted the PSLRA and required heightened pleading of scienter because securities-fraud plaintiffs were bringing strike suits that "injure[d] the entire U.S. economy." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 81 (2006) (quoting H.R. Conf. Rep. No. 104-369, at 31 (1995)). This case invites the same harm: left standing, the Second Circuit's opinion would allow plaintiffs to deploy similar allegations—claiming an issue is important and addressed in routine corporate communications—to evade the PSLRA's pleading requirements in virtually any securities-fraud case. And with the Second Circuit now joining the minority of circuits on both issues, most securities-fraud defendants nationwide will be left to defend themselves under lenient standards the PSLRA forbids.

This case also provides an excellent vehicle to resolve both questions: both were squarely decided, and the scienter determination cannot stand without these allegations. This Court has not hesitated to grant review to resolve circuit splits regarding the application of the PSLRA to frequently recurring allegations—even splits far less pronounced than those presented here. *See, e.g.*, *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 30-31 (2011) (resolving 3-1 circuit split); *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 338, 340 (2005) (resolving 4-1 circuit split). The petition should be granted.

STATEMENT OF THE CASE

A. Legal Background

1. Section 10(b) of the Securities Exchange Act of 1934, as implemented through SEC Rule 10b-5, makes it unlawful 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." 17 C.F.R. § 240.10b-5(b); *see* 15 U.S.C. § 78j(b). Although Section 10(b) "does not by its terms create an express civil remedy for its violation," *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 196 (1976), this Court has "acquiesced" to decisions of lower courts reading a private right of action into the statute, *Touche Ross & Co. v. Redington*, 442 U.S. 560, 577 n.19 (1979); *see Superintendent of Ins. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 13 n.9 (1971).

To prove a Section 10(b) violation, a plaintiff must establish that the defendant made a material misrepresentation or omission with scienter—"a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst*, 425 U.S. at 193 n.12. A plaintiff must also show that the material misrepresentation or omission was made in connection with the purchase or sale of a security, and a private plaintiff must show that she relied on the defendant's misrepresentation and suffered economic loss as a result. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005).

2. In 1995, Congress enacted the PSLRA "[a]s a check against abusive litigation by private parties." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). In enacting the PSLRA, Congress determined that practices such as "nuisance filings,"

"targeting of deep-pocket defendants," "vexatious discovery requests," and "extortionate settlements" were being used to "injure[] the entire U.S. economy." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 81-82 (2006) (citation omitted); *see, e.g.*, S. Rep. No. 104-98, at 8, 10-11 (1995) (noting that plaintiffs' attorneys would "race to the courthouse" after only "minimal time preparing complaints," often based on no more than a stock-price drop or "a failed product development project"). The PSLRA thus provided "control measures" to ensure that "[p]rivate securities fraud actions" are not "employed abusively to impose substantial costs on companies and individuals whose conduct conforms to the law." *Tellabs*, 551 U.S. at 313.

To achieve that end, the PSLRA imposes "[e]xacting pleading requirements" for private securities-fraud claims, *Tellabs*, 551 U.S. at 313, and the statute creates particularly stringent requirements to plead scienter. In a typical fraud action, a plaintiff must "state with particularity the circumstances constituting fraud," but the defendant's state of "mind may be alleged generally." Fed. R. Civ. P. 9(b). But the PSLRA imposes a uniquely demanding standard for pleading scienter, requiring private plaintiffs to "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)(A).

To meet the PSLRA's standard for pleading scienter, it is not enough "that a reasonable factfinder plausibly could infer from the complaint's allegations the requisite state of mind." *Tellabs*, 551 U.S. at 314. Rather, "[t]o qualify as 'strong'" within the meaning of the PSLRA, "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." *Id.* "The 'strong inference' standard unequivocally raised the bar for pleading scienter." *Id.* at 321 (citation omitted) (alterations omitted).

B. Factual Background

The Hain Celestial Group, Inc. manufactures, markets, and sells organic, natural, and personal care products to a variety of distributor customers, who then sell to consumers. Pet. App. 7a. Plaintiffs allege that Hain, like many companies, offered some customers incentives to purchase products well in advance of selling them to consumers—for example, cash incentives, discounts, return guarantees, and extended payment terms. *Id.* at 7a-8a. Hain typically reported sales based on when the company shipped products to distributors, not when those products were ultimately sold to consumers. *See id.* at 122a.

According to the complaint, some of Hain's distributors "returned . . . excess inventory from the previous quarter," making reported revenues appear inflated. Pet. App. 11a. In early 2016, Hain hired external auditors, who concluded Hain had prematurely recognized revenue for sales to certain distributors, due in part to its use of sales concessions. *See id.* at 11a-14a. Hain revised its results for FY 2014, FY 2015, and the first nine months of FY 2016—announcing it had overstated net sales by 2.1%, 2.9%, and 1.9%, respectively. *Id.* at 14a. The SEC investigated and settled charges related to these practices but declined to impose a civil penalty, noting that the "vast majority of the products purchased" by distributors "ultimately sold through" to consumers

and that "[n]one of these types of incentives are improper." *Id.* at 15a (citation omitted).

C. Judicial Proceedings

1. After Hain's stock price declined, respondents brought this action on behalf of a purported class of investors who acquired Hain's stock from November 5, 2013, through February 10, 2017. Pet. App. 3a-4a. Respondents asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, naming Hain and four of its executives as defendants. *Id.*

Respondents claimed that Hain and its executives made false or misleading statements about revenue, compliance with accounting rules, and financial success, through practices respondents characterize as "channel-stuffing." Pet. App. 27a-30a. In attempting to plead scienter, respondents asserted that a motive to commit fraud could be inferred from allegations about stock sales and bonuses for two—but not all—of the executives named as defendants. *Id.* at 38a-39a. Respondents did not allege that any executive had received any information that conflicted with what the company disclosed, but claimed that some executives communicated with various customers and "received regular reports" about sales. *Id.* at 42a-45a. Beyond that, respondents invoked the "core operations doctrine," claiming that that the importance of the company's sales and inventory levels supported an inference that executives acted with scienter. *Id.* at 45a-47a & n.19, 52a.

2. The district court dismissed the operative complaint.[1] As relevant here, the district court agreed with a magistrate judge that respondents' allegations that executives received "internal reports" were "generic in nature" and therefore "insufficient to raise the requisite inference of scienter." Pet. App. 69a; *see id.* at 104a. The district court likewise declined to apply the "core operations doctrine," agreeing that respondents had not provided sufficient "allegations raising an inference of scienter," such as "specific factual allegations linking the Individual Defendants to the alleged fraud." *Id.* at 69a; *see id.* at 101a-02a. The court concluded that any inference of scienter was "far less compelling than an inference of, at most, non-actionable mismanagement and negligence." *Id.* at 70a; *see id.* at 104a.

3. On appeal, the Second Circuit vacated the judgment, holding that respondents had "adequately alleged scienter." Pet. App. 52a. The court first concluded that two of the individual defendants had the motive to commit fraud because they sold shares and received bonuses. *Id.* at 37a-40a. But the court recognized that plaintiffs' other scienter-related allegations "must still be strong" to raise the requisite strong inference of scienter and thus survive a motion to dismiss. *Id.* at 40a.

From there, the Second Circuit determined that respondents' allegations raised the inference that Hain's executives "had actual knowledge" that the disputed statements were false. Pet. App. 42a. The Second Circuit focused, in large part, on allegations

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[1] The district court also dismissed the prior complaint, but the Second Circuit vacated the district court's order and remanded on grounds not relevant here. *See* Pet. App. 5a-6a n.4.

that executives generally received information through routine communications with customers and colleagues. The court pointed, for example, to allegations that one executive "called the general manager of a customer" and "dealt directly with [another customer's] owner." *Id.* at 42a-43a. The court similarly relied on allegations that two executives "received weekly reports on sales, inventory, and guidance targets"—claiming that those allegations suggested "actual knowledge" that the executives' statements about sales were misleading. *Id.* at 44a. The court did not, however, identify any information that any report, customer, or other source provided to Hain's executives. *See id.* at 42a-45a, 52a.

The Second Circuit further invoked the core operations doctrine to infer that executives knew their statements about sales and inventory were false. Pet. App. 45a-47a. The Second Circuit acknowledged that it had not previously "affirmed the validity of the core-operations doctrine following the passage of the PSLRA," *id.* at 46a n.19 (citation omitted) (alterations omitted), but it elected to adopt the doctrine in this case, citing "the *importance*" of the alleged fraud, *id.* at 47a. *Accord id.* at 46a & n.19, 52a. Applying the core operations doctrine, the court concluded that it could infer scienter from the fact that the disputed statements "touched on large swaths of Hain's U.S. business and areas of critical import to Hain and its executives." *Id.* at 45a. The court further emphasized the "*size* of this alleged fraud" as a basis for inferring scienter, even though it had only resulted in an adjustment of Hain's "net sales by 2.1%, 2.9%, and 1.9%"—figures that the court acknowledged were "not eye-popping." *Id.* at 46a & n.19.

Petitioners sought rehearing, which the Second Circuit denied without analysis. Pet. App. 196a-97a.

REASONS FOR GRANTING THE PETITION

To survive a motion to dismiss under the PSLRA, plaintiffs asserting private securities-fraud claims must "state with particularity facts giving rise to a strong inference" of scienter. 15 U.S.C. § 78u-4(b)(2)(A). This Court should grant certiorari to resolve two circuit splits regarding the "stricter demand[s]" the PSLRA's pleading standards impose. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314 (2007).

First, the courts of appeals disagree about whether the "core operations doctrine" provides a basis for pleading scienter under the PSLRA. Five circuits—the Fourth, Sixth, Eighth, Tenth, and Eleventh—have declined to adopt the doctrine, holding that the alleged importance of an issue does not support a "strong inference" that statements were made with fraudulent intent. In contrast, five other circuits—the First, Second, Third, Fifth, and Ninth—have embraced the core operations doctrine, although they have not reached any consensus on when the doctrine applies.

Second, the courts of appeals disagree about whether plaintiffs may raise a "strong inference" of scienter through allegations that executives generally receive information through routine corporate communications, such as reports or calls, without details about what specific information those executives obtained. Six circuits—the Third, Fourth, Fifth, Sixth, Tenth, and Eleventh—do not allow this approach to pleading scienter, but three circuits—the First, Second, and Ninth—hold that plaintiffs may raise a strong inference of scienter through allegations

about the mere existence of corporate communications with executives.

In this case, the Second Circuit took the wrong position on both issues, deepening mature circuit splits and approving of easy-to-replicate pleading tactics the PSLRA forbids. This Court should grant review and reverse.

I. The Second Circuit's Adoption of the Core Operations Doctrine Deepens a Circuit Split and Conflicts with the PSLRA.

The courts of appeals are in conflict about whether the so-called "core operations doctrine" provides a basis for pleading scienter under the PSLRA. Before the PSLRA's enactment, the core operations doctrine provided an easy path to plead scienter: it allowed an inference of intent to rest on allegations that an issue was "a significant part of [a company's] business." *Cosmas v. Hassett*, 886 F.2d 8, 13 (2d Cir. 1989). Since the PSLRA created heightened standards for pleading scienter, however, circuits have split on the continuing validity of the doctrine, with at least five circuits correctly declining to adopt the core operations doctrine and five other circuits accepting it.

For years following the PSLRA's enactment, the Second Circuit expressly declined to adopt the core operations doctrine, stating that it had "not clearly affirmed the validity of this doctrine following the passage of the PSLRA." *In re Renewable Energy Grp. Sec. Litig.*, 2022 WL 14206678, at *3 n.4 (2d Cir. Oct. 25, 2022); *see, e.g.*, *Frederick v. Mechel OAO*, 475 F. App'x 353, 356 (2d Cir. 2012) ("[W]e have not yet expressly addressed whether, and in what form, the 'core operations' doctrine survives as a viable theory of scienter."). The Second Circuit's decision to change

course and rely on the doctrine here deepens a conflict that warrants this Court's review.

A. The Circuits Are Divided on Whether the Core Operations Doctrine Provides a Basis for Pleading Scienter Under the PSLRA.

1. At least five circuits have declined to adopt the core operations doctrine as a basis for pleading scienter under the PSLRA. These circuits have either rejected the doctrine on the merits or refused to apply it in every case in which it has been invoked. This approach makes sense: the assumption that a statement must be *fraudulent* simply because it concerned a topic of importance to a business is fundamentally incompatible with the PSLRA's requirement that plaintiffs state facts with "particularity" to raise a "*strong* inference" that a defendant acted with the requisite state of mind. 15 U.S.C. § 78u-4(b)(2)(A) (emphasis added).

The Sixth Circuit's analysis of this issue illustrates the correct legal rule, holding that "the fact that executives are intimately familiar with a core component of their business does little to suggest fraudulent intent." *Teamsters Loc. 237 Welfare Fund v. ServiceMaster Glob. Holdings, Inc.*, 83 F.4th 514, 531 (6th Cir. 2023) (quoting *Pittman v. Unum Grp.*, 861 F. App'x 51, 55 (6th Cir. 2021)). In *ServiceMaster*, for instance, plaintiffs claimed that executives must have known of an alleged "crisis" and its impact on their business simply because it concerned a "core" part of the business, about which executives were generally "familiar." *Id.* at 530-31. But rather than adopt the core operations doctrine, the Sixth Circuit held that, "[w]ithout more information about what

the . . . executives knew and when they knew it," plaintiffs could not raise the requisite "strong inference" of scienter under the PSLRA. *Id.* at 532; *see Pittman*, 861 F. App'x at 55 (holding that the "overall importance" of an issue "is not a scienter-bolstering fact").

The Fourth Circuit follows the same approach, holding that courts "cannot impute factual knowledge to individuals merely . . . because such knowledge relates to the business's core operations." *San Antonio Fire & Police Pension Fund v. Syneos Health Inc.*, 75 F.4th 232, 242 (4th Cir. 2023) (citation omitted). In *Syneos Health*, plaintiffs claimed that executives "must have" known of an adverse development related to a merger with another company simply because the issue was "an important predictor" of the company's "commercial success." *Id.* The Fourth Circuit firmly rejected that reasoning, explaining that the mere fact that an issue "relates to the business's core operations" provides no basis to infer that executives "learned *specifically*" that anything they said was untrue. *Id.* And since courts "may not stack inference upon inference to satisfy the § 10(b) pleading standard," the Fourth Circuit refuses to find a strong inference of scienter based on allegations about the mere "importan[ce]" of an issue. *Id.* at 242-43 (citation omitted) (alterations omitted).[2]

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[2] Prior to *Syneos Health*, the Fourth Circuit had stated that "core-operations allegations 'are relevant to the court's holistic analysis of scienter.'" *KBC Asset Mgmt. NV v. DXC Tech. Co.*, 19 F.4th 601, 612 (4th Cir. 2021) (quoting *Yates v. Mun. Mortg. & Equity, LLC*, 744 F.3d 874, 890 (4th Cir. 2014)). But the Fourth Circuit has never held that such allegations supported an inference of scienter—and *Syneos Health* subsequently clarified

The Tenth Circuit agrees, holding that allegations about the "significance" of an issue to a company's "core operations do little to create an inference of scienter." *Meitav Dash Provident Funds & Pension Ltd. v. Spirit AeroSystems Holdings, Inc.*, 79 F.4th 1209, 1223-24 (10th Cir. 2023). In *Spirit Aerosystems*, for example, plaintiffs claimed that executives must have known their statements about production and sales were false because the company "obtained most of its revenue from sales" to the customer at issue and those issues therefore "involve[d] [the company's] core operations." *Id.* at 1222-23. The Tenth Circuit rejected this theory of scienter under the PSLRA, holding that the alleged "significance" of an issue to a company's "core operations" does not "create a particularized basis to draw a strong inference of [an executive's] awareness" that anything disclosed to investors was misleading. *Id.* at 1224;[3] *see also Anderson v. Spirit Aerosystems Holdings, Inc.*, 827 F.3d 1229, 1246 (10th Cir. 2016) (similarly rejecting "core operations" theory, which provides no "good reason to believe that the executives *knew* that the projects were unlikely to meet forecasts").

The Eleventh Circuit, for its part, has functionally rejected the core operations doctrine, albeit without using the doctrine's label. In *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230 (11th Cir. 2008), for instance,

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that courts should not rely on the core operations doctrine to infer intent under the PSLRA.

[3] *Spirit AeroSystems* distinguished cases in which plaintiffs "allege[d] with particularity" that an executive "saw data that would have alerted him" to the problem, 79 F.4th at 1222 n.4 (citing *Ind. Pub. Ret. Sys. v. Pluralsight, Inc.*, 45 F.4th 1236, 1263-64 (10th Cir. 2022)), recognizing that the core operations doctrine lacks precisely that "particularity."

plaintiffs pointed to the "breadth and amount of the fraud" related to statements about damaged goods to claim that executives "*must have known about it*," even though plaintiffs cited no facts "suggesting that the high-ranking defendants knew anything about the alleged fraud." *Id.* at 1250. The Eleventh Circuit rejected that approach, emphasizing that a scienter theory premised on the purported significance of an issue—its "breadth" or "amount"—"does not come close to accomplishing" plaintiffs' burden to "at least allege *some* facts showing . . . knowledge of the fraud" by executives. *Id.* at 1250-51. The Eleventh Circuit further emphasized that this Court has "unambiguously explained . . . that the 'strong inference' requirement, though not insurmountable, is difficult to meet," and allegations of the mere significance of an issue "do not pass Congress's stringent test" under the PSLRA. *Id.* at 1257.

Finally, while the Eighth Circuit has reserved judgment on "whether the core operations approach can be utilized to plead scienter," *Elam v. Neidorff*, 544 F.3d 921, 929 (8th Cir. 2008), its precedents all but refute the doctrine. In *Cornelia I. Crowell GST Trust v. Possis Medical, Inc.*, 519 F.3d 778 (8th Cir. 2008), for example, plaintiffs claimed that executives must have known that a clinical trial was going more poorly than they told the public because of "the overarching importance of the . . . study," which was allegedly "vital to the company's future." *Id.* at 783. But the Eighth Circuit rejected this theory, holding that the mere "importance of [an issue] to [a defendant] does little to establish scienter." *Id.* at 783. Like other circuits, the Eighth Circuit refuses to leap from allegations of an issue's "importance" to the conclusion

that "executives were aware of . . . negative [information] prior to making statements." *Id.*[4]

2. In contrast to this approach, five other circuits have adopted the core operations doctrine—allowing plaintiffs to clear the PSLRA's bar for pleading scienter through allegations that a disputed statement concerns an issue of importance. But while these courts agree on the bottom line that the core operations doctrine can factor into the scienter analysis, they have disagreed on the circumstances that may properly trigger the doctrine's application.

In the First Circuit, the core operations doctrine allows plaintiffs to plead scienter through allegations that an issue is "important" to the business. *Constr. Indus. & Laborers Joint Pension Tr. v. Carbonite, Inc.*, 22 F.4th 1, 9 (1st Cir. 2021). In *Carbonite*, for instance, plaintiffs claimed that executives "must have known" that a new product was not functioning properly, contrary to their public statements, because of the "product's professed importance to the company." *Id.* The First Circuit accepted the doctrine, finding a strong inference of scienter because plaintiffs had alleged "facts showing that [the product] was viewed by [the company] as an important product"—even though it was only one of the company's "many offerings" and did not have an "outsized impact on [its] revenue projections." *Id.*

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[4] The D.C. Circuit also has not adopted the core operations doctrine, and district courts within the circuit have expressed skepticism about its applicability. *See Stevens v. InPhonic, Inc.*, 662 F. Supp. 2d 105, 121 n.8 (D.D.C. 2009) ("[T]his 'exceedingly rare[ly]' used doctrine has not been recognized by this Circuit and the Court declines to recognize it here." (citation omitted)).

The Third Circuit has adopted the core operations doctrine as well, allowing plaintiffs to plead scienter through allegations about the sheer "importance" or "centrality" of an issue. *Institutional Invs. Grp. v. Avaya, Inc.*, 564 F.3d 242, 272 (3d Cir. 2009). In *Avaya*, plaintiffs invoked the "core operations inference" to claim that executives knew their statements about financial performance and pricing pressure were misleading. *Id.* at 268. The Third Circuit accepted this approach, finding that "the importance to the '[company's] story' of maintaining margins" supported "a strong inference that [an executive] either *knew* at the time that his statements were false" or was "reckless" in disregarding the "obvious risk of misleading the public." *Id.* (emphasis added).

The Fifth Circuit has also accepted the core operations doctrine, which it applies in "special circumstances" under a circuit-specific multifactor test. *Okla. Firefighters Pension & Ret. Sys. v. Six Flags Ent. Corp.*, 58 F.4th 195, 219 (5th Cir. 2023). Specifically, the Fifth Circuit applies the core operations doctrine after considering (i) "the company's size," (ii) whether the statement is "critical" to the company's "vitality," (iii) whether the misrepresented information is "readily apparent," and (iv) whether "the defendant's statements were internally inconsistent." *Id.* (citation omitted). Applying this standard in *Six Flags*, the Fifth Circuit held that the core operations doctrine applied because plaintiffs had alleged that the development of new amusement parks were "important to Six Flags' success" and "an important aspect of future growth prospects"—even though this development was "not critical to Six Flags' survival." *Id.* Allegations like

these, under the Fifth Circuit's test, are enough to support a "cogent" and "compelling" inference of scienter. *Id.* (citation omitted).

Finally, the Ninth Circuit has also adopted the core operations doctrine, which it applies under a different standard unique to that circuit. *See Constr. Laborers Pension Tr. of Greater St. Louis v. Funko Inc.*, 166 F.4th 805, 831 (9th Cir. 2026). In the Ninth Circuit, the doctrine applies when plaintiffs' allegations "suggest that the defendants had actual access to the disputed information" or "in rare circumstances when the allegations are not particularized, but the nature of the relevant fact is of such prominence that it would be absurd to suggest that management was without knowledge of the matter." *Id.* (citation omitted) (alterations omitted). The Ninth Circuit's standard is a permissive one: it allows plaintiffs to plead scienter through allegations that, for instance, an issue is "critical to [a company's] business operations," "key to its ability to manage its inventory effectively," and viewed as "integral to its success as a business." *Id.* at 831-32.

In this case, after decades of expressly declining to address whether the core operations doctrine may apply under the PSLRA, the Second Circuit embraced the doctrine for the first time in a precedential opinion. The court held that respondents had raised a strong inference that Hain's executives *knew* their statements about sales and inventory levels were false based on allegations about "the size of the alleged fraud" and "its importance to Hain's operations," as well as allegations that "the alleged fraud touched on large swaths of Hain's U.S. business and areas of critical import to Hain and its executives." Pet. App. 45a-47a & n.19; *accord id.* at 52a. The Second Circuit

concluded these allegations supported a "strong inference" of scienter even though the alleged misstatements prompted Hain to adjust its net sales by just 2.1%, 2.9%, and 1.9%—figures that the court acknowledged were "not eye-popping." *Id.* at 46a. In the Second Circuit's view, "it would strain credulity to conclude" that executives were not aware of information resulting in those adjustments. *Id.* at 47a.

In at least five circuits, this attempt to deploy the core operations doctrine would fail as a matter of law. In those circuits, allegations about the "breadth and amount of the fraud," *Mizzaro*, 544 F.3d at 1250, or claims that the disputed statements concerned an issue of "importance" or a "core component of [Hain's] business" could not contribute to finding a "strong inference" of scienter, *ServiceMaster*, 83 F.4th at 531 (citation omitted). The Second Circuit's adoption of the core operations doctrine here thus deepens an established circuit split, which this Court should resolve.

B. The Second Circuit's Core Operations Holding Is Wrong.

Five circuit courts have declined to adopt the core operations doctrine for good reason: it defies the PSLRA's stringent pleading requirements. Under the core operations doctrine, a plaintiff may support a "strong inference" of scienter through garden-variety allegations that *any* issue is "important" or "significant" to a business, coupled with speculation that executives therefore *would have* known about it. Pet. App. 45a-47a & n.19, 52a. The PSLRA prohibits such speculation, and the Second Circuit was wrong to endorse the core operations doctrine here.

To "curb frivolous, lawyer-driven litigation" and to ensure fairness to defendants, the PSLRA establishes "[e]xacting pleading requirements" in private securities-fraud cases. *Tellabs*, 551 U.S. at 322. The PSLRA requires a complaint to "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)(A) (emphasis added). That is a "stricter demand," under which an inference of scienter must be "cogent and at least as compelling as any opposing inference of nonfraudulent intent"—and "omissions and ambiguities count against inferring scienter." *Tellabs*, 551 U.S. at 314, 326.

The core operations doctrine is fundamentally at odds with these pleading requirements. Instead of demanding "particularity," the core operations doctrine invites generality: under the doctrine, allegations that a statement concerned an issue viewed as "important," *Carbonite*, 22 F.4th at 9, "critical," *Funko*, 166 F.4th at 831, or "central[]," *Avaya*, 564 F.3d at 272, support an inference that the statement is *fraudulent*. And instead of requiring allegations that give rise to a "strong inference" of fraudulent intent, the core operations doctrine is grounded in speculation: under the doctrine, courts infer that an executive "would have," *Carbonite*, 22 F.4th at 9; *Six Flags*, 58 F.4th at 219, or "must have," *Funko*, 166 F.4th at 831, known a statement was misleading based on allegations that the subject mattered to the company. Those inferential leaps, through allegations devoid of specificity, are exactly what the PSLRA is designed to forbid. *See Tellabs,* 551 U.S. at 334 (Alito, J., concurring) ("[F]acts not stated with the requisite particularity cannot be considered

in determining whether the strong-inference test is met.").

That explains why, before this case, district court judges within the Second Circuit had routinely expressed doubts about whether the core operations doctrine survived the PSLRA's enactment. As then-District-Court Judge Sullivan explained, "the plain language of the PSLRA, which requires facts supporting the scienter inference to be 'state[d] with particularity,' would seem to limit the force of general allegations about core company operations." *In re Wachovia Equity Sec. Litig.*, 753 F. Supp. 2d 326, 353 (S.D.N.Y. 2011) (quoting 15 U.S.C. § 78u-4(b)(1)). Judge Furman likewise emphasized his "considerable doubt whether the core operations doctrine survived enactment of the PSLRA." *Hensley v. IEC Elecs. Corp.*, 2014 WL 4473373, at *5 (S.D.N.Y. Sept. 11, 2014) (Furman, J.); *see also, e.g.*, *In re Rockwell Med., Inc. Sec. Litig.*, 2018 WL 1725553, at *14 (S.D.N.Y. Mar. 30, 2018) (Sullivan, J.) (explaining that the PSLRA "significantly limited the salience of the core operations doctrine"); *Glaser v. The9, Ltd.*, 772 F. Supp. 2d 573, 596 n.17 (S.D.N.Y. 2011) (Holwell, J.) ("It is questionable whether the 'core operations' doctrine has survived the PSLRA at all.").

That skepticism was well-founded, and this case aptly illustrates the problems the core operations doctrine invites. The Second Circuit relied on the core operations doctrine to infer scienter because sales and inventory levels are issues of "importance" and "critical import" to Hain, but that much could be said of virtually any company. Pet. App. 45a-46a. And the court repeatedly emphasized "the *size*," "the *importance*," and the "significance" of the alleged fraud to Hain's operations—even though the alleged

misstatements amounted to just 2.4 percent of Hain's overall net sales during the relevant time period. *Id.* at 46a-47a, 52a. If that is enough to invoke the core operations doctrine, it is difficult to imagine a case in which plaintiffs would *not* be able to invoke the doctrine as a shortcut to pleading scienter.

To make matters worse, the core operations doctrine also conflicts with other fundamental principles of pleading scienter under the PSLRA. The statute requires plaintiffs to plead scienter with particularity as to "the defendant" and "each act or omission" alleged to violate the law. 15 U.S.C. § 78u-4(b)(2). As the Eleventh Circuit has explained, that language mandates that "scienter must be found with respect to *each* defendant and with respect to *each* alleged violation." *Phillips v. Sci.-Atlanta, Inc.*, 374 F.3d 1015, 1017-18 (11th Cir. 2004) (emphases added); *cf. Tellabs*, 551 U.S. at 326 n.6 (noting "disagreement among the [c]ircuits" on related questions about "group pleading" under the PSLRA). But the core operations doctrine inverts that requirement: inferring scienter from an issue's general "importance" to a business presumes shared knowledge across *all* defendants, rather than pleading particularized facts as to each one. And this case proves the point: the doctrine permitted respondents to establish scienter as to some defendants against whom they alleged little, if any, defendant-specific knowledge at all. *See* Pet. App. 37a-40a (identifying no motive allegations as to Conte and Smith); *see also id.* at 42a-47a, 51a-52a.

Ultimately, the PSLRA forecloses the core operations doctrine, and the Second Circuit was wrong to join the circuits adopting it as a valid basis to plead scienter. The Second Circuit's decision deepens a

stark conflict among the circuits, which this Court should resolve.

II. The Second Circuit's Scienter Ruling on Executives' Receipt of Corporate Information Deepens a Circuit Split.

The Second Circuit's scienter ruling conflicted with the decisions of other circuits in a second way: the court held that generalized allegations that executives receive routine corporate communications—without any detail about what information was conveyed—support a strong inference of scienter under the PSLRA. Six circuits have rejected this approach, recognizing that allegations that an executive simply received a report or placed a call says nothing with "particularity" about what he learned, and therefore cannot support a "strong inference" that he knew his statements were misleading. The Second Circuit's decision to join a minority of circuits allowing this approach deepens a circuit split and warrants this Court's review.

A. Most Circuits Hold That Generalized Allegations of Corporate Communications Provide No Basis for Pleading Scienter.

1. Six circuits hold that securities-fraud plaintiffs may not plead scienter based on the mere existence of routine corporate communications, such as sales reports and customer calls. That rule comports with the PSLRA: absent allegations about *what* an executive learned through any communication, there is no basis to infer he knew anything other than what he later told the public—and an allegation equally consistent with "nonfraudulent intent" cannot give

rise to a "strong inference" of scienter. *Tellabs*, 551 U.S. at 313.

The Fourth Circuit's recent decision in *San Antonio Fire & Police Pension Fund v. Syneos Health Inc.*, 75 F.4th 232 (4th Cir. 2023), again illustrates the majority approach. There, plaintiffs asserted that the defendants "must have" known statements about a merger were false because they "held a series of meetings at which they generally discussed the commercial aspects of [the company's] business." *Id.* at 242. The Fourth Circuit flatly rejected that approach, holding that the fact that "these due diligence meetings" occurred "does not support the inference that [executives] learned any *specific* information"—much less specific information that would render their statements misleading. *Id.* (emphasis added). As the Fourth Circuit explained, a bald claim about what executives "*should have known*" by attending meetings "merely argues that [they acted] *negligently*"—not fraudulently. *Id.*

The Fifth Circuit agrees. In *Indiana Electrical Workers' Pension Trust Fund IBEW v. Shaw Group, Inc.*, 537 F.3d 527 (5th Cir. 2008), the Fifth Circuit held that plaintiffs could not raise a strong inference of scienter through generic allegations about executives' "receipt of monthly reports . . . discussed at meetings," as "the complaint d[id] not . . . allege that the reports or the meetings included information at odds with [the defendant's] public statements." *Id.* at 540. Absent such detail, allegations like those "d[id] not substantiate an inference that [executives] knew they contained false information, nor d[id] the mere fact that they received the reports imply that they knew of any inaccuracy." *Id.*

The Sixth Circuit has followed the same approach, holding that "mere attendance at meetings where the [issue] was discussed does little to establish . . . a strong inference of scienter." *Teamsters Loc. 237 Welfare Fund v. ServiceMaster Glob. Holdings, Inc.*, 83 F.4th 514, 531 (6th Cir. 2023). In *ServiceMaster*, plaintiffs claimed that executives knew of the crisis undermining their public statements because "issues relating to the . . . crisis were discussed amongst [the company's] executives." *Id.* at 531. But without "any detail about exactly what was discussed, whether or not the extent of the problem or liability for possible claims were discussed, [and] whether the possible impact on [the company's] financial results was raised," the Sixth Circuit held that such barebones allegations about executives "discuss[ing]" an issue did not suggest scienter. *Id.*

The Tenth Circuit follows the same rule, holding that "it's not enough for the plaintiffs to allege briefings to a speaker on the underlying data or the speaker's access to internal reports." *Meitav Dash Provident Funds & Pension Ltd. v. Spirit AeroSystems Holdings, Inc.*, 79 F.4th 1209, 1216 (10th Cir. 2023). Instead, plaintiffs must allege with "particularity" what the executives actually "knew when they made the public disclosures." *Id.* at 1217. Thus, without "particularized allegations about the contents" of any reports or "particularized allegations that anyone told" executives anything in meetings, such allegations fail as a matter of law to support an inference of scienter. *Id.* at 1220-21.

The Eleventh Circuit has taken the same approach in circumstances strikingly similar to those presented here. In *Garfield v. NDC Health Corp.*, 466 F.3d 1255 (11th Cir. 2006), plaintiffs accused defendants of a

channel-stuffing scheme and attempted to plead scienter through allegations that executives "attended monthly operations meetings" at which "every aspect of the . . . business was discussed in detail, including the aggressive channel stuffing." *Id.* at 1264. But without any allegations about "what was said at the meeting[s]," the Eleventh Circuit held that plaintiffs had failed to provide the "requisite particularity," as a "general allegation that [executives] promoted channel stuffing at a series of meetings does not establish scienter." *Id.* at 1265.

Finally, the Third Circuit has likewise held that the PSLRA requires specificity when a plaintiff seeks to raise a strong inference of scienter through allegations about information executives receive. Thus, for example, a "barebones sketch of [an] internal memo," without allegations about its content—such as "what data its conclusions were based upon"—"utterly fails to meet [the PSLRA's] standard in any respect." *Cal. Pub. Emps.' Ret. Sys. v. Chubb Corp.*, 394 F.3d 126, 147-48 (3d Cir. 2004).

2. By contrast, the First, Second, and Ninth Circuits follow a different rule. In these circuits, plaintiffs may satisfy the PSLRA's scienter standards through generic allegations that executives received information through sources like calls and reports, paired with speculation that this information "would have" conflicted with what executives told investors.

The First Circuit took this approach first in *In re Stone & Webster, Inc. Securities Litigation*, 414 F.3d 187 (1st Cir. 2005), which involved claims that a company had concealed its deteriorating financial condition as it headed for bankruptcy. *Id.* at 192, 196. Plaintiffs' scienter theory hinged on allegations that

executives had "received calls from vendors" and received "comprehensive internal financial reports." *Id.* at 210-11. The First Circuit explained that "the contents of the reports [were] not described," but proceeded to hold that the court could "fairly infer that they described" the company's financial condition, which "*would have been* reflected in those internal reports [as] becoming desperate." *Id.* at 211 (emphasis added). Thus, from allegations that executives generally "received calls" and "financial reports," the First Circuit piled on the inferences to hold that plaintiffs had raised a strong inference that executives knew their statements were *false*.

The Ninth Circuit has adopted a similar approach. In *E. Ohman J:or Fonder AB v. NVIDIA Corp.*, 81 F.4th 918 (9th Cir. 2023), which this Court agreed to review before dismissing the writ as improvidently granted, plaintiffs asserted that an executive knew the company had sold more of its products to cryptocurrency miners than it had disclosed because the executive "had detailed sale[s] reports prepared," "closely monitored sales," and "reviewed everybody's sales data in detail at . . . meetings." *Id.* at 939-40. The dissent argued that plaintiffs did not "allege with particularity the contents of any contemporaneous report that directly contradicts [the] challenged statements," *id.* at 955 (Sanchez, J., dissenting), but the majority found the allegations sufficient to presume that the "sales data at the time would have shown" data conflicting with the company's public statements, *id.* at 940 (majority op.). Since this Court dismissed the writ in *NVIDIA*, the question remains unresolved in the Ninth Circuit. *See* 604 U.S. 20 (2024); *infra* at 31 (discussing vehicle issues with *NVIDIA*).

The Second Circuit opted to follow the minority approach here. The court held, for instance, that the fact that two executives "received weekly reports on sales, inventory, and guidance targets" was enough to "suggest actual knowledge" that the company's statements were misleading. Pet. App. 44a. The court similarly inferred scienter from an allegation that another executive "called the general manager of a customer" and "dealt directly with [a customer's] owner on the concessions and revenue." *Id.* at 42a-43a. But there is not a single allegation of what information any "weekly report" or customer provided. In the majority of circuits to have considered the issue, these allegations would not allow a plaintiff to satisfy the PSLRA's standards for pleading scienter. The Second Circuit's contrary conclusion deepens a mature circuit split that this Court should resolve.

B. The Second Circuit's Analysis Is Wrong.

The Second Circuit's decision to adopt the minority view of allegations about routine corporate communications is both flawed and important. The PSLRA's twin demands that plaintiffs allege all facts supporting scienter with "particularity" and raise a "strong inference" of scienter refute the Second Circuit's position.

Requiring "particularity" means demanding that plaintiffs allege "the who, what, when, where, and how." *DiLeo v. Ernest & Young*, 901 F.2d 624, 627 (7th Cir. 1990) (Easterbrook, J.). This requirement "imposes another layer of factual particularity to allegations of securities fraud." *Chubb*, 394 F.3d at 144 (citation omitted). And under the "strong inference" standard, "omissions and ambiguities count

against inferring scienter." *Tellabs*, 551 U.S. at 326. These requirements for pleading scienter simply cannot be satisfied by claiming that executives generally receive information the way *all* executives do—through calls and reports.

This case presents a particularly stark example of the problems the minority position creates. The communications the Second Circuit identified in inferring "actual knowledge" are as mundane as they come—two executives received "weekly reports on sales, inventory, and guidance targets," and one "called the general manager of a customer" and "dealt directly" with another customer. Pet. App. 42a-44a. From that, the court simply presumed that information shared through reports or calls *would have* conflicted with what was disclosed to the public. But since virtually every executive receives reports and makes calls, allegations like these would support an inference of scienter in virtually every case.

And if accepted, the Second Circuit's position would result in consequences at odds with the core objectives of the securities laws. The securities laws are broadly designed to "achieve a high standard of business ethics," *United States v. Naftalin*, 441 U.S. 768, 775 (1979) (citation omitted), including through sound business practices like internal reporting that ensure executives have the information they need before they speak to investors. But if simply receiving regular reports or speaking to customers itself weighs in *favor* of inferring fraudulent intent, companies would be effectively penalized for engaging in such basic oversight of their businesses—exactly the opposite of what the securities laws are designed to do.

This Court's decision to grant review on a similar question in *NVIDIA* two Terms ago underscores the urgency of addressing the question presented. *See NVIDIA Corp. v. E. Ohman J:or Fonder AB*, 144 S. Ct. 2655 (2024) (granting writ as to "[w]hether plaintiffs seeking to allege scienter under the PSLRA based on allegations about internal company documents must plead with particularity the contents of those documents"). The Court appreciated the importance of this issue in granting the writ, and the United States agreed as amicus curiae that the minority position on this question is wrong as a matter of law. *See* Br. of United States as Amicus Curiae at 22, *NVIDIA Corp. v. E. Ohman J:or Fonder AB*, No. 23-970 (U.S. Oct. 2, 2024) ("[W]hen a securities-fraud plaintiff seeks to plead scienter by alleging that a company's public statements were inconsistent with information contained in the company's files, the complaint must set forth particularized factual bases for its assertions about what those files contained."). The government argued, however, that *NVIDIA* did not implicate this legal question—and so was an inappropriate vehicle for resolving it—because the plaintiffs had, in fact, alleged "numerous details about the contents" of company records and meetings. *Id.* at 23. But no such "details" exist here; the allegations of "reports" and "call[s]" in this case are devoid of *any* particularized information. *See* Pet. App. 42a-44a. This case thus squarely implicates the circuit split this Court previously recognized warrants review.

The PSLRA forecloses any inference of fraudulent intent from allegations that executives simply receive information through communications channels all companies use. The Second Circuit was wrong to join

the minority of circuits that allow this approach, and this Court should grant review and reverse.

III. This Case Presents an Excellent Vehicle to Review These Exceptionally Important Issues.

1. The questions presented are exceptionally important, and this Court's review is urgently required to restore the PSLRA's "exacting" requirements for pleading scienter in private securities-fraud cases.

Congress enacted the PSLRA "[a]s a check against abusive litigation by private parties" that "impos[ed] substantial costs on companies and individuals whose conduct conforms to the law." *Tellabs*, 551 U.S. at 313. Among the "perceived abuses" were "nuisance filings, targeting of deep-pocket defendants, vexatious discovery requests, and 'manipulation by class action lawyers.'" *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 81 (2006) (quoting H.R. Rep. No. 104-369, at 31 (1995)); *see also Tellabs*, 551 U.S. at 320. As Congress recognized, private securities-fraud litigation had for too long been marked by "'the routine filing of lawsuits'" alleging securities fraud "'with only [a] faint hope that the discovery process might lead eventually to some plausible cause of action.'" *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005) (quoting H.R. Rep. No. 104-369, at 31). The PSLRA's heightened pleading requirements were thus "designed to discourage private securities actions lacking merit" and to prevent "fishing expeditions brought in the dim hope of discovering a fraud." *Pub. Emps.' Ret. Ass'n of Colo. v. Deloitte & Touche LLP*, 551 F.3d 305, 311 (4th Cir. 2009) (Wilkinson, J.).

Left standing, the Second Circuit's opinion supplies ready-made tools to evade the PSLRA's requirements for pleading scienter in future cases. Under the core operations doctrine, securities-fraud plaintiffs may plead scienter through allegations that a disputed statement concerned an issue of general "significance" or "importance"—even one that threw off a company's sales figures by just a percentage point or two. Pet. App. 52a. Plaintiffs may likewise deploy allegations that executives engaged in customary communications like receiving sales reports or calling customers, without providing specific details of what was communicated, to overcome the PSLRA's standards for pleading scienter. Because this pleading strategy would be easy to replicate in virtually any case, it would defeat the PSLRA's core objective of ferreting out meritless securities fraud suits used "to injure the entire U.S. economy." *Merrill Lynch*, 547 U.S. at 81 (quoting H.R. Rep. No. 104-369, at 31); *see* S. Rep. No. 104-98, at 8 (1995) ("A complaint alleging violations of the Federal securities laws is easy to craft and can be filed with little or no due diligence.").

Scienter, in particular, is a defining feature of the PSLRA's scheme, and the Second Circuit's opinion confirms that this element warrants the Court's attention. Through the PSLRA, "Congress chose to focus on the element of scienter as a way to separate the meritorious wheat from the dismissible chaff." Richard A. Booth, *Deconstructing Scienter*, 16 Va. L. & Bus. Rev. 1, 27 (2021). But since *Tellabs* was decided nearly two decades ago, several circuits have steadily loosened the scienter standard this Court described as an "[e]xacting" one by relying on the core operations doctrine or routine corporate communications to plead scienter. *Tellabs*, 551 U.S. at 313. The lower courts

plainly disagree with one another about what counts and what doesn't in assessing scienter under the PSLRA—but the question whether a securities-fraud case can proceed should not depend on the happenstance of geography.

It is especially significant that the Second Circuit has now embraced the minority position on both issues in this case, particularly after years of avoiding any adoption of the core operations doctrine. *See supra* at 12 (collecting cases). The Second Circuit has long been a leading circuit on securities law: it is home to the most private securities cases of any circuit, and together with the Ninth Circuit, it accounts for the majority of all securities cases in the nation. *See* Edward Flores & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2025 Full-Year Review* 5 & fig. 4 (2026), https://perma.cc/B5WP-ZTFL. As a result, these increasingly permissive standards will now govern most securities-fraud cases nationwide.

This Court has not hesitated to grant review when, as here, the circuits disagree over the PSLRA's legal standards and application to frequently recurring allegations. *See, e.g.*, *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 30 (2011) (reviewing question of "whether a plaintiff can state a claim for securities fraud . . . based on a pharmaceutical company's failure to disclose reports of adverse events . . . if the reports do not disclose a statistically significant number of adverse events"); Pet. at 7-10, *Matrixx*, No. 09-1156 (U.S. Mar. 23, 2010) (describing 3-1 circuit split on the question); *Tellabs*, 551 U.S. at 322 (reviewing Seventh Circuit's application of "strong inference" standard in light of "diverge[nce]" among the circuits); *Dura Pharms.*, 544 U.S. at 338, 340 (reviewing Ninth

Circuit's adoption of specific "loss causation" theory under the PSLRA, which "differ[ed] from those of other Circuits" in a 4-1 circuit split). The Court should likewise grant review here: the 5-5 and 6-3 splits in this case are especially deep and involve two of the most common approaches to pleading scienter in securities-fraud cases.

2. This case provides an excellent vehicle to resolve both questions presented. On each issue, this case deepens clear splits. And while every securities-fraud case involves a mix of allegations offered to plead scienter, like the allegations purportedly showing motive in this case, *see* Pet. App. 37a-40a, the Second Circuit here expressly held that it could infer scienter *only* if other allegations—such as those about the core operations doctrine and corporate communications—were "strong." *Id.* at 40a. These holdings played a particularly outsized role in the Second Circuit's analysis because the court identified few, if any, other allegations supporting the scienter of two of the four individual defendants—and none whatsoever regarding their motive. *See id.* at 37a-42a.

This case also provides the Court a particularly clean illustration of both questions presented. As to core operations, the Second Circuit expressly invoked the doctrine and was clear about the doctrinal move it made—noting that it had not previously "affirmed the validity" of the doctrine "following the passage of the PSLRA." Pet. App. 46a n.19 (citation omitted). But the court nevertheless determined that the "size," "importance," and "significance" of the alleged fraud supported the doctrine's application. *Id.* at 45a-47a, 52a. And as to executives' receipt of corporate information, the Second Circuit pointed to "weekly reports" and "call[s]" to a customer, without *any*

allegations about the contents of those communications. *Id.* at 43a-44a. These allegations are clearly deficient—and the Court should grant review to say so.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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May 1, 2026

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2024

(Argued: December 5, 2024
Decided: September 29, 2025)

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Docket No. 23-7612

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SALAMON GIMPEL, ROSEWOOD FUNERAL HOME,
Lead Plaintiffs–Appellants,

JAMES SPADOLA, RODNEY LYNN,
Consolidated Plaintiffs,

BRADLEY D. FLORA, Individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE HAIN CELESTIAL GROUP, INC., IRWIN D. SIMON, PASQUALE CONTE, JOHN CARROLL, STEPHEN J. SMITH,

Defendants–Appellees.

———

Before: SACK, NARDINI, AND LEE, *Circuit Judges*.

Lead Plaintiffs-Appellants Salamon Gimpel and Rosewood Funeral Home (the "Plaintiffs") appeal from a Rule 12(b)(6) dismissal of their complaint against Defendants-Appellees The Hain Celestial Group, Inc. ("Hain"), and Irwin D. Simon, Pasquale Conte, John Carroll, and Stephen J. Smith (the "Individual Defendants," and together with Hain, the "Defendants") by the United States District Court for

the Eastern District of New York (Joanna Seybert, *Judge*). The Plaintiffs brought a securities-fraud class action pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b), 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b–5. They alleged that, in order to meet Wall Street revenue projection numbers, the Defendants engaged in "channel-stuffing" practices, offering Hain's distributors valuable concessions at the end of each quarter to take more product than they could sell without adequately disclosing the practice or accounting for its financial implications to investors. In dismissing the Plaintiffs' complaint, the district court concluded that the Plaintiffs had failed to adequately allege scienter, the wrongful state of mind, of the Defendants.

For the reasons that follow, we conclude that the Plaintiffs have adequately alleged that the Defendants made actionable misstatements and did so with scienter. Moreover, we conclude that the Plaintiffs have adequately alleged loss causation and control-person liability. We therefore

VACATE the district court's judgment and REMAND for further proceedings consistent with this opinion.

CHRISTINE M. FOX (Carol C. Villegas, James M. Fee, Matthew J. Grier, Labaton Keller Sucharow LLP, New York, NY, *on the brief*); (Robert V. Prongay, Leanne Heine Solish, Jonathan M. Rotter, Glancy Prongay & Murray LLP, Los Angeles, CA, *on the brief*); (Brian Schall, The Schall Law Firm, Los Angeles, CA, *on the brief*),

for Lead Plaintiffs-Appellants Rosewood Funeral Home and Salamon Gimpel;

JOHN M. HILLEBRECHT (Marc A. Silverman, *on the brief*), DLA Piper LLP (US), New York, NY, *for Defendants-Appellees.*

SACK, *Circuit Judge*:

Lead Plaintiffs-Appellants Salamon Gimpel and Rosewood Funeral Home[1] (collectively, the "Plaintiffs") appeal from the dismissal of their securities-fraud class action brought against Defendants-Appellees The Hain Celestial Group, Inc. ("Hain") and four of its present or former officers, Irwin Simon, Pasquale Conte, John Carroll, and Stephen Smith (the "Individual Defendants," and together with Hain, the "Defendants").[2] On behalf of a

[1] Co-Lead Plaintiff Rosewood Funeral Home is a funeral home in the Houston, Texas area that purchased Hain Celestial Group, Inc. ("Hain") call options during the Class Period and suffered approximately $1,548,333 in losses. Co-Lead Plaintiff Salamon Gimpel purchased Hain common stock and suffered approximately $822,519 in losses during the Class Period.

[2] Defendant Simon founded Hain and served as its President, Chief Executive Officer ("CEO"), and Chairman of the Board until June 2018. Defendant Conte served as Treasurer and Vice President from July 2009 to October 2014, Senior Vice President of Finance from October 2014 to September 2015, and Chief Financial Officer ("CFO") and Executive Vice President of Finance from September 2015 to June 2017 (as successor to Smith). Defendant Carroll was Hain's Executive Vice President and CEO for Hain Celestial North America from February 2015 to March 6, 2017, and has been the Executive Vice President for Global Brands, Categories, and New Business Ventures since March 6, 2017. Defendant Smith preceded Conte as Hain's CFO and Executive Vice President from September 3, 2013, to September 30, 2015.

putative class of investors who purchased or otherwise acquired Hain's publicly traded common stock from November 5, 2013, through February 10, 2017 (the "Class Period"), the Plaintiffs asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b), 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b–5, in their operative, Second Amended Complaint (the "Complaint").

The gravamen of the Complaint is that Hain, a leading marketer, manufacturer, and seller of organic and natural food and personal care products, engaged in a so-called "channel-stuffing" scheme: Faced with flagging demand for its products and pressure to meet Wall Street analysts' financial forecasts for the company, Hain offered its distributors significant concessions to accept more product than they needed at the end of each fiscal quarter. However, by stuffing its distributors to the gills, Hain allegedly robbed Peter to pay Paul, cannibalizing future revenues to make present sales look more impressive. After distributors would no longer accept inventory and Hain's practices precipitated internal strife and an independent audit, the Securities and Exchange Commission (the "SEC") launched an investigation. Eventually, Hain restated its financial numbers, conceded that it lacked adequate internal controls to account for its practices and improperly recognized revenue, and settled with the SEC, which declined to bring charges. Hain's reported sales figures plummeted. The Plaintiffs brought suit in the Eastern District of New York.

Channel stuffing is not necessarily illegal, but it may give rise to liability under the Exchange Act when a company engages in the practice to deceive

investors. Here, the Plaintiffs allege that the Defendants made false statements to investors about, among other things, their financial results, the existence of adequate internal controls, and their compliance with Generally Accepted Accounting Principles ("GAAP"); they allege further that the Defendants made misleading statements by attributing Hain's financial success to consumer demand and by downplaying concerns about inventory levels without disclosing their reliance on channel stuffing. And, according to the Plaintiffs, the Defendants made these false and misleading statements with a wrongful state of mind, i.e., scienter, defined here as the "defendant's intention to deceive, manipulate, or defraud."[3] *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007); *see* 15 U.S.C. § 78u–4(b)(1), (2).

After the district court first dismissed the Plaintiffs' Complaint, *In re Hain Celestial Grp. Inc. Sec. Litig. (Hain II)*, No. 16-CV-4581, 2020 WL 1676762, at *17 (E.D.N.Y. Apr. 6, 2020), and we reversed, *In re Hain Celestial Grp., Inc. Sec. Litig.*, 20 F.4th 131, 137-38 (2d Cir. 2021), the Defendants again moved to dismiss.[4] Largely adopting the

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[3] Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

[4] To date, this case has seen four substantive district-court opinions and one opinion from this Court. *See In re The Hain Celestial Grp. Inc. Sec. Litig. (Hain I)*, No. 16-CV-4581, 2019 WL 1429560, at *22 (E.D.N.Y. Mar. 29, 2019) (dismissing then-operative complaint without prejudice); *In re Hain Celestial Grp. Inc. Sec. Litig. (Hain II)*, No. 16-CV-4581, 2020 WL 1676762, at *17 (E.D.N.Y. Apr. 6, 2020) (dismissing Complaint with prejudice), *vacated and remanded* 20 F.4th 131 (2d Cir. 2021); *In re Hain Celestial Grp. Inc. Sec. Litig. (Hain III)*, No. 16-CV-4581, 2022 WL 18859055 (E.D.N.Y. Nov. 4, 2022), *report and*

conclusions of Magistrate Judge Lee G. Dunst's Report and Recommendation ("R&R"), *In re Hain Celestial Grp. Inc. Sec. Litig. (Hain III)*, No. 16-CV-4581, 2022 WL 18859055 (E.D.N.Y. Nov. 4, 2022), the district court (Joanna Seybert, *Judge*) granted the Defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), concluding that the Plaintiffs had failed to adequately allege that the Defendants acted with scienter, *In re Hain Celestial Grp. Inc. Sec. Litig. (Hain IV)*, No. 16-CV-4581, 2023 WL 6360345, at *14-18 (E.D.N.Y. Sep. 29, 2023).

On appeal, we conclude that the Plaintiffs have adequately alleged that the Defendants made actionable misstatements in connection with Hain's channel-stuffing practices and did so with scienter under Rule 10b-5(b); they also sufficiently alleged loss causation. We further determine that the Plaintiffs' claims for control-person liability against the Individual Defendants under Section 20(a) of the Exchange Act may proceed. For the reasons set forth in further detail below, we **VACATE** the district court's order dismissing the Plaintiffs' Complaint and **REMAND** the matter for further proceedings consistent with this opinion.

BACKGROUND

I. Factual History

The following facts are drawn primarily from the factual allegations of the Plaintiffs' Complaint, which we treat as true for present purposes, "drawing all reasonable inferences in favor of [the] Plaintiffs to the extent that the inferences are plausibly sup-

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recommendation adopted (Hain IV), No. 16-CV-4581, 2023 WL 6360345, at *17–*18 (E.D.N.Y. Sep. 29, 2023) (dismissing Complaint with prejudice again).

ported by allegations of fact." *Hain*, 20 F.4th at 133. The Complaint relies on allegations from eight unnamed confidential witnesses ("CWs"), seven of whom are former Hain employees, and one of whom worked for a company that provided warehousing services for Hain. We generally consider and take as true allegations by CWs at the pleadings stage so long as the CWs "are described in the complaint with sufficient particularity to support the probability that a person in the position occupied by the source would possess the information alleged." *Emps.' Ret. Sys. of Gov't of the Virgin Islands v. Blanford*, 794 F.3d 297, 305 (2d Cir. 2015). The Complaint also incorporates by reference various publicly available documents, such as SEC filings, an SEC order, and earning calls transcripts, of which we take judicial notice. *See San Leandro Emergency Med. Grp. Profit Sharing Plan v. Philip Morris Cos.*, 75 F.3d 801, 808–09 (2d Cir. 1996).

A. Hain's Alleged Channel-Stuffing Scheme

Hain is a leading marketer, manufacturer, and seller of organic, natural, and personal care products, which it sells primarily to specialty and natural food distributors, supermarkets, and select e-commerce retailers. In the early 2010s, Hain faced stiffening competition from other brands and retailers offering a similar selection of natural and organic foods, which weakened demand for Hain's products. Hain feared that it could meet neither its own financial projections nor the predictions made by Wall Street financial analysts about Hain's financial performance—shortcomings that could send Hain's stock prices tumbling. Hain resorted to "channel stuffing," offering its distributors significant concessions to purchase substantial quantities of product in advance

of the distributors' typical purchasing patterns. *See Greebel v. FTP Software, Inc.*, 194 F.3d 185, 202 (1st Cir. 1999); *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998). But channel stuffing may exact a heavy toll: By pulling sales forward, the company artificially inflates its present sales at the expense of its future performance—it robs Peter to pay Paul. *See Steckman*, 143 F.3d at 1298. Among the concessions Hain allegedly offered its distributors to front-load their purchases were (1) cash incentives as high as $500,000 for a single distributor in a single quarter; (2) product discounts of up to 20%; (3) extended payment terms; (4) spoils coverage, or reimbursements for excess product that spoiled or expired; and (5) an absolute right to return unsold product.

Hain's channel stuffing worked roughly as follows. Each quarter, Hain publicly reported its financial results and provided investors with guidance on its projected net sales and earnings per share. Independent Wall Street financial analysts then established consensus prospective quarterly estimates, i.e., financial benchmarks for the company, that were generally consistent with Hain's guidance and predicted continued sales growth for the company. Investors used these forecasts to gauge a company's financial performance and health, but a company's failure to meet these "Street expectations" could trigger a decline in the company's stock price.

That all is standard practice—but here's the rub: As sales weakened during the Class Period, Hain faced a "sales shortfall" between its actual, mid-quarter results and its projected figures. Joint App'x 208 ¶ 63. To bridge that gap, Carroll, the CEO of Hain North America, obtained the mid-quarter

numbers, estimated the sales shortfall, and, along with Hain President and CEO Simon, enticed Hain's distributors to take on additional inventory by offering the various concessions. Carroll and Simon then directed Hain brand managers to ship the excess inventory to distributors. By pulling forward these sales, Hain could report to investors that it had met its performance benchmarks without disclosing its declining financial prospects.

For one key Hain distributor, United Natural Foods, Inc. ("UNFI"), end-of-quarter sales were especially prominent. Hain and UNFI agreed to quarterly inventory purchasing targets of around $90 million per quarter; however, UNFI communicated to Hain that it might miss these targets by as little as $10 million and as much as $30 million. To ensure that UNFI would meet its targets, Hain negotiated "off-contract" incentives and concessions. UNFI bought between 52-64% of its inventory based on these off-contract incentives, constituting more than 15% of Hain's entire U.S. quarterly sales.[5] Hain relied on similar tactics with another key distributor, Walmart Stores, Inc., which accounted for around 8% of Hain's net U.S. sales.

But these channel stuffing practices raised serious accounting issues. For one, as Hain later disclosed, although Hain negotiated these concessions "off-contract" or in "side agreements"—rather than in, for instance, its annual sales contracts—it did not have effective internal controls to "identify, accumulate[,] and assess the accounting impact" of these arrangements. Joint App'x 231–32 ¶ 147. Indeed, Hain's

[5] The U.S. business segment, in turn, represented around half of Hain's global net sales during the Class Period.

agreements with UNFI were, according to a subsequent SEC investigation, "typically memorialized only in email correspondence with the distributor," and some incentives agreed to only "orally." *Id.* at 361 ¶ 9. Moreover, Hain allegedly resorted to using millions of dollars' worth of credits and accruals[6] to offset sales deficits on its balance sheet. But Hain accounted for the "credits and off-invoice concessions as revenue as soon as the shipments left the warehouse." *Id.* at 209 ¶ 64; *see id.* at 215 ¶ 82. And because of the size of the credits and accruals and the ensuing "drop off" in sales following Hain's end-of-quarter product push, *id.* at 212 ¶ 76, Hain's Chief Operating Officer ("COO") and non-defendant James Meiers "smoothed out" and "chang[ed]" the credits, concessions, and sales and revenue numbers to make the numbers "look pretty," *id.* at 209, ¶ 64, 220–21 ¶ 104.

Booking Hain's shipments as revenue as soon as they went out the door also proved especially troublesome because, according to the CWs, Hain offered its distributors an "absolute right to return" product with no obligation to pay. Joint App'x 207 ¶ 59. One CW reported having routinely processed hundreds of thousands of dollars in quarterly product returns, including $700,000 in one quarter of 2015 alone. Nonetheless, Meiers sent the sales and revenue numbers for inclusion in Hain's SEC filings to Hain's

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[6] In "accrual basis" accounting, an accrual is revenue that is actually earned but not yet paid, whereas in "cash basis" accounting, "revenues are recognized when cash is received (as opposed to earned)." *Setzer v. Omega Healthcare Invs., Inc.*, 968 F.3d 204, 209 n.8 (2d Cir. 2020). One CW reported becoming wary about the size and legitimacy of the accruals used to offset sales deficits. Joint App'x 215–16 ¶ 85.

CFO (either Smith or Conte), who signed off on Hain's accounting statements and certified their accuracy.

In addition to presenting accounting problems, the channel-stuffing practices were also unsustainable. The following fiscal quarter, distributors often returned the excess inventory from the previous quarter, "and the process would begin again, although with an increasingly larger deficit due to the prior quarter's credits [for returns] and off-invoice concessions." *Id.* at 209 ¶ 65. Faced with declining end-customer demand for Hain's products, distributors also began to hit an inventory wall, reaching their capacity. All the while, the Defendants made repeated public statements attributing Hain's strong growth in sales numbers to "strong consistent consumer demand" and other "organic" factors, while failing to disclose how the channel-stuffing practices artificially inflated sales figures. *See, e.g.*, *id.* at 259 ¶ 257, *id.* at 260 ¶ 260, *id.* at 262 ¶ 266.

B. The Channel-Stuffing Scheme Unravels

Around late 2015, things fell apart. As sales ebbed, accruals and credits flowed. Filled to the brim with inventory, Hain's distributors informed Hain that they would no longer accept more inventory than necessary. Hain's newly arrived Treasurer James Langrock, brought onboard in late 2015 and "surprised" by what he found in Hain's books, questioned "how [Hain was] accounting for" its various practices. *Id.* at 224–25 ¶¶ 115, 117. He subsequently brought in external auditors, including Ernst & Young ("EY").

On January 11, 2016, as EY began to dig into Hain's books, Hain cut its quarterly and annual

guidance, announcing that it anticipated its full-year sales to be $70 million less than expected and its earnings per share in the range of $1.95-$2.10, below its previous issued guidance of $2.11-$2.26. On January 21, 2016, Hain revealed in an SEC filing that Ross Weiner resigned from his positions as Vice President of Finance and Chief Accounting Officer, allegedly because "he did not like what he was seeing regarding the off-invoice concessions offered to distributors." *Id.* at 226 ¶ 122. Despite Simon's assurances to investors on January 22, 2016, that there is "nothing wrong with Hain's accounting at all," Hain's share price declined 7% between January 21 and January 25, 2016, from $36.10 a share to $33.46. *Id.* at 226 ¶¶ 123–24.

On August 15, 2016, Hain also announced that it would delay its release of its 2016 financial results because "the Company identified concessions that were granted to certain distributors in the United States [and] . . . is currently evaluating whether revenue associated with those concessions was accounted for in the correct period and is also currently evaluating its internal control over financial reporting." *Id.* at 226–27 ¶ 125. Hain disclosed that it was reevaluating whether it should have recognized revenue associated with concessions when its products sold through the distributors to *end customers*, rather than at the time of shipment to *distributors*, as it had been doing. From August 15 to 16, 2016, Hain's share price fell by 26%, from $53.40 to $39.35 per share, shaving $1.6 billion off of Hain's market capitalization. On August 30, 2016, Hain informed the SEC that it would not be able to file its annual Form 10-K report for Fiscal Year 2016 by the filing deadline because of its reevaluation of its revenue-recognition policies.

Although Hain announced in a November 16, 2016, press release that it had completed its internal audit without finding any "evidence of intentional wrongdoing," it disclosed that it had "begun to implement a remediation plan to strengthen its internal controls and organization" and was still unable to release financial results. *Id.* at 228 ¶ 132. Despite the purported conclusion of its internal investigation, on the final day of the Class Period, February 10, 2017, Hain announced it had expanded the scope of its internal investigation to encompass its historical financial results and that the SEC had launched a formal investigation of Hain and issued subpoenas seeking relevant documents. Hain's stock price fell a further 8%, from $38.53 to $35.10 per share. Over the next months, Hain removed Carroll from his role as CEO for North America, received notice that its stock was subject to delisting from the National Association of Securities Dealers Automated Quotations ("NASDAQ"), and obtained several additional extensions for the deadline to file its financial results.

C. Hain Restates its Financial Results

On June 22, 2017, having failed to publicly file any financial reports for almost a year, Hain issued its belated Report on Form 10-K for Fiscal Year ("FY") 2016, as well as its Reports on Form 10-Q for the first, second, and third quarters of FY 2017. Hain admitted that it identified "deficiencies that constituted individually, or in the aggregate, material weaknesses in [its] internal control over financial reporting as of June 30, 2016," including an ineffective control environment and inadequate revenue-recognition mechanisms. *Id.* at 231–32 ¶ 147. Specifically, it acknowledged, "both [its] fiscal 2016 and fiscal 2015 net sales benefited from certain

concessions provided to [its] largest distributors, including payment terms beyond the customer's standard terms, rights of return of product[,] and post-sale concessions, most of which were associated with sales that occurred at the end of each respective quarter." *Id.* at 231 ¶ 146.

In conjunction with these disclosures, Hain restated its historic financials, disclosing that it overstated its net sales by $167 million—2.1%, 2.9% and 1.9% in FY 2014, FY 2015 and for the nine months ending March 31, 2016, respectively—and its GAAP earnings per share by $0.13 for Fiscal Years 2014, 2015 and the first three quarters of FY 2016. Despite having previously reported financial results that met Wall Street's consensus estimates for three of the six quarters from FY 2015 through the second quarter of FY 2016, Hain's restatement revealed that it would have missed those estimates in *every quarter* had it engaged in proper accounting practices. Hain also announced that CFO Conte was being replaced by James Langrock, effective immediately; according to a CW, Hain also terminated several senior members of its financial team, including its Controller Marla Hyndman.

Hain's business subsequently nosedived. In the first nine months of FY 2017, U.S. net sales fell 14% year-over-year, and net income and earnings per share each plummeted 51.1%. These numbers, the CEO of Hain North America acknowledged, were "obviously a significant hit for [Hain] to take." *Id.* at 235 ¶ 154.

D. SEC Investigation and Settlement

On December 11, 2018, the SEC concluded its almost two-year-long investigation and announced it

had entered a consent decree with Hain (the "SEC Order"). *See id.* at 358–65. Hain admitted that it violated Section 13(b)(2)(A) of the Exchange Act, which requires Hain to make and keep records that accurately and fairly reflect Hain's transactions, and Section 13(b)(2)(B), which requires Hain to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are executed in accordance with management's authorization and in conformity with GAAP.

The SEC Order recounted its findings. It stated that Hain had engaged in "end of quarter sales" in which Hain asked its two leading distributors—which together accounted for 30% of Hain's U.S. net sales—to purchase specific dollar values of inventory by quarter-end, in exchange for the following incentives:

> (1) cash incentives (up to $500,000), (2) extended payment terms (up to 90 days), (3) discounts off list price (up to 20% off), and (4) spoils coverage, whereby Hain agreed to reimburse the distributor for products that spoiled or expired before the distributor could sell through to retailers.

Id. at 360. While the SEC Order stated that the "vast majority of the products purchased in connection with [end-of-quarter] sales . . . ultimately sold through to retailers," and "[n]one of these types of incentives are improper," it noted that these incentives "could have financial reporting implications." *Id.* at 360–61. Moreover, it concluded that "Hain lacked sufficient policies and procedures to provide reasonable assurances that [end-of-quarter] sales were accounted for properly." *Id.* at 361. Ultimately, in part because Hain engaged in rem-

edial acts, self-reported to the SEC, and assisted with its investigation, the SEC declined to impose a civil penalty. It did, however, order Hain to cease and desist from committing violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

II. Procedural History

The case before us already has a lengthy procedural history. On August 17, 2016, three plaintiffs filed separate securities fraud actions against Hain, which the district court consolidated, appointing Lead Plaintiffs. On September 7, 2017, Plaintiffs filed a second complaint, adding additional individual defendants.

A. Prior Proceedings

On March 29, 2019, the district court[7] dismissed the Plaintiffs' allegations under Sections 10(b) and 20(a) of the Exchange Act and Rule 10(b)-5 without prejudice and granted the Plaintiffs leave to amend. *See Hain I*, 2019 WL 1429560, at *22. The Plaintiffs filed their operative Complaint on May 6, 2019, and, responding to the district court, added additional allegations, including those based on additional CWs.

On April 6, 2020, the district court again dismissed the Plaintiffs' Complaint, this time with prejudice. *See Hain II*, 2020 WL 1676762, at *17. The court dismissed the Plaintiffs' claims under Rule 10b-5(a) and (c),[8] which prohibits the "employ[ment of] any device, scheme, or artifice to defraud," 17 C.F.R.

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[7] At this time, Judge Arthur B. Spatt presided over the case; the case was transferred to Judge Seybert after Judge Spatt's passing.

[8] As discussed below, these claims are not before us on this appeal.

§ 240.10b–5(a), and "engage[ment] in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person," *id.* § 240.10b–5(c). *Hain II*, 2020 WL 1676762 at *9–12. The court determined that the Plaintiffs had not sufficiently alleged an "absolute right to return" purchased product, *Hain II*, 2020 WL 1676762, at *11; this absolute right to return was dispositive to these "scheme liability" claims, the court held, because "[c]hannel stuffing becomes a form of fraud only when it is used to book revenues on the basis of goods shipped but not really sold because the buyer can return them," *id.* at *10–11 (quoting *Makor Issues & Rts., Ltd. v. Tellabs Inc.*, 513 F.3d 702, 709 (7th Cir. 2008)). The court then dismissed the Plaintiffs' Section 10(b) and Rule 10b-5(b) claims because the court had already determined that the channel-stuffing scheme was legitimate. *Id.* at *12 ("This theory fails because its predicate is the illegitimacy of the channel stuffing practices the Court already found to be legitimate."). The court also reached the issue of scienter, concluding that although the Plaintiffs' allegations were "quite close" to meeting their burden, they nonetheless failed to do so. *Id.* at *14–17. The Plaintiffs timely appealed from the district court's dismissal of their allegations of a violation of Rule 10b-5(b), but not clauses (a) and (c).

On appeal, we vacated the district court's judgment and remanded the case for the district court to reconsider the Defendants' motion to dismiss. *See Hain*, 20 F.4th at 138. We concluded that the district court had erred in dismissing the Plaintiffs' Rule 10b-5(b) claim because whether the channel-stuffing scheme is itself fraudulent under 10b-5(a) or (c) is not dispositive to a Rule 10b-5(b) claim, which focuses "not on schemes, devices, or practices, but on state-

ments made." *Id.* at 136–37. Rule 10b-5(b), we elaborated, "does not require that conduct underlying a purportedly misleading statement or omission amount to a fraudulent scheme or practice." *Id.* at 137. We clarified that the success of the Plaintiffs' theory—"that [the] Defendants made statements attributing Hain's high sales volume to strong consumer demand, while omitting to state that increased competition had weakened consumer demand and that Hain's high sales volume was achieved in significant part by the offer of unsustainable channel stuffing incentives," *id.* at 137—depends on whether "something said was materially misleading, either because it included a false statement of a material fact or because it omitted to state a material fact which omission rendered the things said misleading," *id.* at 136. We therefore vacated the district court's decision that the Complaint failed to satisfy Rule 10b-5(b)'s requirements. *Id.* at 137.

As to scienter, we concluded that the district court erred twice. First, the district court's mistaken understanding of the Plaintiffs' theory "inevitably affected" its scienter analysis, requiring reconsideration. *Id.* Second, we determined that the court erred in failing to "assess the total weight of the circumstantial allegations together with the allegations of motive and opportunity." *Id.* at 137–38. We directed the district court to consider anew whether the Complaint sufficiently stated a Rule 10b-5(b) claim. *Id.* at 138.

B. The District Court's Opinion on Remand

On remand, the Defendants' motion to dismiss was referred to Magistrate Judge Lee G. Dunst. Judge Dunst issued a report and recommendation ("R&R") recommending that the district court grant the

Defendants' motion to dismiss with prejudice, concluding that the Plaintiffs had failed to adequately plead (1) any actionable misstatement or omission under Rule 10b-5(b) and (2) scienter. *See Hain III*, 2022 WL 18859055, at *34.

On September 29, 2023, Judge Seybert issued a memorandum and order adopting much of the R&R. *See Hain IV*, 2023 WL 6360345, at *18. While the court "concur[red]" with "Magistrate Judge Dunst's threshold recommendation finding that [the] Plaintiffs have failed to plead an actionable misstatement or omission," *id.* at *14, it explicitly adopted only the R&R's "scienter-related recommendations," *id.* at *18. Because the court concluded that the Plaintiffs had failed to make the requisite scienter allegations, it dismissed the Plaintiffs' Rule 10(b) and Rule 20(a) claims and denied the Plaintiffs leave to amend their Complaint. *Id.* at *18. The Plaintiffs appeal for a second time.

DISCUSSION

I. Applicable Law

A. Standard of Review

We review the district court's dismissal of a complaint for failure to state a claim *de novo*. *Johnson v. Nextel Commc'ns, Inc.*, 660 F.3d 131, 138 (2d Cir. 2011). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

"Any complaint alleging securities fraud must satisfy the heightened pleading requirements of the [Private Securities Litigation Reform Act of 1995

(the "PSLRA")] and Fed. R. Civ. P. 9(b) by stating with particularity the circumstances constituting fraud." *ECA, Loc. 134 IBEW Joint Pension Tr. of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 196 (2d Cir. 2009). Under the PSLRA's heightened pleading requirement, the plaintiff must "(1) 'specify each statement alleged to have been misleading [and] the reason or reasons why the statement is misleading,' and (2) 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind,'" i.e., scienter. *Tellabs*, 551 U.S. at 321 (quoting 15 U.S.C. §§ 78u–4(b)(1), 78u–4(b)(2)). While we "normally" draw all reasonable inferences in favor of the plaintiff, "the PSLRA establishes a more stringent rule for inferences involving scienter because the PSLRA requires particular allegations giving rise to a strong inference of scienter." *ECA*, 553 F.3d at 196.

B. Securities Law

The Plaintiffs' primary claims are brought pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and the relevant provision of its implementing regulation, Rule 10b-5(b), 17 C.F.R. § 240.10b–5(b). Section 10(b) makes it unlawful for "any person, directly, or indirectly . . . [t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of" rules and regulations promulgated by the SEC for the protection of investors. 15 U.S.C. § 78j(b). Rule 10b-5(b), in turn, makes it unlawful 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."[9] 17 C.F.R. § 240.10b–5(b). As we explained when this case was last on appeal, violations of Rule 10b-5(b) "do[] not require that the defendant have used a fraudulent or otherwise illegal device, scheme, artifice, act, practice, or course of business" but rather turn on "whether something said was materially misleading, either because it included a false statement of a material fact or because it omitted to state a material fact which omission rendered the things said misleading." *Hain*, 20 F.4th at 136.

To succeed on a Section 10(b) claim, "a plaintiff must prove (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 157 (2008). The Plaintiffs also bring Section 20(a) control-person liability claims against the Individual Defendants, which require an adequately pleaded Rule 10b-5(b) claim as a predicate. *ECA*, 553 F.3d at 207.

C. Channel Stuffing

Channel stuffing is not necessarily fraudulent: Offering distributors concessions is a common practice, *see Tellabs*, 551 U.S. at 325, and there may be legitimate reason for a company "pressing for sales to be made earlier than in the normal course," *Greebel*,

[9] The Supreme Court has found an implied private right of action in Section 10(b) and Rule 10b–5. *See Macquarie Infrastructure Corp. v. Moab Partners, L. P.*, 601 U.S. 257, 260 (2024).

194 F.3d at 202, such as to "incite [its] distributors to more vigorous efforts to sell the stuff lest it pile up in inventory," *Makor*, 513 F.3d at 709. However, channel stuffing may become fraudulent when it is "done to mislead investors." *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1262 (11th Cir. 2006). Parsing between "[a] certain amount of channel stuffing [that] could be innocent," *Makor*, 513 F.3d at 709, and illegitimate channel stuffing done to mislead investors has been no easy task for courts. In *Tellabs*, the Supreme Court suggested that a company "writing orders for products customers had not requested" is the "illegitimate kind" of channel stuffing, 551 U.S. at 325; on remand, the Seventh Circuit opined that channel stuffing becomes fraudulent "only when it is used . . . to book revenues on the basis of goods shipped but not really sold because the buyer can return them" because the conditions of revenue recognition—the transfer of "ownership and its attendant risks"—have not actually occurred. *Makor*, 513 F.3d at 709.

As we previously explained in this case, a plaintiff proceeding under Rule 10b-5(b)[10] may successfully plead securities fraud even when the alleged channel-stuffing practices are not themselves "fraudulent or otherwise illegal" because Rule 10b-5(b) focuses "on whether something said was materially misleading, either because it included a false statement of a material fact or because it omitted to state a material

[10] Two other provisions of Rule 10b-5, clauses (a) and (c), impose liability on public companies for "use of a fraudulent or deceptive device, scheme, artifice, act, or practice." *Hain*, 20 F.4th at 136. Because these provisions are not before us, we do not consider the circumstances in which channel stuffing might become a fraudulent scheme in and of itself.

fact which omission rendered the things said misleading," rather than on whether "that conduct underlying a purportedly misleading statement or omission amount to a fraudulent scheme or practice." *Id.* at 136–37. In our Circuit, courts have recognized two relevant scenarios in which a company may incur liability under Rule 10b-5(b) in connection with channel-stuffing practices.

First, district courts have recognized that channel stuffing may give rise to liability if it results in improper revenue recognition and, therefore, false financial statements and violations of GAAP. *See, e.g.*, *Plumbers & Pipefitters Nat. Pension Fund v. Orthofix Int'l N.V.*, 89 F. Supp. 3d 602, 608–09, 616 (S.D.N.Y. 2015) (concluding, where the plaintiff alleged that the defendant engaged in "large bulk sales to distributors designed to inflate revenue before the end of a quarter" and the defendant restated its financial results and admitted violations of GAAP, that the plaintiff adequately alleged a securities-fraud claim). Improper revenue recognition could occur, for example, if the company offers its distributors the "right to return" product and fails to account for those returns, or if it does not properly recognize the costs associated with the incentives used to induce channel stuffing. Of course, even if channel stuffing requires financial corrections or results in false affirmations of GAAP compliance, those misstatements must be material, and a plaintiff must adequately plead scienter for a cognizable securities-fraud claim to obtain. *See Novak v. Kasaks*, 216 F.3d 300, 309 (2d Cir. 2000) ("Only where such allegations [of GAAP violations or accounting irregularities] are coupled with evidence of corresponding fraudulent intent might they be sufficient.").

A second possibility—regardless of whether the company restated its financial results—is that the company made misleading statements about, for example, the company's financial success or channel inventory levels without disclosing its reliance on channel stuffing. *See Hain*, 20 F.4th at 136–37 (holding that a company may incur liability based "on whether something said was materially misleading" in connection with channel stuffing on Rule 10b-5(b) claim); *see, e.g.*, *Okla. Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc.*, 367 F. Supp. 3d 16, 31–34 (S.D.N.Y. 2019) (concluding that the defendants' statements about inventory levels, revenue growth, and price harmonization were actionable in light of channel-stuffing allegations); *San Antonio Fire & Police Pension Fund v. Dentsply Sirona Inc.*, 732 F. Supp. 3d 300, 316 (S.D.N.Y. 2024) (statements about "the strength and sustainability of the company's earnings in general and demand for [the] products in particular" are misleading if "much of [the company's] sales were due to channel stuffing"); *In re SolarEdge Techs., Inc. Sec. Litig.*, No. 23-CV-9748, 2024 WL 4979296, at *7 (S.D.N.Y. Dec. 4, 2024) ("Plaintiffs have adequately pleaded that it was misleading for [the defendant] to attribute increased revenues in late 2022 to a variety of factors meanwhile omitting that part of the increase in revenues was caused by a practice of channel stuffing."). Failing to disclose the existence of channel stuffing, under this theory, is misleading because investors would want to know that revenue is not being driven by increased demand but by sales tactics that will likely prove unsustainable once distributors reach maximum inventory and the company can no longer flood them with product.

Mindful of these principles, we turn to the Plaintiffs' allegations.

II. Actionable Misstatements

We first examine whether the Plaintiffs have plausibly alleged actionable misstatements. The district court noted only that it concurred with the portions of the R&R that concluded that the Plaintiffs had failed to allege such actionable misstatements and omissions, *Hain IV*, 2023 WL 6360345, at *14, but did not specifically adopt those portions of the R&R into its findings, *see id.* at *18 ("The Court adopts Magistrate Judge Dunst's scienter-related recommendations."). So, although the district court did not reach the misstatement issue, we first consider the alleged actionable misstatements because our conclusions as to which statements are actionable are, of course, relevant in determining whether the Defendants acted with scienter in making them.

A. Legal Principles

Under Rule 10b–5(b), it is unlawful to (1) "make any untrue statement of a material fact," or (2) "omit to state a material fact necessary in order to make the statements made . . . not misleading." 17 C.F.R. § 240.10b–5(b). These prongs correspond to two actionable theories under Section 10(b) and Rule 10b–5: (1) a false statement, i.e., "an actual statement . . . that is . . . 'untrue' outright," and (2) a half-truth, i.e., a "representation[ ] that state[s] the truth only so far as it goes, while omitting critical qualifying information."[11] *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 239–40 (2d Cir. 2016).

[11] We use the term "half-truth," rather than "omission," to avoid confusion with non-actionable, "pure omissions." *See*

A false statement is the most intuitive: it must, of course, be false at the time it was made, and the plaintiff must demonstrate with specificity why the statement is false. *Rombach v. Chang*, 355 F.3d 164, 172 (2d Cir. 2004).

A half-truth theory involves more nuance. A classic contract-law example of a half-truth is "the seller who reveals that there may be two new roads near a property he is selling, but fails to disclose that a third potential road might bisect the property." *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 188–89 (2016). For securities-fraud claims, although "§ 10(b) and Rule 10b–5 do not create an affirmative duty to disclose any and all material information," *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44 (2011), once "a company speaks on an issue or topic," it must "tell the whole truth," *Meyer v. Jinkosolar Holdings Co.*, 761 F.3d 245, 250 (2d Cir. 2014). That is, when a company does speak, it assumes "a duty to be both accurate and complete," *Caiola v. Citibank, N.A., N.Y.*, 295

Vivendi, 838 F.3d at 240 n.9. "[T]he difference between a pure omission and a half-truth is the difference between a child not telling his parents he ate a whole cake and telling them he had dessert." *Macquarie*, 601 U.S. at 264. Although we had previously held that liability may arise under a "pure omission" theory—omissions when the "corporation is subject to a duty to disclose the omitted facts," such as where a different statutory or regulatory provision obligates the company to speak affirmatively, *Vivendi*, 838 F.3d at 239–40 & n.8—the Supreme Court has since clarified that they are not actionable under Rule 10b–5(b), *see Macquarie*, 601 U.S. at 264; *Maso Cap. Invs. Ltd. v. E-House (China) Holdings Ltd.*, No. 22-355, 2024 WL 2890968, at *4 (2d Cir. June 10, 2024) (summary order) ("Rule 10b–5(b) does not proscribe pure omissions, but instead covers half-truths by requiring disclosure of information necessary to ensure that statements already made are clear and complete.").

F.3d 312, 331 (2d Cir. 2002), and adequate disclosure is required to make other statements, "in light of the circumstances under which they were made, not misleading," *Meyer*, 761 F.3d at 250. To determine whether a statement is misleading, our inquiry is objective, from the perspective of a "reasonable investor," considering not only a statement's "literal truth" but also its "context and manner of presentation." *Singh v. Cigna Corp.*, 918 F.3d 57, 63 (2d Cir. 2019).

The plaintiff must also adequately allege that the misstatement or half-truth is "material," meaning that "a reasonable investor would have considered [it] significant in making investment decisions." *Caiola*, 295 F.3d at 329. In other words, there must be a "substantial likelihood" that the statement or omission "would have been viewed by the reasonable investor as having significantly altered the total mix of information made available." *Matrixx*, 563 U.S. at 38.

Here, the Plaintiffs allege that Defendants made both actionable false statements to investors related to Hain's financial results and accounting practices and misleading "half-truths" in failing to disclose their reliance on channel stuffing when attributing their financial success and discussing inventory levels.

B. Misstatements under Accounting Fraud Theory

We first conclude that the Plaintiffs have plausibly alleged that the Defendants made a series of material misstatements about, among other things, Hain's financial results, its compliance with GAAP, the existence of effective internal controls, its description

of its revenue-recognition policies, and its certifications in its SEC filings that, among other things, those filings did not contain any untrue or misleading statements of material fact and rested on adequate internal controls (the "SOX certifications").[12] *See, e.g.*, Joint App'x 238–57 ¶¶ 163–250 (detailing false statements in Hain's financial results); *id.* at 271–72 ¶¶ 294–96 (Hain's compliance with GAAP); *id.* at 272–73 ¶¶ 297–99 (Hain's revenue-recognition policies); *id.* at 273 ¶¶ 300–02 (Hain's statement that "incentives are deducted from our gross sales to determine reported net sales"); *id.* at 273–74 ¶¶ 303–05 (Hain's statement that "[a]ccruals for trade promotions are recorded primarily at the time a product is sold to the customer based on expected levels of performance"); *id.* at 274–77 ¶¶ 306–12 (SOX certifications); *id.* at 277–81 ¶¶ 313–19 (Hain's statements about the existence of adequate internal controls). Hain's subsequent restatement of its financial results and disclosure of material weaknesses in its internal controls and financial-reporting and accounting practices, *see id.* at 231–33 ¶¶ 147–49, suffice to establish that these statements were in fact false

[12] The Defendants' principal argument on this score is that the Plaintiffs abandoned these claims, a conclusion with which the R&R agreed. *See Hain III*, 2022 WL 18859055, at *16–17. However, our review of the record reveals that the Plaintiffs maintained that these statements were false and material before both the magistrate judge and the district court. *See, e.g.*, Joint App'x 947 (the Plaintiffs' opposition to Defendants' motion to dismiss before the magistrate judge stating that "Hain's quarterly and annual reported financial results during the Class Period, including net sales, net income, and EPS, were materially overstated in violation of GAAP because the Company failed to account for the off-invoice sales concessions and incentives granted to distributors, including with respect to revenue recognition").

at the time they were made,[13] *see, e.g.*, *Fresno Cnty. Emps.' Ret. Ass'n v. comScore, Inc.*, 268 F. Supp. 3d 526, 544 (S.D.N.Y. 2017) ("In light of [the defendant's] admission that it must restate its financial statements, there can be no dispute that the [complaint] pleads numerous false and misleading misstatements with respect to revenue, revenue related metrics, and [the defendant's] compliance with GAAP."); *In re Atlas Air Worldwide Holdings, Inc. Sec. Litig.*, 324 F. Supp. 2d 474, 486 (S.D.N.Y. 2004) ("Although a restatement is not an admission of wrongdoing, the mere fact that financial results were restated is sufficient basis for pleading that those statements were false when made.").

C. Actionable "Half-Truths" in Failing to Disclose Channel-Stuffing Practices

We also conclude that the Defendants made a series of actionable misleading, "half-true" state-

[13] The SOX certifications are statements of opinion, which may be actionable if, among other things, that statement does not rest on the issuer's "meaningful inquiry" or "fairly align with the information in the issuer's possession at the time." *New Eng. Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo*, 122 F.4th 28, 46–47 (2d Cir. 2023). As the Defendants press, a subsequent restatement of financial results or disclosure of material weaknesses in internal controls, "standing alone, does not mean that the original certified opinions were disingenuous[,] [n]or is a genuinely held opinion that turned out to be wrong necessarily actionable." *Id.* at 47. However, as we explain further below, the Plaintiffs allege that the Defendants never had an internal audit or compliance department and documented the concessions they personally negotiated in potentially deceptive ways. Such allegations, coupled with the later disclosure, suggest that "the speaker kn[ew] or reasonably should [have] know[n] of different material facts" about Hain's internal controls and accounting practices. *Abramson v. Newlink Genetics Corp.*, 965 F.3d 165, 175 (2d Cir. 2020).

ments by failing to disclose to investors their reliance on the channel-stuffing practices when discussing Hain's financial success and inventory levels at its distributors.

As an initial matter, the Plaintiffs have adequately alleged that Hain relied on various channel-stuffing practices to boost its revenues. According to the CW allegations, Hain offered distributors an absolute right to return purchased product. The Defendants counter that the CW allegations are too vague and conclusory to support this conclusion, but this argument founders. We may credit the allegations of the CWs so long as they "are described in the complaint with sufficient particularity to support the probability that a person in the position occupied by the source would possess the information alleged." *Novak*, 216 F.3d at 314. The Plaintiffs' Complaint does just that: CW 6, who served as Senior Manager of Customer Support at Hain, alleged that they alone processed a $700,000 product return from UNFI in just one quarter of 2015, while CW 7, who served as Senior Director of Supply Chain Finance, also reported that Simon negotiated a right of return with UNFI. Hain's disclosure in its FY 2016 SEC filing that its net sales benefited from "rights of return of product" fortifies these allegations. Joint App'x 231 ¶ 146. That disclosure and the subsequent SEC Order together reveal that Hain relied on a host of other practices that may have been of interest to investors, such as quarterly cash incentives of up to $500,000 to distributors, extended payment terms, price discounts of up to 20% off, and spoils coverage, including up to $1.6 million for one distributor in one quarter alone. The Plaintiffs have therefore plausibly alleged that Hain used undisclosed, material sales tactics to meet benchmarks that may have made a

difference in the mind of a "reasonable investor." *Caiola*, 295 F.3d at 329.

Having determined that the Complaint sufficiently alleges that Hain employed various channel-stuffing tactics, we further conclude that the Defendants made a series of actionable misleading statements by failing to disclose their reliance on channel stuffing to meet investor benchmarks. In making these statements, Hain triggered the "half-truth" doctrine—that "once a company speaks on an issue or topic, there is a duty to tell the whole truth," *Meyer*, 761 F.3d at 250—by repeatedly attributing its financial results during the Class Period to factors such as "expanded distribution and brand contribution," Joint App'x 241 ¶ 174, "strong demand for [its] organic and natural brands as demonstrated by the increasing consumption of [its] products," *id.* at 242 ¶ 181, "momentum for organic and natural products," *id.* at 244 ¶ 190, its "diverse portfolio of brands and products," *id.* at 246 ¶ 198, and "strong worldwide demand for [its products]," *id.* at 250 ¶ 219. But it did not disclose that it allegedly achieved its financial results in no small part by granting distributors credits, incentives, spoils coverage, or a right to return product. By "put[ting] the reasons for the company's success at issue, but fail[ing] to disclose a material source of its success, specifically the practice of channel stuffing, the[se] statement[s] [were] materially misleading." *SolarEdge*, 2024 WL 4979296, at *8; *see also San Antonio Fire*, 732 F. Supp. 3d at 316 (concluding that statements discussing strength and sustainability of the company's earnings and demand for its products "would be misleading if (as alleged) the company was having trouble getting the materials to make the products, many of the products it did make didn't

work, and much of its sales were due to channel stuffing"); *Okla. Firefighters*, 367 F. Supp. 3d at 33 ("[A] reasonable investor would likely have found it significant that . . . revenues were driven by inflated channel inventory and not increased end-user demand because those forces fundamentally differ in sustainability.").

We similarly conclude that several of the Defendants' statements about distributors' inventory levels were also misleading. For example, on January 12, 2016, the day after Hain cut its quarterly and annual guidance for anticipated sales and earnings, Carroll acknowledged to investors that the guidance cut was "in the area of inventory" but stated that these problems were "one-offs." Joint App'x 267 ¶ 281. If, as the Complaint alleges, demand for Hain's products had waned, and Hain's distributors had already reached their inventory capacity, the characterization of these problems as "one-offs" would be misleading since inventory saturation would persist. *See Novak*, 216 F.3d at 311–12 (holding that the defendants' "reassurances that inventory was under control or giving false explanations for its growth" constituted "conscious misstatements"); *Okla. Firefighters*, 367 F. Supp. 3d at 31 (concluding that statements that channel inventory levels were "flat," "neutral," or had increased only a "bit" were misleading because they failed to mention "the true nature of [the defendant's] channel inventory levels"). For the same reason—that a buildup of inventory based on channel stuffing "would inevitably require a drawdown in future quarters," *Okla. Firefighters*, 367 F. Supp. 3d at 35—several of the Individual Defendants' other statements about inventory levels and declining sales are similarly actionable, s*ee, e.g.*, Joint App'x 258–59 ¶¶ 253–56 (Carroll downplaying inventory concerns

on a February 4, 2014, earnings conference call); *id.* at 266 ¶ 278, 269 ¶ 288, 270 ¶ 291 (Carroll and Conte attributing declining sales to distributor and account shifts, rather than inventory saturation from channel stuffing); *id.* at 269–70 ¶¶ 290–91 (Carroll telling investors that "[w]e're resolving some of the issues we had with retailers, for example, with . . . distributors as we had accounts shift" in response to question about declining sales growth in U.S. segment on a May 4, 2016, earnings call).

The Defendants contend that Hain adequately disclosed these practices to investors, but we are unpersuaded. The "truth-on-the-market" defense invoked by the Defendants provides that "a misrepresentation is immaterial if the information is already known to the market because the misrepresentation cannot then defraud the market." *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 167 (2d Cir. 2000). Here, Hain urges that it disclosed its channel-stuffing practices to investors by stating in SEC filings that it undertook "[s]ales incentives and promotions" such as "price discounts, slotting fees and coupons" in an effort to "support sales of the Company's products." *See, e.g.*, Hain Celestial Group, Inc., Annual Report at 42 (Form 10-K) (Aug. 21, 2015).

The Defendants' argument fails at the pleading stage. We have emphasized that the "corrective information must be conveyed to the public with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by the alleged misstatements" and cautioned that "[t]he truth-on-the-market defense is intensely fact-specific and is rarely an appropriate basis for dismissing a § 10(b) complaint for failure to

plead materiality." *Ganino*, 228 F.3d at 167. For one, Hain's statement that it used various incentives and promotions did not disclose that it offered distributors a right to return product. And because the "truth-on-the-market defense" is a fact-intensive inquiry, whether Hain's generic language about offering sales incentives and promotions sufficiently counterbalanced the statements that attributed sales growth to growing demand should not be resolved at the pleadings stage. *See, e.g.*, *In re Fannie Mae 2008 Sec. Litig.*, 891 F. Supp. 2d 458, 476 & n.12 (S.D.N.Y. 2012), *aff'd*, 525 F. App'x 16 (2d Cir. 2013) (rejecting the defendants' contention that it disclosed sufficient information to "correct, clarify, or render immaterial the purported misstatements" on motion to dismiss). We cannot conclude, for example, that Hain's boilerplate statement that "[s]ales are reported net of sales and promotion incentives" in its revenue-recognition policies,[14] Joint App'x 272 ¶ 297, would inform a reasonable investor that Hain's increasing reliance on credits, discounts, and incentives propelled those sales numbers, *see, e.g.*, *Solomon v. Sprint Corp.*, No. 19-CV-5272, 2022 WL 889897, at *6 (S.D.N.Y. Mar. 25, 2022) (company's general disclosures of its use of promotions "do not defeat the clear impression generated by the company's other statements about the strength of the business overall"). Indeed, the Defendants can hardly be said to have disclosed their channel stuffing when, despite their alleged increasing reliance on the practice, they failed to update these statements year over year, "render[ing] [the statements] meaningless in light of the changing circumstances and risks." *In re Salix*

[14] In any event, it appears that this statement was false in light of Hain's subsequent disclosures.

Pharms., Ltd., No. 14-cv-8925, 2016 WL 1629341, at *12 (S.D.N.Y. Apr. 22, 2016) (concluding that the defendant's cautionary language was inadequate to invoke the PSLRA's safe-harbor provision for forward-looking statements[15]). *Compare* Hain, Annual Report at 42, 61 (Form 10-K) (Aug. 21, 2015) *with* Hain, Annual Report at 37, 54 (Form 10-K) (Aug. 27, 2014).

Nor do the cases cited by the Defendants salvage their argument. For instance, in *Dalberth v. Xerox Corp.*, 766 F.3d 172 (2d Cir. 2014), we concluded on summary judgment that one of the individual defendants adequately disclosed that the company's reorganization of U.S. operations had negative effects on the company's revenue growth where, for example, the individual defendant stated that cash generation was "clearly unsatisfactory" and attributed this problem in part to the company's "reorganization and restructuring," *id.* at 186. This specific disclosure about a discrete problem is miles apart from Hain's generic statement that it generally employed promotions and incentives—just as a child telling his parents that he ate dessert is misleading if he ate the entire cake. *See Macquarie Infrastructure Corp. v. Moab Partners, L. P.*, 601 U.S. 257, 264 (2024).

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[15] Because the PSLRA's safe-harbor provision applies to forward-looking statements, it is not applicable to the Defendants' representations of present fact. *See Okla. Firefighters*, 367 F. Supp. 3d at 33. However, the doctrine's treatment of unchanging, boilerplate language is illustrative here. *See Slayton v. Am. Exp. Co.*, 604 F.3d 758, 772–73 (2d Cir. 2010) (holding that the doctrine requires the defendants to "demonstrate that their cautionary language was not boilerplate and conveyed substantive information" and concluding that cautionary language was mere boilerplate in part because "the defendants' cautionary language remained the same even while the problem changed").

In sum, we conclude that Hain made actionable misstatements when it stated, among other things, its financial results, the existence of adequate internal controls, and its compliance with GAAP. That Hain restated its financials and admitted deficiencies in its practices suffices to establish that they were false at the time they were made. We further conclude that Hain made a series of misleading "half-truths" in discussing the causes of its financial success without disclosing its reliance on channel stuffing.

III. Scienter

We next turn to whether the Plaintiffs have adequately alleged scienter, "a mental state embracing intent to deceive, manipulate, or defraud."[16] *Tellabs*, 551 U.S. at 319. Under the PSLRA, a plaintiff must allege facts giving rise to a "strong inference that the defendant acted with [scienter]," 15 U.S.C. § 78u-4(b)(2)(A), where a "strong inference" means that the inference "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*, 551 U.S. at 314. That inference, however, need not be "irrefutable," of the "smoking-gun genre," or even the "most plausible of competing inferences." *Id.* at 324. Instead, we must consider "whether *all* of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation,

[16] The Individual Defendants' scienter can be imputed to Hain. *See Teamsters Loc. 445 Freight Div. Pension Fund v. Dynex Cap. Inc.*, 531 F.3d 190, 195 (2d Cir. 2008) ("When the defendant is a corporate entity, . . . the pleaded facts must create a strong inference that someone whose intent could be imputed to the corporation acted with the requisite scienter.").

meets that standard," *id.* at 323, and we must take into account inferences favoring both the plaintiff and the defendant, *Blanford*, 794 F.3d at 305.

A plaintiff may establish scienter by alleging facts showing that (1) the defendants had the motive and opportunity to commit fraud, or (2) strong circumstantial evidence of conscious misbehavior or recklessness. *ECA*, 553 F.3d at 198. A plaintiff can also meet his scienter burden with both motive-and-opportunity and circumstantial allegations, considered collectively. *See Hain*, 20 F.4th at 137–38. The Plaintiffs here advance both motive-and-opportunity and recklessness arguments; because a plaintiff who fails to show motive must provide correspondingly stronger circumstantial allegations, *Ark. Pub. Emps. Ret. Sys. v. Bristol-Myers Squibb Co.*, 28 F.4th 343, 355 (2d Cir. 2022), we consider the strength of the Plaintiffs' motive allegations first.

A. Motive and Opportunity

The Plaintiffs first argue that the Individual Defendants had the motive and opportunity to make the false and misleading statements. We generally presume that high-level corporate insiders, such as C-suite executives, have the opportunity to commit fraud. *See In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 74 (2d Cir. 2001). To establish a motive to engage in fraud, "plaintiffs must assert a concrete and personal benefit" to the individuals who allegedly carried out the fraud. *Kalnit v. Eichler*, 264 F.3d 131, 139 (2d Cir. 2001). We have cautioned against inferring motive from a "generalized" desire of individual defendants to see strong corporate performance or higher stock prices, "common to all corporate executives and, thus, too generalized to demonstrate scienter," *id.*—otherwise, "virtually every company in

the United States that experiences a downturn in stock price could be forced to defend securities fraud actions." *ECA*, 553 F.3d at 201. The Plaintiffs allege that we may infer motive from the Individual Defendants' suspicious stock sales and compensation incentives that were tied to erroneous financial statements. We agree.

First, the Plaintiffs have adequately alleged that two of the Individual Defendants, Carroll and Simon, engaged in suspicious stock sales during the Class Period; as a point of comparison to the Class Period sales, the Plaintiffs provide a Control Period from July 30, 2010, to November 4, 2013, a period equal in length to and before the Class Period. During the Class Period, Carroll disposed of approximately 74% of his total shares for more than $24.3 million, and Simon sold 66% of his total for more than $80 million, both of which represent significantly higher volumes and totals than during the Control Period.

We find the timing and volume of stock sales unusual, even if the allegations lack several attributes that might make the inferences drawn in the Plaintiffs' favor even stronger. Although the Plaintiffs did not plead net profits that Carroll and Simon received from the sales, our caselaw instructs that the amount of profits is merely one of several "[f]actors considered in determining whether insider trading activity is unusual," including "the portion of stockholdings sold, the change in volume of insider sales, and the number of insiders selling," *Scholastic*, 252 F.3d at 74–75, and therefore imposes no net-profit pleading requirement. We decline to impose one here. That the Plaintiffs do not allege that the sales occurred in the final 100 days of the nearly four-year-long class period or that two of the other

Individual Defendants, Smith and Conte, engaged in suspicious sales might weaken the strength of the inferences we draw in the Plaintiffs' favor. *Cf. San Leandro*, 75 F.3d at 814 (concluding that the failure of some individual defendants to sell stock during class period undermined the plaintiffs' allegations that any defendant intended to inflate stock for personal profit); *Chapman v. Mueller Water Prods., Inc.*, 466 F. Supp. 3d 382, 412 (S.D.N.Y. 2020) (stating that district courts in our Circuit are "frequently skeptical that stock sales are indicative of scienter where no trades occur in the months immediately prior to a negative disclosure"). But that does not mean we discount the Plaintiffs' allegations altogether. Rather, consistent with the teachings of *Tellabs*, we simply consider at the pleading stage whether "*all* of the facts alleged, taken collectively," support an inference of scienter, even if that inference is "not [] irrefutable." 551 U.S. at 323–24. We therefore abstain from imposing a brightline rule that securities-fraud plaintiffs *must* allege that sales took place in the final 100 days of a class period or that all Individual Defendants engaged in such sales. *See Scholastic*, 252 F.3d at 75 (explaining that *San Leandro* and similar cases did not "establish[] a per se rule that the sale by one officer of corporate stock for a relatively small sum can never amount to unusual trading[;] [r]ather, each case was decided on its own facts"). The Plaintiffs' allegations of motive, taken collectively, tip the scale in their favor.

Second, we give weight to the Plaintiffs' allegations that Simon and Carroll had the motive to commit fraud because bonuses they received were tied to the very metrics that Hain admittedly overstated. To be sure, "[m]otives that are common to most corporate officers, such as the desire for the corporation to

appear profitable and the desire to keep stock prices high to increase officer compensation, do not constitute 'motive' for purposes of this inquiry." *ECA*, 553 F.3d at 198. But we may infer the defendants' "motive to sweep problems under the rug" if the allegations support a "direct link between the compensation package and the fraudulent statements." *Id.* at 201. Here, the Plaintiffs' allegations move the needle because the significant bonuses and stock awards that Simon and Carroll received in FY 2015—a bonus of $5,565,725 and $8,787,355 in stock awards for Simon and a bonus of $711,711 and $1,119,854 in stock awards for Carroll—were tied to the metrics that Hain overstated, including Hain's net sales, net income, and earnings per share. [17] That Simon met his bonus target for net sales in FY 2015 by only 0.1%—and would not have hit that metric had Hain properly accounted for its channel-stuffing practices—suffices to show that the "defendants benefitted in some concrete and personal way from the purported fraud." *Novak*, 216 F.3d at 307–08; *see also San Antonio Fire*, 732 F. Supp. 3d at 318 (motive allegations weigh in favor of scienter where the alleged fraud of several million dollars was "critical" because "the company just barely hit the thresholds necessary for bonuses").

Because we conclude that the Plaintiffs' motive allegations weigh in favor of scienter, the circumstantial evidence need not be as great, although it must still be strong. *See Ark. Pub. Emps.*, 28 F.4th at 355.

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[17] Executive compensation packages may, of course, depend on a host of metrics, but we may infer motive where there is a "direct link" between at least some of the metrics and the alleged fraudulent statements. *ECA*, 553 F.3d at 201.

B. Circumstantial Evidence of Conscious Misbehavior or Recklessness

We next consider the Plaintiffs' allegations of circumstantial evidence of conscious misbehavior or recklessness. Here, recklessness is "highly unreasonable" conduct representing "an extreme departure from the standards of ordinary care" and "approximating actual intent," rather than "merely a heightened form of negligence." *Setzer v. Omega Healthcare Invs., Inc.*, 968 F.3d 204, 214–15 (2d Cir. 2020). "[S]ecurities fraud claims typically have sufficed to state a claim based on recklessness when they have specifically alleged [the] defendants' knowledge of facts or access to information contradicting their public statements." *Id.* at 215. "Under such circumstances, [the] defendants knew or, more importantly, should have known that they were misrepresenting material facts related to the corporation." *Novak*, 216 F.3d at 308.

As discussed above, the Plaintiffs here advance two broad sets of actionable misstatements: (1) false statements about, among other things, Hain's financial results and accounting and internal controls practices, and (2) misleading, half-true statements about Hain's financial success and inventory. While both scienter inquiries turn on the same principle—whether the Defendants "knew or, more importantly, should have known that they were misrepresenting material facts related to the corporation," *Novak*, 216 F.3d at 308—our precise inquiry in applying that principle varies with the type of actionable misstatement. For the false statement theory, the question is whether the Defendants knew or should have known that their revenue-treatment policies and hence their contemporaneous financial state-

ments were incorrect. *See In re Bristol-Myers Squibb Sec. Litig.*, 312 F. Supp. 2d 549, 566 (S.D.N.Y. 2004); *Plumbers & Pipefitters*, 89 F. Supp. 3d at 616–17. For the half-truth theory, we ask whether the Defendants knew or should have known that the channel-stuffing practices and its implications contradicted their statements about Hain's financial success and inventory levels. *See San Antonio Fire*, 732 F. Supp. 3d at 319–20; *Okla. Firefighters*, 367 F. Supp. 3d at 37. Because of the substantial overlap between these inquiries, we consider them together.

i. Confidential Witnesses' Allegations About Individual Defendants

The Plaintiffs first argue that the Individual Defendants' actual knowledge of and active participation in the channel-stuffing practices support an inference of scienter. Again, we have recognized that such circumstantial evidence can support scienter where the defendants "knew facts or had access to information suggesting that their public statements were not accurate." *ECA*, 553 F.3d at 199. We conclude that the Plaintiffs' allegations support a strong inference that the Individual Defendants had actual knowledge of the channel-stuffing practices that made their statements about financial success and inventory misleading.

Start with the Plaintiffs' allegations that Individual Defendants negotiated the concessions and directed Hain employees to push product on distributors. According to the CWs, Carroll requested mid-quarter sales numbers from CW 6 to calculate sales shortfalls, negotiated the credits and off-invoice concessions to make up for sales shortfalls, and informed sales-calls attendees about the concessions. At the end of the fourth quarter of FY 2016, Simon

called the general manager of a customer, BluePrint, told him that BluePrint "needs to make [the forecasted sales numbers] this quarter," and directed CW 2[18] to "push[] inventory" to BluePrint's distributor. Joint App'x 213 ¶ 78. And, according to CW 7, Simon dealt directly with UNFI's owner on the concessions and revenue and could "always make [UNFI] buy more [product] if needed." *Id.* at 218 ¶ 94. These allegations, which we treat as true for present purposes, contradict Hain's public statements attributing its financial success to factors such as strong demand and downplaying inventory issues. *See Scholastic*, 252 F.3d at 73 (concluding that the company's "aggressive sales practices . . . would furnish additional support for the proposition that company officials were aware of declining sales and increasing returns"). They also support scienter as to the false financial and accounting statements because the Individual Defendants knew or had access to information about sales on "loosened terms." *Plumbers & Pipefitters*, 89 F. Supp. 3d at 617.

The CWs' allegations about Hain's accounting practices further support a strong inference of scienter. For example, according to CW 7, Hain pushed out inventory, used credits and accruals to offset sales deficits on its balance sheet, and engaged in creative accounting tactics to smooth out sales, which would plummet in the first month of a subsequent quarter after Hain had pushed its inventory on distributors. Several CWs confirmed that Hain offered its distributors a right to return product: CW 6 reported a $700,000 product return in 2015 and

[18] CW 2 served as a Senior Sales Analyst, "responsible for forecasting, trade planning, and profit and loss analysis at the BluePrint brand business at Hain." Joint App'x 199 ¶ 33.

stated that $500,000 in quarterly returns were on the "low-end" of such returns. Joint App'x 211 ¶ 72. CW 3—who prepared budget materials as an Executive Assistant to COO Meiers—stated that at the end of 2015 and early in 2016, they witnessed a significant increase in returns and credits. CW 7 reported that accruals began to climb into the millions of dollars from a starting point of around $200,000. CW 1 eventually left Hain in June 2016 because he believed "something screwy" was going on with Hain's financial numbers after he saw sales declining but credits increasing to millions of dollars each quarter. Joint App'x 217 ¶ 89.

Burnishing the scienter allegations, the Individual Defendants' involvement continued through concession negotiations and top-down directives to accounting and reporting. After Carroll and Simon directed Hain's managers to ship off-invoice product to distributors, Smith and Conte prepared Hain's financial reports for the public, and they, with Simon, signed off on their accuracy. Notably, Smith and Carroll received weekly reports on sales, inventory, and guidance targets. Such allegations suggest actual knowledge of the alleged unsustainable practices and improper revenue-recognition practices. *See, e.g.*, *Okla. Firefighters*, 367 F. Supp. 3d at 37 (the plaintiffs sufficiently alleged knowledge where the defendants tracked inventory levels and saw data at monthly meetings); *Freudenberg v. E*Trade Fin. Corp.*, 712 F. Supp. 2d 171, 198 (S.D.N.Y. 2010) (conversations and attendance at meetings show "access to and actual knowledge of facts"). That Hain never had an internal audit or compliance department and subsequently disclosed in its Form 10-K for FY 2016 that its "internal controls to identify, accumulate and assess the accounting impact of

certain concessions or side agreements on whether the Company's revenue recognition criteria had been met were not adequately designed or operating effectively," Joint App'x 231–32 ¶ 147; *see also id.* at 362 ¶ 16 (SEC Order finding that Hain maintained insufficient policies), further suggests recklessness on the part of the Defendants, *see San Antonio Fire*, 732 F. Supp. 3d at 321 (collecting district court cases in this Circuit holding that "poor internal controls support an inference of scienter").

Consider next the Plaintiffs' allegations that the Defendants maintained an inappropriate "tone at the top," i.e., a company culture of secrecy and fear, and poor internal controls. *See San Antonio Fire*, 732 F. Supp. 3d at 320–21 (collecting district court cases that have "repeatedly held that improper tone at the top . . . support[s] an inference of scienter"). For example, according to CW1, after Hain's August 15, 2016, announcement that it would delay releasing its FY 2016 financial results, Carroll demanded that "employees refrain from using the term 'loading'" and rephrase it as "'inventory reduction.'" Joint App'x 217–18 ¶ 92. CW7 alleged overhearing Carroll and Simon stating that they were "not supposed" to be discussing their arrangements with UNFI in front of others. *Id.* at 218–19 ¶ 95. And, according to CW 7, Hain executives told one employee who was eventually fired during the class period—to stop asking questions about the end-of-quarter tactics. *Id.* at 223 ¶ 113. Such secrecy insinuates knowledge of wrongdoing.

Bolstering the scienter inference is that the alleged fraud touched on large swaths of Hain's U.S. business and areas of critical import to Hain and its executives, who we may infer "are likely to know

more about things central to their business." [19] *Stadium Cap. LLC v. Co-Diagnostics, Inc.*, No. 22-cv-6978, 2024 WL 456745, at *5 (S.D.N.Y. Feb. 5, 2024). Hain ultimately adjusted its net sales by 2.1%, 2.9%, and 1.9% in FY 2014, FY 2015 and for the nine months ending March 31, 2016, respectively, which, taken together, accounted for about $167 million of $7 billion (around 2.4%) in net sales over a three-year period. The total *size* of this alleged fraud is comparable to other cases in which we have credited scienter allegations, *see Scholastic*, 252 F.3d at 77 (holding that a total of $24 million in charges for book returns "undermines, at the pleading stage, the argument that the defendants were unaware" of any increase in returns), although the figures are not eye-popping as a percentage of net sales, *cf. Salix*, 2016

[19] In making this argument, the Plaintiffs invoke two related doctrines, the "core-operations" and "magnitude of the fraud" doctrines. The core-operations doctrine posits that "scienter may be imputed to key officers who should have known facts relating to the 'core operations' of their company," *In re Wachovia Equity Sec. Litig.*, 753 F. Supp. 2d 326, 352 (S.D.N.Y. 2011), while the magnitude of the fraud doctrine suggests recklessness if the alleged falsity impacted a large portion of the company's sales or operations, *see Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 2000). We have not, however, "clearly affirmed the validity of [the core-operations] doctrine following the passage of the PSLRA," *In Re Renewable Energy Grp. Sec. Litig.*, No. 22-335, 2022 WL 14206678, at *3 n.4 (2d Cir. Oct. 25, 2022) (summary order), although we have suggested that the doctrine "can provide supplemental support for allegations of scienter, even if they cannot establish scienter independently," *New Orleans Emps. Ret. Sys. v. Celestica, Inc.*, 455 F. App'x 10, 14 n.3 (2d Cir. 2011) (summary order). Here, we assume that the size of the alleged fraud, coupled with its importance to Hain's operations, provides supplemental support for the Plaintiffs' other sufficiently pleaded allegations of scienter.

WL 1629341, at *3, 16 (considering a "startling" magnitude of alleged fraud, around 12.5% of sales).

Further tilting the balance in the Plaintiffs' favor, moreover, is the *importance* of this alleged fraud to Hain. *See, e.g.*, *Scholastic*, 252 F.3d at 76–77 (stating that pleaded facts establishing significance of inventory levels to company's financial performance supported allegation that defendants acted recklessly when they failed to acknowledge publicly the company's decreased sales and increased returns); *New Orleans Emps. Ret. Sys. v. Celestica, Inc.*, 455 Fed. App'x 10, 14 & n.3 (2d Cir. 2011) (summary order) (the plaintiffs properly pleaded scienter where "inventory levels" were "key to measuring [the defendant's] financial performance and [were] a subject about which investors and analysts often inquired"). As already recounted, pushing product at the end of quarters through various channel-stuffing tactics was a top-down priority, deemed critical to meet Wall Street financial benchmarks, and involving top Hain executives and the company's most important distributors. Because of the size of the restatement, the importance of the end-of-quarter practices to meet financial targets, and the distributors affected, we infer that the Individual Defendants would have "monitored [these operations] closely," *San Antonio Fire*, 732 F. Supp. 3d at 319, and knew or should have known information contradicting their public statements, *see Okla. Firefighters*, 367 F. Supp. 3d at 37–38 (inferring scienter from allegations of fraud in the defendant's "primary profit engine"). Put simply, it would strain credulity to conclude that the Individual Defendants were unaware of channel stuffing and its potentially insidious implications for investors.

ii. Personnel Changes During and After the Class Period

District courts in our Circuit have concluded that key personnel changes—while not sufficient to establish scienter—may add to the total mix of circumstantial evidence of fraud when those changes are "highly unusual and suspicious," especially "when independent facts indicate that the resignation was somehow tied to the fraud alleged." *In re AppHarvest Sec. Litig.*, 684 F. Supp. 3d 201, 245 (S.D.N.Y. 2023). Here, the Plaintiffs provide a litany of suspicious personnel changes—the terminations of seven executives and demotions of two more—some of which the CWs' allegations link to the alleged fraud. *See* Joint App'x 288–90 ¶¶ 339–47.

Of particular note, each of the Individual Defendants and other key personnel departed under suspicious circumstances. On September 8, 2015, Hain announced that Conte would be replacing Smith as CFO after only two years in the role, allegedly because Smith clashed with Simon over the company's practices. On December 7, 2016, Hain transferred Meiers, who oversaw the accounting issues, from his position as COO to a role as CEO for the Hain Pure Protein division, in a move that one CW characterized as a demotion. On March 6, 2017—less than a month after the revelation that the SEC had launched an investigation—Hain announced that Carroll would be removed from his role as CEO for Hain North America. Then, on June 22, 2017, the same day that Hain restated its financial results and announced its remedial measures, Conte resigned as CFO. On that day, Hain also announced that it would be creating an expanded "team with new hires including a new controller for the U.S. segment, a

global revenue Controller, a Head of Internal Audit, and a Chief Compliance Officer." *Id.* at 290 ¶¶ 346–47. In 2018, Simon and Senior Vice President and Controller Marla Hyndman also departed.

Fortifying these allegations**,** several other Hain executives left the company, allegedly because they took issue with Hain's channel-stuffing practices and its financial reporting. *See, e.g.*, *id.* at 223 ¶ 112, 289 ¶ 341 (Hain firing Senior Vice President of Finance/Business Planning, Rose Ng, in September 2015, allegedly because she was "butting heads with Meiers" over Hain's financial-reporting practices); *id.* at 226 ¶ 122 (Hain announcing Ross Weiner's resignation from his position of Vice President—Finance, Chief Accounting Officer on January 21, 2016, and CW 6 alleging that Weiner left because "he did not like what he was seeing regarding the off-invoice concessions offered to distributors"). We view these allegations as offering supplemental, circumstantial support for the Plaintiffs' scienter pleadings.

iii. The SEC Order

Finally, we reject the Defendants' insistence that the SEC Order exonerates them of potential liability. The Defendants assert that the SEC Order "undermines any inference of wrongful intent" because of the Order's statement that the incentives were not necessarily improper and the SEC's decision not to charge Hain or any individual with fraud. Appellee's Br. at 29 (citing *Hain IV*, 2023 WL 6360345, at *15). As a preliminary matter, the SEC's decision not to pursue charges is "irrelevant as to whether Plaintiffs have plausibly alleged claims in *this* case," *Vanleeuwen v. Keyuan Petrochems., Inc.*, No. 13-cv-6057, 2014 WL 3891351, at *4 n.5 (S.D.N.Y. Aug. 8, 2014), because the SEC Order was the result of

negotiated, "private bargaining" between the SEC and Hain, rather than "the result of an actual adjudication of any of the issues," *Lipsky v. Commonwealth United Corp.*, 551 F.2d 887, 893–94 (2d Cir. 1976). Indeed, by its own terms, the SEC Order states that Hain consented to the entry of the Order "[s]olely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party." Joint App'x 358. It does not doom the Plaintiffs here.

But even taking the Defendants' argument on its own terms, the SEC Order is consistent with the Plaintiffs' theory. As we pointed out above, the inquiry under Rule 10b-5(b) is not on the legality of "schemes, devices, or practices, but on statements made." *Hain*, 20 F.4th at 136. Again, that principle establishes that the Defendants' exposure to Rule 10b-5(b) liability does not turn on the propriety of the incentives described in the SEC Order,[20] but on whether the Defendants made misleading statements in connection with those practices. What is more, while noting the legality of these incentives in a vacuum, the SEC Order explicitly recognized that those incentives "could have financial reporting implications," Joint App'x 360 ¶ 5—consistent with the Plaintiffs' theory as to Hain's allegedly fraudulent accounting practices. Nor does the SEC Order's determination that the "vast majority of the products purchased [by distributors] in connection with [end-of-quarter] sales . . . ultimately sold through to retailers," *id.* at 361–62, absolve the Defendants.

[20] Note, too, that the SEC Order did not speak about a right to return, but we have credited the Plaintiffs' allegations on this point.

That finding is consistent with the Plaintiffs' theory that distributors would be stuffed to the gills with inventory and eventually either return Hain's product or stop buying it, causing sales to fall off a cliff. *See id.* at 206 ¶ 57. And Hain's numbers eventually did precisely that, with year-over-year U.S. net sales falling by 14% and net income plummeting by 51.1% for the first nine months of FY 2017 after Hain imposed remedial measures. That much of the product may have eventually sold through to end customers negates neither Hain's admission that it failed to account properly for those sales in its SEC filings nor its allegedly misleading statements about its financial and operational status during the Class Period.

C. Holistic Evaluation of the Plaintiffs' Allegations

Having analyzed the Plaintiffs' allegations, we now consider "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." *Tellabs*, 551 U.S. at 323. We conclude that they do.

To summarize, based on the unusual stock sales and executive compensation tied to Hain's overstated financial results, the Plaintiffs have adequately alleged that the Individual Defendants had the motive and opportunity to mislead investors about the channel-stuffing practices. Holistically, the CWs' allegations also limn a portrait of the Individual Defendants acting recklessly—at the very least—in orchestrating those practices and failing to ensure a proper accounting thereof. In light of the allegations of the Individual Defendants' personal involvement, we would be hard-pressed to conclude at this stage

that the Defendants did not know, or should not have known, that those practices would endanger the propriety of their financial results, or that it would be inaccurate to attribute Hain's financial success solely to organic demand. And providing the final gloss for the Plaintiffs are the size and significance of the alleged fraud to Hain's operations, the improper "tone at the top" and admittedly inadequate internal controls, and a sustained pattern of suspicious executive personnel changes. Notwithstanding their heightened pleading burden, the Plaintiffs have adequately alleged scienter.

IV. Loss Causation

We also conclude that the Plaintiffs have adequately pleaded loss causation, for which there is no heightened pleading standard. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346–47 (2005); *see also Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 174 (2d Cir. 2005) (stating that loss causation is generally a fact-specific question appropriate for trial). As the Plaintiffs have alleged declines in Hain's stock price following Hain's negative disclosures, the Plaintiffs have met the pleading standard. *See, e.g.*, *AppHarvest*, 684 F. Supp. 3d at 273.

V. Section 20(a) Control Liability Claims

Finally, we reinstate the Plaintiffs' claims under Section 20(a), under which a plaintiff may "allege a primary § 10(b) violation by a person controlled by the defendant, and culpable participation by the defendant in the perpetration of the fraud." *Scholastic*, 252 F.3d at 77; *see* 15 U.S.C. § 78t(a). Because the district court dismissed the Plaintiffs' Section 20(a) claims for failure to plead a primary Section 10(b) violation, *see Hain IV*, 2023 WL

6360345, at *14, and "on appeal [the] defendants offer no basis for dismissing the secondary liability claim if we reverse the dismissal of the securities fraud causes of action, we hereby reinstate it," *Scholastic*, 252 F.3d at 78.

CONCLUSION

We have considered the Defendants' other arguments and conclude that they are without merit. Based on the foregoing, we conclude that the Plaintiffs have adequately alleged that the Defendants made actionable misstatements and omissions in connection with the channel-stuffing scheme and acted with scienter.[21] Accordingly, this long-pending case should proceed to discovery. The judgment of the district court is therefore **VACATED**, and this case is **REMANDED** to the district court for further proceedings consistent with this opinion.

[21] Because we reverse the district court's judgment, we do not decide whether the court abused its discretion in denying the Plaintiffs leave to amend the Complaint. *See* Joint App'x 1064 (the Plaintiffs requesting leave to amend if the district court granted the Defendants' motion to dismiss).

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[Filed: 3:49 pm, Sep 29, 2023]

IN RE THE HAIN CELESTIAL GROUP INC.
SECURITIES LITIGATION

ORDER ADOPTING
REPORT & RECOMMENDATION
16-CV-4581 (JS)(LGD)

Appearances

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SEYBERT, District Judge:

Before the Court is the Report and Recommendation ("R&R" or "Report") of Honorable Lee G. Dunst recommending that the dismissal motions[3] of Defendants The Hain Celestial Group, Inc. ("Hain" or "the Company"), and of Irwin D. Simon ("Simon"), Pasquale Conte ("Conte"), John Carroll ("Carroll"), and Stephen J. Smith ("Smith", and together with Simon, Conte, and Carroll, the "Individual Defendants") (collectively, the "Defendants") be granted and that the Second Amended Consolidated Class Action Complaint ("SAC") (ECF No. 110) of Lead Plaintiffs Rosewood Funeral Home and Salamon Gimpel (the "Plaintiffs") be dismissed with prejudice. (*See* R&R, ECF No. 142.[4]) Plaintiffs object to

[3] The dismissal motions of Hain (ECF No. 113) and the Individual Defendants (ECF No. 116) are addressed together; hereafter, they shall be referred to as the "Dismissal Motions". (*See also* Hain Support Memo, ECF No. 114; Hain Reply, ECF No. 120; Ind. Defs. Support Memo, ECF No. 117; Ind. Defs. Reply, ECF No. 121; Suppl. Support Memo, ECF No. 134; Opp'n re: Hain, ECF No. 118; Opp'n re: Ind. Defs., ECF No. 119; Suppl. Opp'n, ECF No. 136.)

[4] The Court assumes the parties' familiarity with the terms of art defined in the R&R, which are adopted herein.

Magistrate Judge Dunst's recommendations (*see* Objection (hereafter, "Objection" or "Obj."), ECF No. 144), to which Defendants have responded (*see* Response, ECF No. 145). For the reasons which follow, the Objections are OVERRULED, the R&R is ADOPTED as discussed herein, and the Dismissal Motions are GRANTED.

BACKGROUND

This federal securities class action asserting violations of the Securities Exchange Act (the "Act") is based upon Plaintiffs' allegations that, by their false and misleading statements and omissions, the Defendants purposely concealed the Company's declining business due to new competitors in the healthy food and personal care products market, which the Company had previously dominated. As the Second Circuit summarized it, Plaintiffs' theory of the case is: "Defendants made statements attributing Hain's high sales volume to strong consumer demand, while omitting to state that increased competition had weakened consumer demand and that Hain's high sales volume was achieved in significant part by the offer of unsustainable channel stuffing incentives." *In re Hain Celestial Grp., Inc. Sec. Litig.,* 20 F.4th 131, 137 (2d Cir. 2021). (*See also* Obj. at 6.) The Court presumes the parties' familiarity with both the underlying factual background and extensive procedural background of this case. Indeed, in the absence of any objections to the Magistrate Judge's recitation of the Factual Background (*see* R&R at 1-24) and the Procedural History of the case (*see id.* at 24-28), which the Court finds to be accurate, thorough, and clear of error, said Factual Background and Procedural History are adopted in their entirety and incorporated herein by reference.

See Sali v. Zwanger & Pesiri Radiology Grp., LLP, No. 19-CV-0275, 2022 WL 819178, at *1 (E.D.N.Y. Mar. 18, 2022) (where no party challenges magistrate judge's recitation of factual and procedural backgrounds of the case, upon clear error review, adopting and incorporating same into court's order).

For ease of reference, the Court notes the following. First, only two causes of action remain: Plaintiffs' first cause of action alleging Defendants' violations of Section 10(b) of the Act and Rule 10b-5(b) promulgated thereunder (hereafter, "Count I" or the "Rule 10(b) Claim"); and Plaintiffs' corresponding third cause of action alleging the Individual Defendants violated Section 20(a) of the Act (hereafter, "Count III" or the "Section 20(a) Claim"). Second, Defendants' Dismissal Motions are before this Court upon remand by the Second Circuit "for reconsideration of Defendants' motion to dismiss the Second Amended Complaint," with this Court to "consider *afresh* whether the [SAC] adequately stated a claim under Rule 10b-5(b)" and to "reassess the sufficiency of the scienter allegations, considering the cumulative effect of the circumstantial allegations of intent together with the pleaded facts relating to motive and opportunity" because "the strength of circumstantial allegations required to plead scienter varies depending on whether there are also allegations of motive and opportunity on the part of corporate officers to commit fraud." *Hain Celestial,* 20 F.4th at 138 (emphasis added) (citing *ECA, Loc. 134 IBEW Joint Pension Tr. of Chi. v. JP Morgan Chase Co.,* 553 F.3d 187, 198-99 (2d Cir. 2002)).

DISCUSSION

I. Applicable Law[5]

A. Rule 72(b)

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); *see also* FED. R. CIV. P. 72(b)(3). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo. See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3). "Objections to a report and recommendation must be 'specific and are to address only those portions of the proposed findings to which the party objects.'" *Fossil Grp. Inc. v. Angel Seller, LLC,* No. 20-CV-2441, 2021 WL 4520030, at *2 (E.D.N.Y., Oct. 4, 2021) (quoting *Phillips v. Reed Grp., Ltd.,* 955 F. Supp. 2d 201, 211 (S.D.N.Y. 2013) (cleaned up)). General objections, or "objections that are merely perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original papers will not suffice to invoke *de novo* review." *Owusu v. N.Y.S. Ins.*, 655 F. Supp. 2d 308, 312-13 (S.D.N.Y. 2009) (quotations, alterations and citation omitted); *see also Trivedi v. N.Y.S. Unified Ct. Sys. Off. of Ct. Admin.,* 818 F. Supp. 2d 712, 726 (S.D.N.Y. 2011), *aff'd sub nom Seck v. Off. of Ct.*

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[5] The Court adopts the legal standards stated by Magistrate Judge Dunst in his Report as to: (1) a Rule 12(b)(6) dismissal motion (*see* R&R at 28-29); (2) the applicable pleading requirements under Rule 9(b) of the Federal Rules of Civil Procedure and under the PSLRA (*see id.* at 29); (3) making out a claim under Rule 10b-5(b) (*see id.);* and (4) stating a Section 20(a) claim under the Act (*see id.* at 29-30), to which no objections have been raised, which are not clearly erroneous, and which are incorporated herein by reference.

Admin., 582 F. App'x 47 (2d Cir. Nov. 6, 2014) ("[W]hen a party makes only conclusory or general objections [] the Court will review the Report strictly for clear error.[] Objections to a Report must be specific and clearly aimed at particular findings in the magistrate judge's proposal." (cleaned up)). Any portion of a report and recommendation to which no specific timely objection is made, or to which only general, conclusory or perfunctory objections are made, is reviewed only for clear error. *Owusu,* 655 F. Supp. 2d at 312-13; *see also Bassett v. Elec. Arts, Inc.,* 93 F. Supp. 3d 95, 100-01 (E.D.N.Y. 2015).

B. Rule 10b-5(b) Claims[6]

> Rule 10b-5(b) provides that, in connection with the purchase or sale of any security, it is "unlawful for any person, directly or indirectly, . . . [t]o 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 light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5. To support a claim under that rule, a plaintiff must plead: (1) a material misrepresentation or omission (i.e., materiality and falsity), (2) scienter, (3) a connection between the misrepresentation or omission and the purchase or sale of a security, (4) reliance on the misrepresentation or omission, (5) economic loss, and (6) loss causation. *See*, *e.g.*, *Noto v. 22nd Century Grp., Inc.,* 35 F.4th 95, 102 (2d Cir. 2022). [Further], "[t]he first two

[6] Provided here merely for the convenience of the reader. (*See supra* note 5.)

> elements must be pled with heightened specificity pursuant to the Private Securities Litigation Reform Act of 1995 and Federal Rule of Civil Procedure 9(b)." *Id.*

(R&R at 29 (second set of brackets added).)

II. Application

A. The R&R

Cognizant of the Circuit Court's directives, in making his Report, Magistrate Judge Dunst proceeded to consider as if for the first time Plaintiffs' SAC. Upon that "afresh" consideration, the Magistrate Judge made the following findings and recommendations.

1. As to Count I

a. Abandoned Portion of the Claim

Initially, "to the extent [Count I] challenges Hain's financial results, the reported methods of calculating them, their compliance with SOX, and their compliance with GAAP," the Magistrate Judge found Plaintiffs abandoned those claims; therefore, he recommends they be dismissed. (R&R at 31.)

[Remainder of page intentionally left blank.]

b. The Attribution Statements Are Not Actionable

Magistrate Judge Dunst found the Attribution Statements,[7] reviewed in context, were not puffery

[7] For convenience, the Court notes, the Attribution Statements where "statements in Hain's SEC filings between November 2013 and May 2016" that attributed the Company's financial results to various causes, *i.e.*: "strong brand contribution;" "expanded distribution;" the "strong demand" and "momentum" for organic and natural products; Hain's "diverse

and, therefore, "trigger[ed] a duty for Hain to disclose any information necessary to make them not misleading." (R&R at 32-33 (footnote omitted).) In making his recommendation, the Magistrate Judge rejected the Company's reliance on the Circuit Court's *Boca Raton* decision (*id.* at 34-37 (discussing *Boca Raton Firefighter's and Police Pension Fund v. Bahash,* 506 F. App'x 32 (2d Cir. 2012)), since other "cases make clear[that,] because Defendants 'put the sources of [Hain's] revenue at issue . . . [,] the alleged failure to disclose the true sources of such revenue could give rise to liability under Section 10(b).'" (*Id.* (quoting *In re Van der Moolen Holding N.V. Sec. Litig.,* 405 F. Supp. 2d 388, 401 (S.D.N.Y. 2005); further citation omitted) (first and third set of brackets added).)

Then, as to Plaintiffs' "challenges [to] the Company's statements as materially false or omissive for failing to disclose that Hain relied on 'unsustainable practices' to generate sales and/or that Hain lacked adequate accounting controls," the Magistrate Judge found Plaintiffs failed to plead an actionable misstatement or omission. (R&R at 38.) Regarding the "unsustainable practices" branch of the recommendation, Magistrate Judge Dunst stated two ground for finding the relevant statements, as pled, were not actionable: (a) as to Plaintiffs' contention that the Company offered its customers an absolute right of return, Plaintiffs misplaced their reliance on CWs to support this claim; the Magistrate Judge found the CWs' statements to be "too conclusory and generic to support an allegation that Hain relied on the right of return as alleged in the SAC" (R&R at 39-

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portfolio" of brands; and/or "solid execution of [Hain's] operational initiatives". (R&R at 31.)

40; *see also id.* at n.18); and (b) the Company disclosed other offered sales incentives and promotions, obviating any further need for disclosure (*see id.* at 41-42). Regarding the accounting controls branch of the recommendation, Magistrate Judge Dunst rejected Plaintiffs' reliance on the SEC Order, finding (c) the SOX Statements were nonactionable opinion statements of management since (i) Plaintiffs did not plead the Company failed to evaluate its internal controls (*see* R&R at 43-44), and (ii) the SEC Order did not indicate that the Individual Defendants contemporaneously knew of any deficiencies in the Company's internal controls when they signed the SOX certificates (*see id.* at 44-45); and (d) contrary to Plaintiffs' allegations of falseness and misleadingness based upon (i) the Company's November 2016 disclosure that the Audit Committee's investigation found no evidence of intentional wrongdoing regarding the Company's accounting practices, and (ii) Simon's related comments regarding the Company's commitment to both the transparency of its financial reporting and the strengthening of its internal controls, such allegations were undermined by and not, as Plaintiffs argued, supported by the SEC Order (*see id.* at 45-46).

c. Plaintiffs Fail to Plead Scienter

As to the scienter element of Plaintiffs' Rule 10(b) Claim, the Magistrate Judge found Plaintiffs failed to plead that claim in accordance with the applicable heightened pleading standards. (*See generally* R&R at 47 ("A complaint will survive 'only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged.'" (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.,* 551 U.S.

308, 324 (2007)).) In making his scienter findings, Magistrate Judge Dunst examined Plaintiffs' alleged facts first as to the Individual Defendants and then as to the Company. The Individual Defendants' scienter finding was further broken down into three subcategories: (a) whether the Individual Defendants had both motive and opportunity to commit the alleged fraud (hereafter, the "Motive & Opportunity Prong") (*see R&R* at 47-54); (b) whether there was strong circumstantial evidence of conscious misbehavior or recklessness by the Individual Defendants (hereafter, the "Misbehavior or Recklessness Prong") (*see id.* at 54-65); and (c) a collective evaluation of the proffered bases for finding scienter (hereafter, the "Collective Evaluation Prong") (*see id.* at 65).

(i) Motive & Opportunity Prong

More particularly to the Motive & Opportunity Prong, which requires allegations showing the Individual Defendants benefitted in some concrete and personal way from the purported fraud (*see* R&R at 47 (quoting *ECA,* 553 F.3d at 198; further citation omitted), the Magistrate Judge found unpersuasive Plaintiffs' reliance upon the Individual Defendants' (a) stock sales, (b) compensation and bonuses, and (c) use of Company stock in certain acquisitions. (*See id.* at 47-48.)

As to Stock Sales: Scienter may be shown "when an insider makes a misrepresentation to sell shares at a profit." (R&R at 48 (citing *ECA,* 553 F.3d at 198).) However, the sale must be unusual or suspicious, and courts consider factors such as "the amount of profit from the sales, the portion of stockholdings sold, the change in volume of insider sales, and the number of insiders selling." *City of Omaha Police & Fire Ret. Sys. v. Evoqua Water Techs. Corp.,* 450 F. Supp. 3d

379, 419 (S.D.N.Y. 2020) (further citation omitted) (quoted in R&R at 48). Further, the timing of insider stock sales may also be a relevant factor. (*See* R&R at 48 (quoting *Glaser v. The9, Ltd.,* 772 F. Supp. 2d 573, 587 (S.D.N.Y. 2011)).) Against that backdrop, Magistrate Judge Dunst found: Plaintiffs' SAC did not identify the profits realized by Carroll or Simon from their respective stock sales, undermining an inference of motive and opportunity (*see id.* at 48-49); the timing of Carroll's and Simon's stock sales were each well outside the first allegedly negative disclosure in January 2016 and before the end of the Class Period, undermining any inference of scienter (*see id.* at 49); and, there are no allegations that the other Individual Defendants, Smith and Conte, or any other insiders, made suspicious stock sales during the Class Period, undermining a strong inference of scienter (*see id.* at 49-50). Yet, as to the number and percentage of shares sold by Carroll and Simon, the Magistrate Judge accepted "Plaintiffs' calculations as true and assume[d] (without deciding) that this factor supports an inference of scienter." (*Id.* at 50.) Nonetheless, when viewed collectively Magistrate Judge Dunst found "Plaintiffs' 'motive and opportunity' allegations fail[ed] to raise an inference of scienter as compelling as the competing non-fraudulent inference." (*Id.*) Thus, "even when insider stock sales are substantial," because Plaintiffs "fail[ed] to plead (1) profits from the challenged sales, (2) that any challenged sales occurred close in time to corrective disclosures or the end of the [C]lass [P]eriod, and (3) that more than two executives allegedly engaged in unusual or suspicious sales," they "have not sufficiently alleged that Carroll and Simon's stock sales reflect motive sufficient to establish their scienter." (R&R at 51.)

As to Bonuses: Magistrate Judge Dunst observed that because virtually all corporate insiders share the desire for an increase in stock prices to improve their executive compensation, the yearning for such an increase does not support scienter. (*See* R&R at 52 (citing *S. Cherry St., LLC v. Hennessee Grp. LLC,* 573 F.3d 98, 109 (2d Cir. 2009)).) Thus, he found Plaintiffs' allegations in this regard insufficient to establish motive. (*See id.* (quoting *Lipow v. Net1 UEPS Techs., Inc.,* 131 F. Supp. 3d 144, 160 (S.D.N.Y. 2015)).)

As to Using Company Stock for Acquisitions: Recognizing that the inflation of stock prices may inure to the benefit of stockholders in the acquisition context, Magistrate Judge Dunst further acknowledged that using artificially inflated stocks may, in certain situations, be sufficient to establish scienter, but that "[t]he requisite showing requires 'extremely contextual' allegations demonstrating 'a unique connection between the [alleged] fraud and the acquisition.'" R&R at 52-53 (quoting *ECA,* 553 F.3d at 201 n.6).) The Magistrate Judge found Plaintiffs' allegations in this regard to be conclusory. (*See id.* at 53.) Moreover, the time between the acquisitions and the first alleged corrective disclosure was too attenuated, and more so as to the end of the Class Period. (*See id.*) Similarly, "Plaintiffs offer nothing to demonstrate that Defendants made material misstatements or omissions to inflate Company stock for any of the acquisitions." (*Id.* at 53-54.)

(ii) Misbehavior or Recklessness Prong

Continuing, and specifically to the Misbehavior or Recklessness Prong, Magistrate Judge Dunst framed his analysis by stating Plaintiff is also seeking "to establish scienter through circumstantial evidence of

recklessness, which requires 'a showing of reckless disregard for the truth, that is, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care.'" (R&R at 54 (quoting *SEC v. Sourlis,* 851 F.3d 139, 144 (2d Cir. 2016); further citation omitted).) Of the four methods by which a plaintiff can show a strong inference of the requisite recklessness, the Magistrate Judge examined Plaintiffs' theory, *i.e.*, that Defendants knew facts or had access to information suggesting their public statements were not accurate. (*See id.* at 54-55.) He further explained that "[b]ecause Plaintiffs . . . have not shown motive (even taking the motive allegations collectively), "the circumstantial evidence of conscious misbehavior must be correspondingly greater." (*Id.* at 55 (quoting *Ark. Pub. Emps. Ret. Sys. v. Bristol-Myers Squibbs Co.,* 28 F.4th 343, 355 (2d Cir. 2022)).) Magistrate Judge Dunst proceeded to analyze each of the five bases Plaintiffs alleged as scienter of known but undisclosed information, *to wit:* (a) an absolute right-to-return; (b) the Company's reliance on sales incentives and promotions; (c) the SOC certifications and internal controls; (d) personnel changes; and (e) access to reports and core U.S. business.

As to an Absolute Right-of-Return: In his Report, Magistrate Judge Dunst states: "The SAC's allegations regarding the right to return rely entirely on the CWs." (R&R at 55.) However, the Magistrate Judge found the CW-based allegations "are too sparse" to show the Individual Defendants actually possessed the knowledge highlighting the falsity of the subject public statements and are "too vague, speculative, and conclusory to contribute to an inference of scienter." (*Id.* at 55-56 (providing examples of deficient allegations).)

As to the Company's Reliance on Sales Incentives and Promotions: Because the Magistrate Judge found Defendants contemporaneously disclosed the Company's use of incentives and promotions to support sales, he concluded that determination precludes finding scienter. (R&R at 56.) Moreover, since such a practice is common, offering sales and promotions to meet revenue targets "contribute little to a strong inference of fraud." (*Id.* (quoting *S.E.C. v. Espuelas,* 698 F. Supp. 2d 415, 430 (S.D.N.Y. 2020) (cleaned up); further citations omitted).)

As to the SOX Certifications and Internal Controls: Because Plaintiffs relied upon events that occurred after the Individual Defendants signed the subject SOX certificates, Magistrate Judge Dunst found Plaintiffs' allegations deficient since they did "not adequately allege[] [Defendants] had any knowledge of 'glaring accounting irregularities' when they executed the SOX certifications." (R&R at 58 (quoting *Reilly v. U.S. Physical Therapy, Inc.,* No. 17-CV-2347, 2018 WL 3559089, *19 (S.D.N.Y. 2018)).) And, regarding internal controls, the Magistrate Judge stated, "[t]hat Hain undertook remedial efforts after the Class Period to strengthen its internal controls 'was a prudent course of action that weakens rather than strengthens an inference of scienter.'" (*Id.* (quoting *Slayton v. Am. Express Co.,* 604 F.3d 758, 777 (2d Cir. 2010)).) Accordingly, based upon the facts alleged in the SAC, Magistrate Judge Dunst found the more plausible inference to be drawn from the Company's inadequate internal controls was corporate mismanagement, which is unactionable. (*See id.* at 58-59 ("[I]t is well established that mismanagement is not actionable under the securities laws." (quoting *Woolger v. Kingstone Cos., Inc.,* 477 F. Supp. 3d 193, 240 (S.D.N.Y. 2020)).)

As to Personnel Changes: Magistrate Judge Dunst observed that terminations and resignations of corporate executives alone is not enough to infer scienter; rather, the employment change must be highly unusual and suspicious. (*See* R&R at 59 (citations omitted).) Thus, a plaintiff needs to plead facts showing the employment change is either somehow tied to the alleged fraud or alerts others to the alleged fraud; alternatively, the employee's scienter must be otherwise evident. (*See id.*) Of the five Company executives upon whose employment changes the Plaintiffs relied in alleging scienter, Magistrate Judge Dunst found none availing. First, Smith's September 2015 resignation after only two years with the Company and subsequent year-plus period of unemployment, without more, did not support scienter. (*See* R&R at 60.) Nor was CW-1's unsupported belief that Smith was forced out of the Company a sufficient "something more" to show scienter. (*See id.*) Second, Carroll's March 2017 change in positions was not highly unusual or suspicious, especially considering Plaintiffs' own allegations that Carroll regularly changed positions within Hain. (*See id.*) Additionally, the March 2017 move to another position could be viewed as a promotion and not a demotion, since the new position concerned "Global Brands" for all of Hain. (*See id.* at 61.) Third, while Conte resigned as CFO and Executive Vice President of Finance "on June 22, 2017[,] the same day Hain filed the 2016 Form 10-K that announced it was taking remedial measures to correct material weaknesses in its internal controls," Plaintiffs' SAC lacks "sufficient facts to support that Conte acted with scienter in connection with the challenged statements, that his resignation somehow alerted anyone at Hain to the alleged fraud, or that

his scienter was otherwise evident." (*Id.*) The Magistrate Judge observed the "more cogent inference" was Conte resigned because of his negligent oversight of responsible employees or the positive optics his resignation would provide. (*See id.*) Fourth, while Plaintiffs allege the Company's June 2018 announcement of Simon's leaving, they "do not explain why [said] resignation supports an inference of scienter." (*Id.* at 62.) Absent an explanation, the timing of Simon's departure from Hain cuts against an inference of scienter since it was 16 months after the Class Period ended. (*See id.*) "Finally, Plaintiffs' allegations regarding the demotion of Meiers and the terminations of Powhida, Ng, and Hyndman are irrelevant to the Individual Defendants' scienter because Plaintiffs do not allege the Individual Defendants were involved in those employment changes." (*Id.* (citations omitted).)

As to Access to Reports & Core U.S. Business: First, the Magistrate Judge summarily found the SAC allegations that the Individual Defendants "had knowledge of" or "had full and unfettered access to" all materials regarding the Company's U.S. business were generic in nature, thereby rendering them insufficient to raise the requisite inference of scienter. (R&R at 63.) Second, Magistrate Judge Dunst rejected Plaintiffs' reliance on the "core operations" doctrine to establish scienter, since that doctrine is more appropriately viewed as providing support for, but not as an independent basis of, scienter. (*See id.* at 64.) In the absence of other allegations raising an inference of scienter, *e.g.*, "specific factual allegations linking the Individual Defendants to the alleged fraud," "Plaintiffs' core operations doctrine arguments fail." (*Id.* at 65 (quoting *Francisco v. Abengoa,*

S.A., 559 F. Supp. 3d 286, 320-21 (S.D.N.Y. 2021) (cleaned up)).)

(iii) Collective Evaluation Prong

Finally, as to the Collective Evaluation Prong, in undertaking that evaluation of Plaintiffs' alleged circumstances and situations supporting scienter, Magistrate Judge Dunst stated "[t]he SAC 'will survive . . . only if a reasonable person would deem the inference of scienter cogent *and* at least as compelling as any opposing inference once could draw from the facts alleged.'" (R&R at 65 (quoting *Tellabs,* 551 U.S. at 324 (emphasis added)).) He found the collective review of the scienter allegations wanting. Highlighting the Individual Defendants' signings of the Class Period SOX certifications regarding the sufficiency of the Company's internal controls, which controls the Company undertook to self-audit, and which the Company self-reported to the SEC, as well as, thereafter, admitting said controls had been deficient, Magistrate Judge Dunst concluded "'any reasonable shareholder would deem the inference of scienter to be far less compelling than an inference of, at most, non-actionable mismanagement and negligence' on the part of the Individual Defendants." (*Id.* (quoting *Sachsenberg v. IRSA Inversiones v. Representaciones Sociedad Anonima,* 339 F. Supp. 3d 169, 185 (S.D.N.Y. 2018); citing *In re Wachovia Equity Sec. Litig.,* 753 F. Supp. 2d. 326, 367 (S.D.N.Y. 2011) (finding scienter allegations collectively reflected "[b]ad judgment and poor management . . . not fraud")).)

In making his scienter finding as to Hain, because "Plaintiffs asked the Court to find corporate scienter by 'imput[ing] each Individual Defendant's scienter to Hain'" (R&R at 66 (quoting Suppl. Opp'n at 6)), since

the Magistrate Judge found "Plaintiffs failed to plead a strong inference of scienter on the part of the Individual Defendants," he likewise found a lack of Company scienter. (*Id.*) Magistrate Judge Dunst concluded that, while not asked to do so, he would further find Plaintiffs could not establish corporate scienter by way of a false statement that is exceedingly dramatic. (*See id.* at 66-67.)

In sum, Magistrate Judge Dunst recommended "the Court find the unabandoned portion of the SAC's Count I fail[s] to state a claim" because Plaintiffs failed to plead an actionable misstatement or omission and failed to raise a strong inference of scienter as to any of the Defendants. (*Id.* at 67.)

2. As to Count III

Finding "Plaintiffs failed to plead their predicate Section 10(b) of Rule 10b-5 violation," Magistrate Judge Dunst correspondingly recommended the dismissal of Plaintiffs' Section 20(a) Claim, *i.e.*, Count III. (R&R at 67.)

3. As to Dismissal with Prejudice

Finally, Magistrate Judge Dunst recommended the Dismissal Motions be dismissed with prejudice since "Plaintiffs had numerous opportunities to plead a case adequate to survive dismissal." (R&R at 67.) Moreover, after the Circuit Court "vacated the 2020 Dismissal Decision, Plaintiffs have neither sought leave to further amend the SAC nor communicated that they possess facts that would bolster it." (*Id.* at 68.)

B. The Parties' Positions

1. Plaintiffs' Objections

Broadly, Plaintiffs object to their purported abandonment of claims concerning Hain's false financial results (hereafter, the "Abandonment Recommendation"), and much of Magistrate Judge Dunst's falsity analysis (hereafter, the "Falsity Recommendation") and all his scienter analyses (hereafter, the "Scienter Recommendation"). (*See* Obj. at 1, 3.)

a. Re: The Abandoned Claims Recommendation (*see* R&R at 30-31)

While acknowledging "a plaintiff may abandon a claim either affirmatively or effectively by failing to oppose arguments raised in defendants' motions to dismiss," Plaintiffs argue neither scenario occurred in this instance. (Obj. at 7-8 (citing R&R at 30-31). "First, Plaintiffs could not have effectively abandoned these statements, because Defendants never challenged their falsity." (*Id.* at 8 (citing Dismissal Motions; Reply, ECF No. 120; Suppl. Support Memo, ECF No. 134; Defs. App. Br.).) Plaintiffs further argue "such an argument would be futile" in light of the Company's restatement of financial results and its "post-Class Period admissions that it suffered from material weaknesses in financial reporting," as well as the SEC's finding the Company lacked sufficient policies and procedures providing reasonable assurances that quarter-end sales were properly accounted. (*Id.* (citing SAC at ¶¶ 146-52, 162; *In re Atlas Air Worldwide Holdings, Inc. Sec. Litig.,* 324 F. Supp. 2d 474, 486 (S.D.N.Y. 2004) ("[T]he mere fact that financial results were restated is sufficient basis for pleading that those statements were false when made.")).) Moreover, Plaintiffs contend they

have "repeatedly maintained the falsity of Hain's financial statements," supporting their maintenance-of-position argument with citations to previous briefings. (*Id.* (citing Opp'n, ECF No. 118, at 11, 16 (listing Hain's accounting policies as categories of alleged misstatements; asserting "Defendants do not challenge the falsity of these alleged misstatements, and have therefore waived this argument"; and incorporating Plaintiffs' previous falsity arguments made in earlier briefs); Pls. App. Br.; Suppl. Opp'n, ECF No. 136, at 3).) Plaintiffs would assign error to the Magistrate Judge's reliance on their separate responsive explanation to Defendants' materiality arguments in making his Abandonment Recommendation, elucidating that in response to Defendants' materiality arguments, Plaintiffs argued "Defendants' omission of their reliance on unsustainable practices . . . were qualitative factors that significantly altered the total mix of altered information for investors" (Obj. at 9 (citing Opp'n at 15)); read in context, that explanation should not be interpreted as Plaintiffs abandoning their challenge to Hain's financial results. (*Id.*)

b. Re: The Falsity Recommendation (*see* R&R at 38-46)

Unsurprisingly, Plaintiffs do not object to Magistrate Judge Dunst's recommended finding that the Company's Attribution Statements are not puffery. (*See* Obj. at 10-11 (citing R&R at 32-33).) However, they object to the Magistrate Judge's further finding that the Attribution Statements are, nonetheless, not actionable "because Hain disclosed in its Class Period [Form] 10-Ks that the Company 'undertook sales incentives and promotions.'" (Obj. at 10 (citing R&R at 41-43).) Plaintiffs contend that, as Judge Spatt did,

Magistrate Judge Dunst misunderstands the requirements of a Rule 10b-5(b) claim, as well as Plaintiffs' theory of their claim by, instead, focusing on whether Plaintiffs sufficiently alleged a right-of-return, thereby erring. (*See id.* at 12 (citing *Hain Celestial,* 20 F.4th at 137).) They further argue that the Magistrate Judge erred in finding the Company's disclosures in its Class Period Form 10-Ks sufficiently disclosed the unsustainable business practices of which Plaintiffs complain, *i.e.*, its off-invoice sales concessions (variously referred to as "channel stuffing", "loading", and "pull-in sales") which disclosures Plaintiffs assert were inadequate since, *e.g.*, the cited disclosures failed to sufficiently convey that part of Hain's business practices included improper revenue recognition for the timing of trade and promotional accruals, as well as premature recognition of revenue of certain sales. (*See id.* at 13-14 (citing R&R at 41-42).) Additionally, after Hain's 2016 Disclosure, the Company's stock decline and the SEC's investigation provided a reasonable inference that Hain's unsustainable business practices were not conveyed with sufficient intensity and credibility to dispel the false impression of Defendants' Attribution Statements. (*Id.* at 14 (quoting *Ganino v. Citizens Utils. Co.,* 228 F.3d 154, 168 (2d Cir. 2000)).) Regarding Hain's accounting controls misstatements, Plaintiffs maintain the Recommendation is improperly limited to examining the SEC Order because of the prior error of finding Plaintiffs abandoned its accounting statement allegations. (*See id.* (citing R&R at 43 and 43-46).) Plaintiffs also argue the Report's recommendation that the SEC Order did not indicate "Defendants knew or should have known of different material facts about the Company's internal controls contemporaneously with the SOX State-

ment," is error. (*Id.* at 15 (quoting R&R at 45).) They posit that, in combination with their CWs' accounts, the SEC's findings in its Order "sufficiently establish that the SOX Statements were materially false and misleading, and give rise to a strong inference that the Defendants knew, or reasonably should have known, of their misleading nature." (*Id.*) Relatedly, Plaintiffs insist the Report fails to adequately consider numerous allegations from their CWs, which provide detailed, specific, firsthand knowledge of the Company's extra-contractual sales concessions and its accounting and internal control practices and which the SEC Order confirmed. (*See id.* at 15-16.) In sum, according to Plaintiffs, the Report improperly failed to find Plaintiffs' CWs' accounts provided sufficient facts to support an inference that (a) Defendants' Attribution Statements, (b) the Company's (i) reported financial results, (ii) accounting policies and practices, and (iii) sales and trade promotions reporting, and (c) the SOX Statements were materially false or misleading. (*Id.* at 16 (footnote omitted).)

c. Re: The Scienter Recommendations

Plaintiffs object to the Report's rejection of all Plaintiffs' individual scienter arguments and the Report's less-than-meaningful assessment of Plaintiffs' scienter allegations as a whole, especially in light of Judge Spatt's having previously determined those allegations (found in Plaintiffs' Amended Consolidated Class Action Compliant (ECF No. 75)) to have come "quite close" but falling "just short" of supporting a strong inference of scienter, and the Circuit Court's directive that, upon remand, this Court "consider[] the cumulative effect of the circumstantial allegations of intent together with the

pleaded facts relating to motive and opportunity." (Obj. at 17 (first quoting *In re Hain Celestial Grp., Inc. Sec. Litig.,* No. 16-CV-4581, 2019 WL 1429560, at *19 (E.D.N.Y. Mar. 29, 2019); then quoting *Hain Celestial,* 20 F.4th at 138).) Plaintiffs expound their objections by addressing them under two categories: the motive-and-opportunity-related scienter and the conscious-misbehavior-and-recklessness-related scienter.

(i) Motive & Opportunity Scienter (*see* R&R at 47-65)

Plaintiffs highlight three situations upon which they relied to allege scienter and with which they object to the Magistrate Judge's recommendations, *to wit:* suspiciously timed and unusual insider stock sales; Individual Defendants' bonuses; and, use of the Company's stock for acquisitions. As to the stock sales, Plaintiffs argue that, although Magistrate Judge Dunst "correctly found that the 'sales volume and the holding portion' of Defendants insider stock sales 'favor[ed] an inference of scienter'," he erred in concluding the "suspiciously timed and unusual stock sales did not support an inference of scienter." (Obj. at 18 (citing R&R at 50-51; quoting R&R at 51).) They contend this error was based upon the Magistrate Judge having inappropriately engaged in fact-finding regarding:

> (i) Plaintiffs' purported failure to allege net profits (versus the net proceeds reported in Reports on Form 4 filed the SEC); (ii) the timing of the insider sales; and (iii) the absence [of] suspicious insider stock sales by the two Individual Defendants who were not at Hain for the entirety of the Class Period.

(*Id.*) Plaintiffs continue by faulting the Magistrate Judge for advancing, without analysis, an argument not made by Defendants, *i.e.*, that Plaintiffs failed to allege net profits, which, in any event, is but one, non-dispositive factor to consider. (*Id.* at 18-19 (citing R&R at 48).) Indeed, according to Plaintiffs, given they pled proceeds from the sales, the percentages of holdings sold, and the alleged suspect timing of the sales, which are relevant factors to the scienter determination, the lack of alleged net profits is of no consequence. (*Id.* at 19.) As for the timing of the insider stock sales, Plaintiffs contend the Report's focus on trades made within the final 100-day period from the end of the Class Period was erroneous because Magistrate Judge Dunst arbitrarily and capriciously derived that timeframe from cherry-picking fact-specific case law to conclude that the timing of the subject sales, *i.e.*, outside the 100-day period, cuts against scienter. (*Id.* (citing R&R at 49).) Rather, the Magistrate Judge should have considered the timing of the sales with other factors, such as the percentage of shares sold by Carroll and Simon, which would have supported finding an inference of scienter. (*See id.* at 19-20.) Moreover, Plaintiffs would have the Court disavow Magistrate Judge Dunst's discounting of Carroll's and Simon's stock sales as inferring scienter based upon the lack of stock sales by insiders Smith or Conte; at most, that fact should undermine scienter as to Smith and Conte only. (*See id.* at 20 (citing R&R at 49-50).)

Additionally, Plaintiffs assert the R&R erroneously recast their well-pled allegations regarding Carroll's and Simon's bonuses, rendering those allegations too general to support an inference of improper motive. (*See* Obj. at 20 (citing R&R at 47); *see also* R&R at 52.) Indeed by truncating Plaintiffs' bonus-related

allegations to "the Individual Defendants were motivated to inflate the Company's stock price to increase their compensation," Plaintiffs argue the Magistrate Judge improperly concluded those allegations failed to establish scienter since "the law is clear that the desire of individual defendants to . . . increase their compensation by artificially inflating stock price is not sufficient to establish motive." (R&R at 52.) Moreover, they contend this misconstrues their allegations and position since what they pled was that Carroll and Simon "were motivated to misrepresent Hain's financial results because of the large cash bonuses and stock option grants *that were closely tied to the Company's financial performance, including Hain's net sales,"* and, that in FY2015, Simon met his bonus target for net sales by only 0.1%." (Obj. at 20-21 (first quoting SAC at ¶ 363; then citing SAC at ¶ 364).) In other words, "nowhere in the [SAC] do Plaintiffs contend that Defendants manipulated Hain's stock price to increase their bonuses; yet, the Recommendation denigrates these well-pled allegations on that errant (and non-existent) basis." (*Id.* at 21 (citing R&R at 54[8]).)

Similarly, Plaintiffs maintain that the Report "recasts Plaintiffs' allegations concerning Defendants' use of Hain stock to effectuate acquisitions during the Class Period," thereby declining to find those allegations support a finding of scienter. (*See* Obj. at 21 (*comparing* SAC ¶ 367, *with* R&R at 52-54 ("[Plaintiffs] assert in a conclusory fashion that Defendants acted with scienter to inflate Hain stock to complete three acquisitions in 2014 and one

[8] Citation to page 54 of the R&R is incorrect; the correct citation should be to page 52 of the R&R.

acquisition in 2015.")).) Plaintiffs contend their allegations are that Defendants carried out the subject acquisitions with fraudulently inflated stocks, which is "a motive allegation that supports a finding of scienter." (*Id.* (explaining further "Plaintiffs do not allege that Defendants' acquisitions were fraudulent").) Hence, Plaintiffs would have the Court reject the Magistrate Judge's finding of lack of scienter arguing his misconstruction of their allegations regarding Defendants' use of Hain's stock for the subject acquisitions led to this incorrect recommendation. (*See id.*)

(ii) Misbehavior or Recklessness Scienter (*see* R&R at 54-65)

Plaintiffs claim several errors in Magistrate Judge Dunst's recommended finding of no scienter. (*See, e.g.,* Obj. at 22 ("While the Recommendation noted that Defendants triggered a duty to disclose the existence of the improper sales practices and deemed Defendants' argument against such disclosure as 'untenable' and 'misplaced" . . . it paradoxically concluded Defendants' failure to fulfill that duty was not undertaken with scienter." (*Id.* (first quoting R&R at 34; then citing R&R at 31-38).)

First, regarding Defendants' knowledge of, and active participation in, the Company's unsustainable sales practices, Plaintiffs argue it was error to find no scienter based upon the Individual Defendants' personal involvement in the undisclosed sales practices, together with their extensive efforts to conceal the extent and terms of those practices, which other courts have found adequate. (*Id.* at 23 (citing *In re Scholastic Corp. Sec. Litig.,* 252 F.3d 63, 76 (2d Cir. 2001)).) Plaintiffs contend this error occurred because the Magistrate Judge ignored Plaintiffs' relevant

allegations regarding same, instead "awkwardly contend[ing] that the absolute right of return allegations were based on inadequate CW allegations and therefore failed." (*Id.*) Moreover, from Plaintiffs' perspective, Magistrate Judge Dunst incorrectly failed to consider the Individual Defendants' close monitoring of inventory levels as an indicia of scienter (*see* R&R at 24-25), as well as Plaintiffs' "allegations that distributors' refusal to accept excess end-of-quarter inventory from Hain was the match that lit the fuse of the Company's accounting investigations, SEC settlement, and massive investor losses." (*Id.* at 24.)

Second, regarding the Company's internal controls and accounting, Plaintiffs assert Hain's admission in its late-filed FY2016 Form 10-K that the Company needed to restate its results for FY2014, FY2015, and the first three quarters of FY2016 supports scienter; therefore, the Magistrate Judge's recommended finding to the contrary is error. (*See* Obj. at 24-25.)

Third, regarding their allegations of terminations, resignations, and demotions, Plaintiffs maintain Magistrate Judge Dunst incorrectly concluded "that the personnel changes during the Class Period at Hain's accounting department, executive officer positions, and other functions directly related to the [alleged] fraud does not contribute to an inference of scienter," coupled with the wrong finding that "Plaintiffs did not adequately plead independent facts indicating that the personnel changes were tied to the alleged fraud, that these changes somehow alerted defendants to the fraud, or that the defendants' scienter was otherwise evident." (*Id.* at 25 (citing R&R at 59).) Plaintiffs are left perplexed given they "plead that the termination of seven

executives and the demotion of two more–a group that included each Individual Defendant–contribute to a strong inference of scienter when considered holistically with Plaintiffs' other scienter allegations." (*Id.* (citing SAC at ¶¶ 339-50).) They argue other courts have found such suspicious resignations tied to unethical sales practices are at least as compelling as any opposing scienter. (*Id.* (quoting *Bos. Ret. Sys. v. Alexion Pharm., Inc.,* 556 F. Supp. 3d 100, 136 (D. Conn. 2021).) Relatedly, to the extent the Magistrate Judge stretches to find other, alternative explanations for the terminations, resignations, and demotions, he erred in finding those explanations to be more compelling than the ones advanced by Plaintiffs. (*See id.* at 26-27 ("The Recommendations independent fact finding and creation of alternative explanations for personnel changes at Hain is improper and must be rectified.").)

Fourth, regarding Plaintiffs' reliance upon the core operation doctrine to support scienter, in asserting the Magistrate Judge erred in recommending Plaintiffs' core operations theory does not support such a finding, Plaintiffs state they never argued their scienter allegations hinged only on that theory. (Obj. at 27 (citing Suppl. Opp'n at 6-8; Opp'n at 17-23; CAC Opp'n at 9-19).) In any event, even if not expressly endorsed by the Circuit Court, courts within the Second Circuit rely upon the doctrine to infer scienter. (*See id.* (citing *Haw. Structural Ironworkers Pension Tr. Fund v. AMC Ent. Holdings, Inc.,* 422 F. Supp. 3d 821, 852 (S.D.N.Y. 2019); further noted cases omitted).)

d. Re: The CWs' Allegations Recommendation

Succinctly, Plaintiffs argue that despite their well-pled CW allegations, Magistrate Judge Dunst erred in finding those allegations "too conclusory and generic" and "based upon rumor or conjecture" because (1) said allegations were detailed and (2) complaints may be based upon hearsay at the pleading stage. (Obj. at 28 (citing *City of Warren Police & Fire Ret. Sys. v. World Wrestling Enter.,* 477 F. Supp. 3d 123, 132 (S.D.N.Y. 2020).) Plaintiffs highlight "[t]he *City of Warren* opinion also rejected 'as easily distinguishable' the defendants' reliance upon the same cases that the Recommendation uses as grounds to ignore the well-pled allegations from the CWs." (*Id.* (citing *City of Warren,* 477 F. Supp. 3d at 132 n.1).) Plaintiffs would further assign fault to the R&R since the Report "ignores precedent from within the Second Circuit which plainly holds that confidential witnesses need not have direct contact with Individual Defendants to credit their allegations." (*Id.* at 28-29 (citing *In re Avon Sec. Litig.,* No. 19-CV-1420, 2019 WL 6115349, at *21 (S.D.N.Y. Nov. 18, 2019)).)

e. Re: The Corporate Scienter Recommendation

Reciprocally, Plaintiffs propound that "[b]ecause the Court should correct the Recommendations' mistaken position that the [SAC] should be dismissed for failure to plead scienter as to the Individual Defendants, the Court should also find that the Individual Defendants' scienter is imputed to Hain." (Obj. at 29.)

f. Re: The Section 20(a) Claim Recommendation

Correspondingly, and based upon their objections to the Magistrate Judge's recommendations that Plaintiffs' first cause of action, the Rule 10(b) Claim, be dismissed, Plaintiffs also lodge an objection to Magistrate Judge Dunst's recommendation that their third cause of action, the Section 20(a) Claim, be dismissed. (*See* Obj. at 29.)

g. Re: The Dismissal with Prejudice Recommendation

Finally, as to Magistrate Judge Dunst's recommendation that Plaintiffs' SAC be dismissed with prejudice, Plaintiffs object to same, arguing that the recommendation is improperly based upon the passage of time when, in actuality, Plaintiffs have "had only two opportunities to replead." (Obj. at 30 ("The Recommendation did not . . . deem amendment futile," but simply that the case "has been pending too long." (*Id.* (citing R&R at 68); *see also* R&R t 67.)

2. Defendants' Responses[9]

[9] Defendants' Response does not track the order of Plaintiffs' objections; instead, their Response proceeds as following: first, addressing scienter (i) beginning with its collective consideration, (ii) then proceeding to the Motive and Opportunity Prong, (iii) followed by the Misbehavior and Recklessness Prong, (iv) then to consideration of the CWs' allegations, and (v) finally addressing corporate scienter; second, addressing Plaintiffs' purported abandonment of claims concerning Hain's reported financial results; third, addressing whether Plaintiffs' pled an actionable misstatement or omission, both as to an absolute-right-of-return and as to disclosure of certain sales practices; fourth, addressing Plaintiffs' Section 20(a) Claim; and, finally, addressing the recommendation to dismiss this action with prejudice.

a. Re: The Scienter Recommendations, Generally

Defendants maintain Magistrate Judge Dunst properly considered scienter, following the Second Circuit's directive to do so collectively. (Response at 4.) Thus, the Magistrate Judge's initial individual consideration of Plaintiffs' various scienter allegations is of no moment. (*See id.*) Moreover, in collectively evaluating Plaintiffs' scienter allegations, Magistrate Judge Dunst rightly determined "that any reasonable inference of scienter was 'far less compelling than an inference of, at most, non-actionable mismanagement and negligence.'" (*Id.* at 5 (quoting R&R at 65).)

(i) Motive & Opportunity Scienter

Defendants would debunk each of Plaintiffs' motive-and-opportunity-related objections. As to the stock sales, Defendants assert the Magistrate Judge correctly relied upon three factors, collectively, in finding no sale-related scienter: the failure to allege net profits from the sales, which the Magistrate Judge found to be "merely one of the many '[r]elevant factors'" considered (Response at 6 (citing R&R at 48; further stating "[n]o portion of the Report suggests that this finding was alone dispositive")); the lack of suspiciously timed stock sales, with the Magistrate Judge using a 100-day-period, supported by case law, merely as a contrast to Plaintiffs' position that sales well-outside a 100 day-period before the end of the Class Period support scienter, but for which proffered longer time-period Plaintiffs do not cite any case law (*see id.* at 7 (citing R&R at 49)); and the lack of other insider sales, which –- contrary to the Plaintiffs' objection -– was not used as a "per se rule" against scienter (*id.* (*comparing* Obj. at 7, *with* R&R at 50-

51)). Moreover, to the extent Plaintiffs argue the Magistrate Judge inappropriately engaged in fact-finding, that is incorrect since what Magistrate Judge Dunst did was draw inferences as the Supreme Court instructs. (*See id.* (first citing Obj. at 18; then quoting *Tellabs,* 551 U.S. at 314).)

Then, as to bonuses, Defendants contend the Magistrate Judge's findings that Plaintiffs' bonus-related allegations do not support scienter "are in lockstep with the settled principle of Second Circuit law . . . ." (Response at 8 (citing R&R at 52 (collecting cases)).) They argue Magistrate Judge Dunst followed "the well-established principle" "that scienter cannot be based on a motivation for the company to succeed," which "applies equally to sales figures—*i.e.*, financial performance—as it does to stock prices." (*Id.* (citations omitted); *see also id.* at 9.)

Continuing, as to Hain's acquisitions with Company stocks, Defendants contend Magistrate Judge Dunst properly found Plaintiffs' acquisition-related allegations do not support scienter given the lack of necessary extremely contextual allegations demonstrating a unique connection between the purported fraud and the acquisition. (Response at 9 (citing R&R at 53-54).) Defendants would further have the Court find unpersuasive Plaintiffs' misapprehension-based objection regarding the Magistrate Judge's finding that "Plaintiffs offer nothing to demonstrate that Defendants made material misstatements or omissions to inflate Company stock price for any of the Acquisitions" since, by its plain meaning, the finding makes clear no misapprehension was had. (*Id.* at 10 (quoting R&R at 53-54).) In addition, the cases upon which Plaintiffs rely do not support their contention that the Company's

stock-reliant acquisitions had any unique connection to the alleged fraud. (*See id.* (further stating "Plaintiffs admit the acquisitions were part of Hain's business strategy *since 2000*" (citing SAC at ¶¶ 45-46; emphasis in Response)).)

(ii) Misbehavior or Recklessness Scienter

Under the Misbehavior or Recklessness Prong, Defendants initially contend that, as the Magistrate Judge found, Plaintiffs did not adequately plead an absolute-right-of-return; therefore, their theory of "unsustainable practices" fails to meet the requisite pleading standards. (Response at 11.) Indeed, Defendants argue Plaintiffs do not dispute Magistrate Judge Dunst's finding that Plaintiffs have abandoned this theory of their case, which Defendants maintain "is an allegation and theory that was offered to support each and every one of [Plaintiffs'] claims." (Response at 11 (citing R&R at 39, 55).) Defendants highlight that "Plaintiffs refer to the alleged 'absolute right to return' at least 25 times in the SAC as support for its core 'unsustainable practices' theory—that Hain was selling product it expected would get returned and therefore the sales were 'unsustainable'." (*Id.* (citing SAC).) Yet, those allegations "rely entirely on the CWs", which the Magistrate Judge found were "too sparse" to support the claim, thereby rightly supporting the Magistrate Judge's finding that scienter was not alleged based upon "unsustainable practices. (*Id.* at 11-12 (quoting R&R at 39, 55) (reiterating "Plaintiffs do not challenge here that they failed to adequately plead an absolute right of return" thereby requiring an adoption of the Magistrate Judge's recommendation that there is no

inference of scienter based upon "unsustainable practices").)

Furthermore, Defendants advance that Plaintiffs' objection regarding Simon's and Carroll's negotiated sales should be overruled since Magistrate Judge Dunst both addressed those allegations and "found that 'offer[ing] sales and promotions to meet revenue targets . . . are common practice." (Response at 12 (quoting R&R at 56-57).) Because that is what the Magistrate Judge found to have occurred here, as underscored by the SEC Order, it was also proper that he found no strong inference of scienter based upon Carroll's and Simon's sales practices. (*See id.; see also id.* at 13 (further discussing how the SEC Order undermines inferences of wrongful intent regarding the Company's sales practices).)

In addition, Defendants propound that the Magistrate Judge's finding of a lack of scienter based upon SOX, GAAP, and internal controls violations was correct because: Plaintiffs relied on facts that occurred after the Individual Defendants signed their SOX certifications, when what was necessary was allegations of knowledge at the time the SOX certifications were executed (Response at 13); the Company's financial statements were audited by Ernst & Young from 2013 through 2016, thereby negating any intent to deceive (*see id.* 13-14); and, Hain's remedial actions after the Class Period undercut any inference of scienter, which recommendation Plaintiffs do not challenge (*see id.* at 14). Thus, Defendants contend these allegations reflect, at most "[u]nactionable corporate mismanagement" and not scienter. (*Id.* citing R&R at 58-59).)

Likewise, Defendants counter Plaintiffs' objection regarding their employment-status-changes alleg-

ations, *i.e.*, that the Magistrate Judge wrongly engaged in independent fact finding and creating alternative explanations (*see* Obj. at 27), advancing their position that Magistrate Judge Dunst properly found Plaintiffs' reliance on CW allegations insufficient to allege scienter, as well as competing inferences that could be drawn from said allegations, which outweighed Plaintiffs' proffered inference of scienter. (Response at 14.) According to Defendants, this was correct because "the court reviewing scienter allegations is directed to consider 'competing inferences rationally drawn from the facts alleged.'" (*Id.* at 15 (quoting *Tellabs,* 551 U.S. at 314).) Moreover, this was the right conclusion given the absence of independent evidence suggesting the employment changes were highly unusual. (*Id.* (citing R&R at 59).)

(iii) The CWs' Allegations

Finally, regarding Magistrate Judge Dunst's finding that Plaintiffs' CWs' allegations lack sufficient specificity, Defendants argue "Plaintiffs vaguely claim that the CWs generally support scienter," but fail to make specific arguments rebutting why said statements are not too conclusory or vague to be credited. (Response at 16 (citing R&R at 39-40, 55-56, 60) (further highlighting that in their Objection, Plaintiffs "do not discuss any particular CW or specific allegation").) In support of the Report, Defendants provide a witness-by-witness list of examples showing why Magistrate Judge Dunst found each CW's allegations to be too vague and conclusory, and, thereby, insufficient. (*See* Response at 17-18.) Additionally, Defendants argue "Plaintiffs have long been on notice as to the fatal flaws in their reliance on their CWs" and encourage this Court to "adopt the persistent conclusion in three written decisions that

'the confidential witnesses' allegations are too vague, speculative, and conclusory to contribute to an inference of scienter.'" (*Id.* at 18 (citing R&R and Judge Spatt's prior Dismissal Orders, ECF Nos. 106 & 122).)

(iv) Corporate Scienter

Relatedly, since "Plaintiffs rely exclusively on the imputation of individual scienter to Hain to plead the Company's corporate scienter," since the Magistrate Judge properly found Plaintiffs failed to raise an inference of scienter as to the Individual Defendants, the correctness of that conclusion inures to the related conclusion that Plaintiffs failed to plead corporate scienter. (Response at 18.)

b. Abandoned Claims Recommendation

Addressing Plaintiffs' objection to Magistrate Judge Dunst's claim-abandonment finding, Defendants focus on the recommended finding that "Plaintiffs' challenge is 'not [to] the financial figures [themselves] but instead the failure to disclose Hain's 'reliance on pull-in sales tactics to generate sales.'" (Response at 19 (quoting R&R at 30 (brackets in Response)).) Defendants explain that, in the context of opposing Defendants' materiality arguments raised in their Dismissal Motions, Plaintiffs challenged the omission of allegedly improper tactics underlying the Company's financial results and not the literal falsity of those results. (*See id.* (citing Pls. Opp'n at 12 and Suppl. Opp'n at 3).) Thus, Magistrate Judge Dunst's claim- abandonment finding was correct since "Plaintiffs themselves took the position that the SAC 'challenge[d] as materially omissive not the financial figures' but the supposed failure to disclose the sales tactics 'that generated these figures.'" (Response at

19-20 (quoting Report at 30 (citing Plaintiffs' own pleading)).) Hence, Defendants characterize this not as abandonment, but "an explicit acknowledgement of what [Plaintiffs'] claims are and are not about." (*Id.* at 20; *see also id.* at note 10 (asserting that even if Plaintiffs had not abandoned their literal-falsity-of-financial-results claim, such claim would fail on scienter grounds).)

c. The Unactionable Statements Recommendation

Contrary to Plaintiffs, Defendants further insist the Magistrate Judge correctly found Plaintiffs failed to plead an actionable omission, *i.e.*, that Hain did not disclose its engagement of certain unsustainable practices, which Plaintiffs contend consisted of an "absolute right of return" and other practices such as sales incentives and promotions. (Response at 20 (citing R&R at 39).) As to the absolute-right-to-return prong, Defendants underscore the Magistrate Judge's reliance on CW allegations in reaching his recommendation that Plaintiffs' claims are too conclusory and/or vague to sufficiently plead the Company generated sales by relying upon that practice. (*See id.* (citing R&R at 39-40).) In sum, Defendants claim, "[b]ecause Plaintiffs did not properly plead that Hain granted an absolute right of return, they *ipso facto* did not plead a failure to disclose it." (*Id.*) As to the other sales practices, the Magistrate Judge correctly found the Company disclosed such practices (*see id.* at 21 (citing R&R at 41)) and that "Plaintiffs conceded explicitly in the SAC that 'throughout the Class Period' the Company disclosed its use of these sales incentives and specified that its reported sales figures were net of those incentives." (*Id.* (quoting R&R at 42).) Simply, there can be no failure-to-

disclose claim because the Company did disclose. (*See id.* at 22 (citing R&R at 42 (collecting cases)).) Moreover, Plaintiffs' objection based upon the Company's alleged lack of intensity and credibility regarding its disclosure of incentives and promotions is unavailing, especially since this is not a case of "affirmative misstatements" requiring intense correction. (*See id.* (citing R&R at 41-43) (further discounting cases Plaintiffs rely upon as inapposite to the instant case).) Rather, Magistrate Judge Dunst was correct in finding Hain openly disclosed its sales and incentives practices. (*See id.*)

Addressing whether the Company's statements regarding its accounting controls were actionable, Defendants maintain Plaintiffs do not challenge Magistrate Judge Dunst's recommendation that the statements are opinions and, therefore, not actionable. (Response at 23 (citing R&R at 43-46).) Defendants explain that "Plaintiffs do not dispute the Report's conclusion that the 'SEC Order does not even discuss . . . the assertions in the SOX Statements that management reviewed Hain's internal controls and concluded that the Controls were effective.'" (*Id.* (quoting R&R at 44).) Further, regarding the Individual Defendants knowing about deficient accounting controls at the time they signed the SOX Statements, Plaintiffs rely upon the CWs' statements to support their objection to the Report, which is not enough to sustain their objection given the Magistrate Judge's finding that the SAC CW allegations are too general and conclusory to support Plaintiffs' position. (*Id.* at 24.) And, as Defendants also observe, Plaintiffs do not "address the principle of law that a 'post-Class Period identification of control deficiencies' is insufficient to show that the Individual Defendants knew—at the time they signed

their certification[s]—of any deficiencies in the Company's internal controls." (*Id.* (quoting R&R at 45 (citing cases)).)

d. The Section 20(a) Claim Recommendation

As to Plaintiffs' Section 20(a) claim, their third cause of action, Defendants argue Plaintiffs' objection to the dismissal of this claim is based on its unavailing objections to Magistrate Judge Dunst's recommendation that their Rule 10(b) Claim be dismissed. (Response at 29.) Because there are no grounds to sustain Plaintiffs' underlying objections, this concomitant objection likewise fails. (*See id.*)

e. The Dismissal with Prejudice Recommendation

Finally, the Defendants would have the Court overrule Plaintiffs' objection to the recommendation that their SAC be dismissed with prejudice. (*See* Response at 29-30.) They base their position on the passage of time, which is mentioned by the Magistrate Judge, further arguing that "Plaintiffs offer no new facts that they could plead to rectify the SAC's deficiencies." (*Id.* at 30.)

C. The Court's Rulings

1. Scienter

Notwithstanding Magistrate Judge Dunst's threshold recommendation finding that Plaintiffs have failed to plead an actionable misstatement or omission (*see* R&R at 46), with which the Court concurs, in light of the Second Circuit's mandate that "[o]n remand, the district court should independently reassess the sufficiency of the scienter allegations, considering the cumulative effect of the circum-

stantial allegations of intent together with the pleaded facts relating to motive and opportunity," *Hain Celestial*, 20 F.4th at 138, herein the Court focuses on Magistrate Judge Dunst's scienter recommendations, Plaintiffs' objections thereto, and Defendants' responsive arguments. Hence, for the reasons that follow, even if the Court were to sustain Plaintiffs' further Rule 10(b) Claim-related objections, because the Court overrules Plaintiffs' scienter-related objections–individually and cumulatively–it is not necessary to address these other objections or Plaintiffs' objections regarding their Rule 20(a) Claim, which, as pled, is dependent upon their Rule 10(b) Claim. The Court proceeds by addressing the scienter objections as presented by Plaintiffs: first, the motive-and-opportunity-related scienter; and, second, the conscious-misbehavior-and-recklessness-related scienter. Generally, however, Plaintiffs' reliance on Judge Spatt's prior "close call" observation regarding scienter is of no moment since it applied to Plaintiffs' Amended Consolidated Class Action Complaint, not the subject SAC. Second, such reliance would fly in the face of the Circuit Court's directive that this Court consider afresh the SAC, which is precisely what the Magistrate Judge has done.

a. Motive & Opportunity Scienter

The Court agrees with Magistrate Judge Dunst regarding Plaintiffs' reliance on stock sales; individually and collectively, finding it does not raise an inference of scienter. After properly identifying the appropriate framework for considering stock sales as an inference of motive-and-opportunity-related scienter, *i.e.*, considering various relevant non-dispositive factors (*see* R&R at 48 (listing by way

of example: sale profits; percentage of stocks sold; change in volume of insider sales; number of shares sold; and, timing of sales)), the Magistrate Judge examined Plaintiffs' allegations against this framework, correctly finding the allegations wanting, with each finding well-supported by case law. (*See* R&R at 48-51.) Likewise, the Court rejects Plaintiffs' characterization of the Magistrate Judge's consideration of the various sales factors as engaging in erroneous fact-finding. Not so. As Plaintiffs themselves recognize (*see* Opp'n at 17), in accordance with Supreme Court directives, when presented with scienter allegations, courts are to consider competing inferences rationally drawn from the facts alleged. *See Tellabs,* 551 U.S. at 323-26 (instructing "the court must take into account plausible opposing inferences" and "the reviewing court must ask: [w]hen the allegations are accepted as true and taken collectively, would a reasonable person deem the inference of scienter at least as strong as any opposing inference?"). Magistrate Judge Dunst has performed the requisite comparison, not engaged in improper fact-finding. Further, the Court will not assign error to the Magistrate Judge's consideration of Plaintiffs' failure to allege net profits on the sales notwithstanding this argument was not raised by Defendants; it is a relevant factor and clearly was not dispositive in the Magistrate Judge's consideration of scienter related to the stock sales. *See*, *e.g.*, *In re Inv. Tech. Grp., Inc. Sec. Litig.,* 251 F. Supp. 3d 596, 622 (S.D.N.Y. 2017) ("A number of courts in this district have found that allegations do not support a finding of 'motive and opportunity' when net profits are not pleaded") (collecting cases). Similarly, Magistrate Judge Dunst's use of a comparative 100-day-period in assessing the time period of the stock sales is not

error; case law supports his use of this approximate time-frame to assess the suspiciousness of the stock sales. *See*, *e.g.*, *Reilly,* 2018 WL 3559089, at *14 ("Indeed, courts in this Circuit are frequently skeptical that stock sales are indicative of scienter where no trades occur in the months immediately prior to a negative disclosure" (collecting cases)). In the absence of countervailing case law to support their argument for consideration of a longer time-period, Plaintiffs' objection on this point carries little weight. Finally, Plaintiffs' objection to Magistrate Judge Dunst finding Individual Defendants Conte and Smith not selling Company stock as cutting against a finding of scienter is little more than a disagreement with his assessment of this stock sale factor; their theory that these Individual Defendants were not with the Company for the full 3.5-year Class Period, without more, is unavailing to assign error to the Magistrate Judge's consideration of this factor. Nor have Plaintiffs persuasively shown how Magistrate Judge Dunst failed to decide the stock sales factor on the facts of this case. Of import, thereafter, Magistrate Judge Dunst collectively evaluated the stock sales motive-and-opportunity allegations and found they failed to infer scienter as compelling as competing non-fraudulent inferences; Plaintiffs raise no objection to this finding, which is not clearly erroneous. In sum, Plaintiffs' stock-sales-related objections are overruled.

Regarding consideration of Carroll's and Simon's bonuses as a scienter factor, the Court disagrees with Plaintiffs' contention that Magistrate Judge Dunst improperly recast their allegations. The Magistrate Judge fairly summarized Plaintiffs' argument and properly assessed the related allegations; his subsequent bonuses-related finding, supported by case

law, is not faulty. Hence, Plaintiffs' bonuses-related objection is overruled.

Finally, Plaintiffs' objection regarding Magistrate Judge Dunst's stock-supported acquisition finding – *i.e.*, that such acquisitions did not infer scienter – is equally unavailing. Plaintiffs do little more than disagree with the Magistrate Judge's succinct rephrasing of Plaintiffs' relevant stock-supported acquisition allegations; such disagreement is untenable to sustain Plaintiffs' lodged objection. Indeed, for this "extremely contextual" inquiry, Plaintiffs fail to identify any unique connection between the alleged fraud and the subject acquisitions that could support such an inference. *See ECA,* 553 F.3d at 201 n.6; *see also id.* at 201 ("[T]he link between the acquisition and the alleged misconduct simply is not close enough to strengthen the inference of an intent to defraud."). Therefore, without more, it was not erroneous for the Magistrate Judge to find a lack of scienter from the proffered stock-supported acquisitions, thereby warranting the overruling of Plaintiffs' corresponding objection.

b. Misbehavior or Recklessness Scienter

As stated, *supra,* Plaintiffs advance arguments of scienter through recklessness. To advance a recklessness theory in support of their fraud claims, Plaintiffs are required to allege "a state of mind approximating actual intent, and not merely a heightened form of negligence." *In re Bristol-Myers Squibb Co. CVR Secs. Litig.,* No. 21-CV-8255, – F. Supp. 3d –, 2023 WL 2308151, at *4 (S.D.N.Y. Mar. 1, 2023) (quoting *Stratte-McClure v. Morgan Stanley,* 776 F.3d 94, 106 (2d Cir. 2015) (cleaned up). That is, "a plaintiff must allege, 'at the least,' that the defendant engaged in 'conduct which is highly

unreasonable and which represents an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" *Id.* (quoting *Kalnit v. Eichler,* 264 F.3d 131, 142 (2d Cir. 2001) (cleaned up).

The Court finds Plaintiffs' objections to the Magistrate Judge's recklessness scienter recommendation, which Magistrate Judge Dunst based upon five categories of allegations, are not sustainable. To begin, Plaintiffs make a perfunctory objection that the Magistrate Judge has not properly considered Plaintiffs' allegations of the Individual Defendants' personal involvement in the Company's alleged undisclosed sales practices. (*See* Obj. at 22-23 (citing R&R at 55-57).) Indeed, Plaintiffs fail to raise any meaningful objection to the Magistrate Judge's finding regarding the absolute-right-of-return allegations. (*Cf.* R&R at 55-56, *with* Obj. at 23.) Nor do they clearly object to the Magistrate Judge's determination that "at the heart of Plaintiffs' claims is the allegation that Hain drove sales by granting distributors a right to return Excess Inventory, [and that] the exercise of that right in turn increased the deficit between Hain's actual and reported sales each financial quarter . . . ." (R&R at 39; *see also id.* at 55.) As Defendants observe, "Plaintiffs refer to the alleged 'absolute right to return' at least 25 times in the SAC as support for its core 'unsustainable practices' theory" and that "[t]he Report rightly found that such allegations 'rely entirely on the CWs' [which] were 'too sparse' to support the claim." (Response at 11 (citing R&R at 39, 55; citations to SAC omitted); *see also id.* at 16-18 (further addressing the CWs' allegations as "vague, conclusory and ultimately insufficient" and listing examples of same).) Re-

latedly, other than baldly asserting the Magistrate Judge "fail[ed] to engage with Plaintiffs' allegations that Defendants had personal knowledge of the unsustainable *and undisclosed* sales practices," (Obj. at 23 (emphasis in original)), Plaintiffs fail to expound upon this point, which is unavailing in light of Magistrate Judge Dunst's thorough discuss of same. (*See* R&R at 56-57 (Part IV(D)(2)(b), "Hain's Reliance On Sales Incentives and Promotions").) Moreover, as Defendants astutely highlight, "the SEC Order undermines inferences of wrongful intent on this question . . . stat[ing] there was nothing wrong with Hain's sales practices, and the SEC did not charge the [C]ompany or any individual with fraud." (Response at 13; *see also* R&R at 56-57 ("[E]ven assuming the Individual Defendants pushed the Company to offer sales and promotions to meet revenue targets[,] that would 'contribute[] little to a strong inference of fraud because such actions are common practice.'" (quoting *S.E.C. v. Espuelas,* 698 F. Supp. 2d 415, 430 (S.D.N.Y. 2010); further citations omitted).)

On the issue of alleged GAAP and internal controls violations, Plaintiffs' objections are little more than their disagreement with the Magistrate Judge's recommendation that the alleged violations do not support scienter. (*See* Obj. at 24-25.) Moreover, the case upon which Plaintiffs rely, *In re CannaVest Corp. Secs. Litig.,* which is factually inapposite from the instant one, undercuts their objection. 307 F. Supp. 3d 222, 245-46 (S.D.N.Y. 2018). There, the plaintiffs' improper accounting allegations were strongly supported by statements of a confidential witness, who: was a financial consultant hired by the company; worked directly with the CEO; knew right away that the company was not applying proper

accounting practices; and, reported frequently to the company's board of directors. *See id.* This is "far more than a misapplication of accounting principles," which is what is required to establish recklessness when improper accounting is alleged. *Id.* (internal quotations and citation omitted). Thus, the *Canna Vest* allegations established that the company knew of its accounting failures. By contrast, here, having examined the SAC, the Magistrate Judge stated:

> Plaintiffs neither undermined the assertions in the SOX Statements that management reviewed Hain's internal controls and concluded that the controls were effective nor adequately pled that Defendants knew or were reckless in not knowing that the Company's internal controls were deficient. To this point, Plaintiffs "have not adequately alleged that defendants had any knowledge of 'glaring accounting irregularities' when they executed the SOX certifications . . . ." *Reilly,* 2018 WL 3559089, at *19. Instead, Plaintiffs "rel[y] only on facts occurring after Individual Defendants signed their certifications, namely the post-Class Period disclosures of material weaknesses in [Hain]'s internal controls . . . That dog won't hunt." *[In re] Diebold [Nixdorf, Inc., Secs. Litig.,* No. 14-CV-2900,], 2021 WL 1226627, at *14 [(S.D.N.Y. Mar. 31, 2018)].

(R&R at 58.)

Finally, as to Plaintiffs' objection regarding personnel changes, they underscore having pled "the termination of *seven* executives and the demotion of *two* more—a group that includes each Individual Defendant," which Plaintiffs argue "contribute to a

strong inference of scienter when considered holistically with Plaintiffs' other scienter allegations." (Obj. at 25 (citing SAC ¶¶ 339-50).) They also contend the timing of the personnel changes can support a strong inference of scienter. (*Id.* at 26 (quoting *In re Salix Pharm., Ltd.,* No. 14-CV-8925, 2016 WL 1629341, at *15 (S.D.N.Y. Apr. 22, 2016).) That may be so, but in *Salix,* cited by Plaintiffs, the court found the resignations of top company executives to be "'highly unusual and suspicious' because the [company] Board exercised the clawback provisions in their resignation agreements," which provisions "allow[ed] for a clawback based on a Board determination that the Individual Defendants 'intentionally engaged in wrongdoing.'" *Salix,* 2016 WL 1629341, at *15. The timing of the *Salix* executives' resignations was not the dispositive factor in finding scienter based upon resignations. *See*, *e.g.*, *Francisco v. Abengoa, S.A.,* 624 F. Supp. 3d 365, 402 (S.D.N.Y. 2022) ("As there is no other circumstantial evidence of fraud, even if the Court were to find [the timing of] Sanchez Ortega's resignation suspicious, it would not be enough to rescue plaintiffs' claims.").

In comparison, here, Magistrate Judge Dunst properly found the timing of the personnel changes were not enough to elevate said changes to "highly unusual and suspicious" given the dearth of facts indicating those changes are "tied to" the alleged fraud. (R&R at 59 (quoting *Glaser,* 772 F. Supp. 2d at 598); *see also, e.g., id.* at 60 (re: Smith ("Courts routinely hold that without more, resigning after an even shorter tenure than Smith's does not support scienter." (citations omitted))); at 61 (re: Carroll ("Plaintiffs failed to plead independent facts indicating that Carroll's employment change was tied to the alleged fraud, alerted defendants to the alleged

fraud, or that Carroll's scienter was otherwise evident." (citation omitted))); at 61 (re: Conte ("Plaintiffs fail to allege sufficient facts to support that Conte acted with scienter in connection with the challenged statements, that his resignation somehow alerted anyone at Hain to the alleged fraud, or that his scienter was otherwise evident.")); at 62 (re: Simon ("Plaintiffs do not explain why Simon's resignation supports an inference of scienter. Under these circumstances, the timing of Simon's resignation—sixteen months after the Class Period ended—cuts against such an inference." (citations omitted)).) Furthermore, to the extent Plaintiffs further register an objection regarding the personnel changes based upon the Magistrate Judge's purported "independent fact finding and creation of alternative explanations," (Obj. at 27), such an argument fails. Magistrate Judge Dunst was correctly assessing whether the proffered scienter was "cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Tellabs,* 551 U.S. at 314.

Finally, Plaintiffs' objection that the Magistrate Judge improperly applied the "core operations" doctrine is erroneous. Magistrate Judge Dunst began by recognizing that the majority of courts within the Second Circuit find the doctrine "may provide support for[,] but not an independent basis of[,] scienter," and that courts in this District that have applied the doctrine require the operation at issue to make up nearly all of a company's business or be essential to the company's survival. (*See* R&R at 64 (first quoting *Lipow v. Net1 UEPS Techs., Inc.,* 131 F. Supp. 3d 144, 163 n.11 (collecting cases); then quoting *Francisco,* 559 F. Supp. 3d at 320).) Then, giving Plaintiffs the benefit of the assumption that

"the U.S. business is essential to Hain's survival because it generates approximately 60% of the Company's net sales," Magistrate Judge Dunst proceeded to find the Plaintiffs' reliance on the "core operations" doctrine to be "misplaced given that the SAC fails to plead separate facts raising an inference of scienter to be supplemented by the core operations doctrine." (R&R at 64.) Thus, there is no reason to assign error here.

Plaintiffs do not lodge any objections regarding Magistrate Judge Dunst's collective evaluation of the recklessness allegations. (*See* Obj., *in toto.*) Nor does the Court find any.

c. The CWs' Statements

In a general manner, Plaintiffs object to Magistrate Judge Dunst's CW-related findings. (*See* Obj. at 27-29.) As Defendants put forth, however: "Plaintiffs' Objection makes no specific arguments to rebut the three decisions finding each and every witness unreliable. . . . Plaintiffs do not discuss any particular CW or specific allegation or identify why these CW statements are not too conclusory and vague to be credited." (Response at 16 (citing Obj. at 27-29, further citation omitted).) Moreover, contrary to Plaintiffs' objection, in support of their position, Defendants provide a detailed list highlighting why the CWs' allegations are vague and conclusory. (*See id.* at 17-18.) The Court agrees with Defendants; the CWs' allegations are too vague, speculative, and conclusory to support an inference of scienter. *See, e.g.*, *Francisco v. Abengoa, S.A.,* 481 F. Supp. 3d 179, 208-09 (S.D.N.Y. 2020) (discrediting "general and second-hand" confidential witness allegations). Therefore, no error is had.

d. The Company's Scienter

Since the Court finds no error in the Magistrate Judge's recommendations regarding scienter as to the Individual Defendants, that recommendation flows to the Company's scienter: The lack of Individual Defendants' scienter imputes to Hain. Likewise, because Plaintiffs' objections regarding their Section 20(a) Claim are based upon their objections regarding their Rule 10(b) Claim, which the Court has overruled, the Court also overrules Plaintiffs' Section 20(a) Claim-related objections. *See*, *e.g.*, *In re Telefonaktiebolaget LM Ericsson Secs. Litig.,* No. 22-CV-1167, – F. Supp. 3d –, 2023 WL 3628244, at *18 (E.D.N.Y. May 24, 2023) (where plaintiff "failed to establish a primary violation of Section 10(b), its Section 20(a) claim necessarily fails and must be dismissed").

2. Dismissal with Prejudice

Finally, regarding Magistrate Judge Dunst's recommendation that the SAC be dismissed with prejudice, Plaintiffs object to same, arguing that the recommendation is based merely upon the passage of time, without the Magistrate Judge having addressed whether amending would be futile. (Obj. at 30 (quoting FED. R. CIV. P. 15(a)(2).) Not so. In addition to observing the passage of time, Magistrate Judge Dunst also observed "Plaintiffs had numerous opportunities to plead a case to survive dismissal," that Plaintiffs were afforded the opportunity to file their SAC, and that since the Circuit's Hain decision, "Plaintiffs have neither sought leave to further amend the SAC nor communicated that they possess facts that would bolster it." (R&R at 67-68.) Hence, without using the word "futile", it is implied by the text of the recommendation that the finding of futility

is the basis for the Magistrate Judge's recommendation of dismissal with prejudice. Moreover, the Court notes: (1) in their Oppositions, Plaintiffs do not request leave to amend; and (2) despite the Magistrate Judge's recommendation of dismissal with prejudice, in their Objection, Plaintiffs fail to articulate any new facts that would rectify the deficiencies of their pleadings. *Cf. Reiner v. Teladoc Health, Inc.,* No. 18-CV-11603, 2021 WL 4451407, at *17-18 (S.D.N.Y. Sept. 8, 2021) (recommending, where "[i]n a single sentence at the end of their opposition brief, plaintiffs request that, 'if any part of the [subject amended c]omplaint is dismissed,' they be granted leave to replead," but where plaintiff also (1) had already been afforded the opportunity to amend in response to a previous dismissal, and (2) had "provide[d] no information – not even a hint – as to what more they believe they could allege to overcome the deficiencies" of the subject amended complaint, said complaint be dismissed with prejudice), *report and recommendation adopted,* 2021 WL 4461101 (S.D.N.Y. Sept. 29, 2021). Thus, here, Magistrate Judge Dunst's recommendation of dismissal with prejudice is proper; Plaintiffs' objection is overruled.

* * *

While some of Plaintiffs' objections are subject to clear error review, even upon *de novo* review, the Court finds the Magistrate Judge's scienter-related recommendations to be thorough and well-reasoned. Therefore, Plaintiffs' scienter-related objections are overruled. The Court adopts Magistrate Judge Dunst's scienter-related recommendations. In turn, in the absence of the requisite specific scienter allegations, Plaintiffs have failed to plausibly allege

their Rule 10(b) and Rule 20(a) Claims, warranting granting the Dismissal Motions.

CONCLUSION

For the stated reasons, **IT IS HEREBY ORDERED** that:

I. Plaintiffs' objections are OVERRULED;

II. The R&R is ADOPTED as to the scienter-related recommendations and the dismissal recommendation;

III. Defendants' Dismissal Motions (ECF Nos. 113, 116) are GRANTED; and

IV. The Clerk of Court enter judgment accordingly and, thereafter, mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 29,2023
Central Islip, New York

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2:16-CV-04581 (JS) (LGD)

IN RE THE HAIN CELESTIAL GROUP INC.
SECURITIES LITIGATION

REPORT AND RECOMMENDATION

LEE G. DUNST, Magistrate Judge:

For more than six years, Plaintiffs have been seeking to pursue a putative class action alleging that defendant The Hain Celestial Group, Inc. ("Hain" or the "Company") and four of its present or former officers—Irwin Simon ("Simon"), Pasquale Conte ("Conte"), John Carroll ("Carroll"), and Stephen Smith ("Smith" and together with Simon, Conte, and Carroll, the "Individual Defendants")—violated federal securities laws from November 5, 2013 through February 10, 2017 (the "Class Period"). *See generally* Second Amended Consolidated Class Action Complaint For Violations Of Federal Securities Laws, filed at Electronic Case File number ("ECF No.") 110 (the "SAC"). Presently before the Court, pursuant to the June 14, 2022 referral from the Honorable Joanna Seybert for a Report And Recommendation, are the latest motions from Hain and the Individual Defendants (together, "Defendants") to dismiss the remaining claims in the SAC. *See* Notice Of Hain's Motion To Dismiss The SAC, ECF No. 113; Notice Of Individual Defendants'

Motion To Dismiss The SAC, ECF No. 116. For the reasons set forth below, the undersigned respectfully recommends that the Court grant Defendants' motions to dismiss the SAC with prejudice.

I. FACTUAL BACKGROUND

Unless otherwise specified, the facts set forth herein are taken from the SAC, documents incorporated into the SAC by reference, and Hain's public disclosure documents filed with the SEC. *See Kleinman v. Elan Corp.*, 706 F.3d 145, 152 (2d Cir. 2013) (discussing permissible sources of facts for addressing a motion to dismiss claims for violations of securities laws).

A. The Parties

Defendant Hain manufactures, markets, distributes, and sells more than forty brands of organic and natural food products in the United States and several other countries. *See* SAC ¶ 25. During the Class Period, approximately 60% of Hain's consoledated net sales were generated within the United States. *Id*. Hain's largest customer during the Class Period was United Natural Foods, Inc. ("UNFI"), a distributor that accounted for 20% of Hain's U.S. sales during the Class Period. *Id*.

Defendant Simon founded Hain and served as its President, Chief Executive Officer ("CEO"), and Chairman of the Board until June 2018. *Id*. ¶ 26. Defendant Smith was Hain's Chief Financial Officer ("CFO") and Executive Vice President from September 3, 2013 to September 30, 2015. *Id*. ¶ 28. Defendant Conte served in multiple roles at Hain over time, including as Treasurer and Vice President from July 2009 to October 2014, Senior Vice President of Finance from October 2014 to September

2015, and then CFO and Executive Vice President of Finance from September 2015 to June 2017 (as successor to Smith). *Id*. ¶ 27. Finally, Defendant Carroll was Hain's Executive Vice President and CEO for Hain Celestial North America from February 2015 to March 6, 2017, and has been the Executive Vice President for Global Brands, Categories, and New Business Ventures since March 6, 2017. *Id*. ¶ 29.

Co-Lead Plaintiff Rosewood Funeral Home ("Rosewood") is a funeral home based in Houston, Texas that lost approximately $1,548,333 on Hain call options purchased during the Class Period. *Id.* ¶ 23. Co-Lead Plaintiff Salamon Gimpel ("Gimpel" and together with Rosewood, "Plaintiffs") lost approximately $822,519 from his purchases of Hain common stock during the Class Period. *Id*. ¶ 24.

B. The Alleged Fraudulent Scheme

According to the SAC, Hain began suffering from increased competition in the early 2010s as generic brands and chain stores began offering natural and organic foods. *See id.* ¶¶ 50-52. That increased competition rendered Hain unable to meet its own revenue targets and Wall Street's projections. *See id.* ¶ 58.

Without explicitly using the term in the SAC, Plaintiffs allege that Defendants responded to those market conditions by engaging in a "channel stuffing" scheme. *See* SAC ¶ 3. Channel stuffing is "a scheme which temporarily overstates revenues by persuading customers to accept product deliveries despite the absence of commensurate demand, often on the understanding that excess product can be returned to

the seller at a later time." [1] *In re Sierra Wireless, Inc. Sec. Litig.*, 482 F. Supp. 2d 365, 375 n.2 (S.D.N.Y. 2007). Defendants allegedly engaged in channel stuffing by shipping extra inventory to its distributors, beyond the distributors' needs, with financial incentives and an absolute right to return the products. *See* SAC ¶¶ 53-60.

The finer details are as follows. In the middle of each financial quarter, Carroll obtained Hain's financial sales to estimate the given quarter's anticipated "sales shortfall." SAC ¶ 63. Carroll then arranged for Hain's distributors to purchase the amount of inventory needed to make up the anticipated shortfall (referenced in the SAC as "Excess Inventory") in exchange for credits and "off-invoice" concessions from Hain. *See id*. Carroll and Simon then told the brand managers how much Excess Inventory to load onto the distributors' trucks and, at the end of the financial quarter, Hain sent the Excess Inventory to the distributors with the understanding that the distributors could later return it without consequence. *See id*. As soon as the Excess Inventory shipped, the supply chain/operations finance group that worked under James Meiers ("Meiers"), Hain's former Chief Operating Officer ("COO"), booked revenue on those sales without reducing it by the

[1] Put differently, "[c]hannel stuffing is the practice of intentionally oversupplying distributors with products in order to artificially inflate sales and revenue. In so doing, a company that stuffs its distribution channels essentially 'robs Peter to pay Paul'—that is, the company inflates revenue for one financial quarter by stealing revenue from a future financial quarter or quarters; and it misrepresents the company's financial status." *Subramanian v. Lupin Inc.*, No. 17-CV-5040, 2020 WL 7029273, at *1 (S.D.N.Y. Aug. 21, 2020) (internal quotations omitted).

credits and off-invoice concessions the Company provided. *See id.* ¶¶ 62, 64. "Meiers and his inner circle then smoothed out the sales and revenue numbers to avoid the discovery of the fraud." *Id*. ¶ 64. Meiers then sent the modified sales and revenue numbers to Hain's CFO—depending on the point in time, either Smith or Conte—who included those numbers in Hain's SEC filings. *See id.* Subsequently, the distributors returned the Excess Inventory in the following financial quarter. *See id*. ¶ 65. As a result of this repeated practice, the deficit between Hain's actual and reported sales increased with each financial quarter. *See id*.

C. The Confidential Witnesses And Their Allegations

In support of its allegations, the SAC relies upon eight confidential witnesses ("CWs"), most of whom previously worked at Hain. Each is described in turn below.

- CW 1 worked at the Company from September 2012 through June 2016 as Hain's Senior Finance Manager responsible for domestic manufacturing costs, including posting accruals quarterly to Hain's accounting department. *Id*. ¶ 32. CW 1 also was "responsible for reporting Hain's financial results," including credits and returns.[2] *Id*. ¶ 83. CW 1 reported to Hain's Senior Director of Supply Chain Finance, who in turn reported to Meiers. *Id*. ¶ 32.

[2] CW 3 confirmed that CW 1 was responsible for the paperwork related to the returns and credits. *See* SAC ¶ 83.

- CW 2 worked at the Company from January 2016 through February 2017 as Hain's Senior Sales Analyst responsible for forecasting, trade planning, and profit and loss analysis at Hain's BluePrint brand.[3] *Id*. ¶ 33. CW 2 reported to the General Manager for BluePrint, who in turn reported to Simon. *Id*.
- CW 3 worked at the Company from June 2014 to July 2016 as an Executive Assistant to Meiers and was responsible for general administrative duties as well as reviewing and formatting Hain's financial results prior to their quarterly public release. *Id*. ¶ 34.
- CW 4 worked at the Company from January 2012 through June 2014 as a Brand Manager and from June 2014 to June 2017 as a Senior Brand Manager. *Id*. ¶ 35. CW 4 was responsible for product development and strategy, profit and loss analysis, and budgeting for non-dairy products. *See id.* CW 4 reported to Hain's former Director of Marketing, who in turn reported to Hain's Vice President of Marketing. *Id.*
- CW 5 worked for UNFI from August 2011 to 2013 as a Senior General Manager in an Ontario, Canada warehouse that UNFI leased from Hain. *See id*. ¶ 36.
- CW 6 worked at the Company from 2000 until October 2016 as the Senior Manager of Customer Support and was responsible for

[3] BluePrint products are delivered nationwide and "consist of raw, organic cold-pressed fruit and vegetable juice beverages, including a raw juice cleanse program designed to detoxify the body." SAC ¶ 33.

customer service tasks, including processing the Company's quarterly numbers and product returns with its financial operations and accounting departments. *Id*. ¶ 37. CW 6 reported to Hain's Director of Customer Satisfaction, who in turn reported to Meiers. *Id*.

- CW 7 worked at the Company from January 2005 until August 1, 2017, most recently as the Senior Director of Supply Chain Finance. *Id*. ¶ 38. CW 7 was responsible for managing the supply chain financials, such as profit and loss analysis, cost accounting, and sales reporting. *Id*. CW 7 reported to Meiers. *Id*.
- CW 8 was the Company's Manager of Sales Planning for the entirety of the Class Period and was responsible for supporting Hain's Field Sales Team and driving retail sales. *Id*. ¶ 39.

1. The Channel Stuffing Practices

The SAC explains how the Defendants engaged in the alleged channel stuffing scheme. Per CW 6, Hain would coordinate with UNFI and other distributors to make up for earnings shortfalls by giving the distributors "off-invoice" concessions, and the resulting Excess Inventory deliveries accounted for approximately 20% of Hain's total sales each quarter. *See id.* ¶ 71. Approximately six to eight weeks after each quarter ended, UNFI and other distributors began to return the Excess Inventory. *See id.* ¶ 72. Returns "normally were heavily scrutinized, but no one asked any questions about UNFI's product returns." *Id*. According to CW 6, he processed at least $500,000 in returns each quarter, including a $700,000 return in

2015, and frequently spent entire days processing returns of inventory that were sold to distributors in previous quarters. *See id*.

Similarly, CW 4 reportedly saw on shipping reports approximately $5 million in transactions during the final weeks of the fiscal quarters. *See id.* ¶ 81. CW 4 "kn[ew] they could not be real" because distributors typically took two months of inventory but, by August 2016, UNFI was receiving nearly five months of inventory. *See id*. CW 4 stated that this channel stuffing took place throughout his five-year tenure at the Company and that Hain offered concessions to distributors at each quarter end by saying "here's a discount to load"—all before ultimately accepting returns of those items in the next quarter. *See id*. ¶ 73.

Other CWs likewise described Hain's quarter end "loading" practices. For example, CW 7 explained how, at quarter ends, Hain offered distributors unconditional return rights to push out inventory—which CW 7 referred to as "customer loading." *See id*. ¶¶ 74-75. CW 2 also claimed that the practice of loading and de-loading was part of Hain's "core business practice" with the goal of increasing financial reporting. *See id*. ¶ 77. CW 2 further detailed an instance from 2016 where it was decided that the BluePrint brand would miss its quarterly Wall Street estimates "because of a concern that if [it] ran too many promotions to get inventory out the door, it would negatively impact subsequent quarters." *Id*. ¶ 78. But CW 2 reported that after that initial decision was made, Simon called BluePrint's General Manager and told him to reverse course and that BluePrint needed to "make" the forecasted sales estimates for that quarter. *See id*. Due to Simon's

call, BluePrint "pushed" inventory to one of its distributors to make the sales forecasts. *See id.* CW 2 claimed that every Hain brand utilized this practice. *See id*.

2. Senior Management's Involvement In And Awareness Of Channel Stuffing

The CWs contends that senior management directed the channel stuffing at Hain. For example, CW 4 recalled that employees and executives referred to the shipping of Excess Inventory as "loading" and recounted that Carroll attended numerous brand strategy meetings where loading was discussed, which included discussions about reduced shipments in the given quarter due to loaded inventory in the previous quarter. *See id*. ¶¶ 91-92. CW 4 stated that, after August 2016, Carroll directed employees to stop using the word "loading" and instead use the phrase "inventory reduction." *Id*. CW 7 also confirmed that the term "loading" was used freely among senior executives, including by Carroll and Meiers, and claimed that Simon encouraged Hain's customers to buy more product at the end of the quarter by offering material concessions (and in one instance, those concessions totaled several million dollars). *Id*. ¶¶ 91, 94.

The CWs also addressed Simon and Carroll's quarter end practice with one of Hain's largest customers, UNFI. CW 6 reported that Carroll asked him to provide "certain numbers, usually by mid-quarter" so that Carroll could determine Hain's quarterly sales shortfall prior to negotiations with UNFI for the latter to take Excess Inventory. *Id*. ¶ 93. CW 7 explained that UNFI's owner dealt directly with Simon when it came to anything related to revenue, and Simon could "always make them

[UNFI] buy more if needed." *Id.* ¶ 94 (brackets in original). CW 6 reported that he participated in internal sales calls where Carroll admitted that he negotiated concessions with UNFI to make up for the given quarter's sales deficit. *See id*. ¶ 93. CW 7 also explained that Simon granted UNFI a right of return. *See id*. ¶ 94.

CW 7 alleged that he heard Carroll and Simon discuss loading even though they tried to be "secretive" about it. *Id.* ¶ 95. CW 7 explained that he heard Simon and Carroll discuss Hain's financial arrangements with UNFI and that, when they realized that CW 7 heard these conversations, Simon and Carroll said they were "not supposed" to discuss those arrangements in front of others. *Id.*

According to CW 7, Simon had "special powers" when it came to interfacing with Hain's customers and "only the higher-ups" had the power to make "special deals" with distributors. *Id.* CW 2 similarly believed that the channel stuffing directives came from Hain's "upper management" based on discussions with Hain's General Manager for the BluePrint brand, who reported directly to Simon. *Id.* ¶ 96.

3. Revenue Recognition Accounting

The CWs further recounted how the Company accounted for the Excess Inventory in its financial results. Per CW 6, Hain recognized revenue as soon as the Excess Inventory was "off the dock." *Id*. ¶ 82. CW 4 corroborated that Hain recognized revenue as soon as the shipments left the warehouse, based on shipment reports. *See id.* CW 1 claims that she "was instructed"—although the SAC does not specify by whom—to book credits from the Excess Inventory

transactions onto Hain's "internal financial overview" for "unofficial reporting." *Id*. ¶ 83. But CW 1 stated that the credits from the Excess Inventory sales were booked on Hain's actual "financial system" as money the distributors owed to Hain (i.e., the credits were posted as accruals due to the Company, otherwise known as accounts receivable). *See id*.

CW 7 reportedly became weary of the legitimacy of the credits and accruals as they increased relative to historic levels. According to CW 7, the accruals started at around $200,000, which seemed reasonable at the time, but became suspicious when they grew to approximately $1.5 million. *See id.* ¶ 85. CW 7 stated that there was a "correlation" between Hain's quarterly performance and the amount of the accruals. *Id*.

CW 1 added that by June 2015, he became suspicious of the credit numbers because they continued to grow—despite declining sales—and "reached millions of dollars each quarter." *Id*. ¶ 89. CW 1 left Hain in June 2016 because he believed that the numbers were being manipulated "to fill in [the] gap" between Hain's quarterly estimated and actual performance. *Id*.

Finally, CW 7 and CW 8 explained that Hain's deficient accounting protocols rendered it susceptible to the improper accounting. CW 7 reported that Hain lacked an internal audit department, a compliance department, a revenue recognition policy, and a proper internal audit function. *See id.* ¶¶ 113, 115. According to CW 7, Hain failed to properly document sales contracts because of those deficiencies. *See id.* ¶ 115. CW 8 similarly alleged that Hain failed to properly account for customer billbacks (i.e., rebates or discounts given after transactions) and contract-

related issues, which was "compounded by the fact that the people at Hain 'doing the books' did not understand the customer contracts." *Id.* ¶ 116; *see id*. ¶ 117 (similar). As an example, CW 8 recounted how he learned about "contract-related deals" from the production department because the accounting department failed to inform him of those deals. *See id.* ¶ 116.

4. Senior Management's Involvement In Accounting Decisions

The Company's upper managers allegedly were aware of and participated in the accounting decisions for transactions involving the Excess Inventory. According to CW 4, Hain's sales, inventory, and targets were tracked weekly and included in reviews and reports that were sent each week to Hain's most senior management, including Simon and Carroll. *See id*. ¶ 97.

Several CWs addressed Meiers' alleged involvement in improper accounting. CW 1 asserts that the finance team at Hain was run by groups reporting to Meiers and Carroll. *See id*. ¶ 101. CW 3 reported that Meiers was "well known for changing numbers left and right," which CW 3 found "hard to believe because they were sales results for the quarter, not forecasts." *Id.* ¶¶ 100, 104. CW 3 also recounted that he was directed to print multiple copies of the same finance reports for Meiers and Carroll's assistants—but the numbers in those reports changed with each subsequent print request. *See id*. ¶ 104. According to CW 3, Meiers "would sit in a room for a week to make the numbers 'look pretty.'" *Id.*

CW 1 explained that when Meiers wanted to change the financial numbers, he would tell the

accounting team "this number has to change." *Id*. ¶ 102. CW 1 reported that Marla Hyndman ("Hyndman"), Hain's Senior Vice President and Controller, and Rose Ng ("Ng"), the Senior Vice President of Finance and Business Planning, asked Meiers to justify his proposed changes. *See id*. Both CW 3 and CW 7 confirmed that Ng routinely requested that Meiers justify these proposed changes. *See id*. ¶ 112 (CW 3 recalling that Ng "attempted to operate as a check and balance" on Hain's finance team and "was always chasing Meiers" in connection with the numbers); *id*. ¶ 113 (CW 7 recalling that "Ng was considered internally to be the 'police'" and that her endeavor "to dig into" Meiers' numbers made Meiers "uncomfortable"). Nonetheless, CW 1 reported that "ultimately Meiers could get what he wanted done." *Id*. ¶ 102.

Similarly, CW 1 and CW 7 described Meiers' involvement with accounting decisions. According to CW 7, Meiers supervised Stephen Powhida ("Powhida"), Senior Vice President of Manufacturing, and relied on Powhida to create accruals that "always magically made it so Hain was no longer short." [4] *Id*. ¶ 86; *see also id*. ¶ 87 (CW 7 explaining how accruals were communicated internally and reiterating that Powhida "ma[d]e the numbers just right" before each quarter end). CW 7 described the accruals as Powhida's "creativity." *Id*. ¶ 86. Similarly, CW 1 reported that Meiers directed Powhida to "book . . . with accounting" the credits connected with the Excess Inventory shipments. *Id*. ¶ 98. CW 1 recalled one instance when Powhida submitted a $3 million

[4] CW 3 characterized Powhida as Meiers' "right hand man" stemming from their days working together at Heinz. SAC ¶ 100.

credit to accounting that later was included in Hain's financial reports. *See id*. CW 1 reportedly questioned Powhida and Meiers about the credits, but they responded "don't worry about it." *Id*. ¶ 103.

5. September 2015 Employee Terminations

The complaint alleges that in September 2015 "[e]mployees who questioned the [channel stuffing] practices were fired." *Id*. ¶ 108. For example, Smith left Hain on September 8, 2015—after only two years as CFO—and CW 1 believes Smith was forced out because he was "not willing to be one of Simon's puppets." [5] *Id.* ¶¶ 109-10. Although Smith allegedly left to pursue other opportunities, he had not secured new employment as of December 2016. *See id*. ¶ 111.

Ng also was fired in September 2015 because, according to CW 1, she was a "bottleneck" to Meiers' accounting manipulations. *Id*. ¶ 112. CW 3 corroborated that Hain fired Ng "after she was constantly butting heads with Meiers because she was unwilling to manipulate the Company's financial numbers." *Id*. CW 7 reported that, after Ng was terminated, "there was no one" at Hain to push back on Meiers' improper accounting. *Id*. ¶ 113.

Hain also fired Powhida in September 2015. *Id*. ¶ 114. CW 1 believes Powhida was fired "to take the hit for the credits scheme." *Id.* CW 7 similarly believed Powhida was fired to make him the "scapegoat" for Meiers. *Id*.

6. Discovery of the Channel Stuffing

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[5] CW 1 also claimed that the head of Human Resources and unnamed others were replaced for disagreeing with Simon. *See* SAC. ¶ 110.

However, new employees later joined the Company and learned of the channel stuffing at Hain. For example, James Langrock ("Langrock") joined the Company in November 2015 as Senior Vice President, Finance and Treasurer, and Michael McGuinness ("McGuinness") joined the Company in March 2016 as Senior Vice President, Finance and Chief Accounting Officer. *See* Hain 8-K dated February 29, 2016, filed with the SEC on March 1, 2016 (announcing McGuinness' hiring at Hain); Hain 8-K dated June 20, 2017, filed with the SEC on June 22, 2017 (describing Langrock's employment at Hain). According to CW 7, both Langrock and McGuinness "were surprised to find what was going on at Hain," and they undertook an accounting review that led to Hain subsequently delaying the filing of its financials and ultimately adjusting previously-filed financials. *See id*. ¶ 115. CW 8 likewise reported that the accounting problems were uncovered once Langrock joined Hain and began reviewing the books. *Id.* ¶ 117. As a result, per CW 8, "it became clear to Langrock" that Hain made significant deals with customers at quarter ends, and CW 8 "heard that Langrock questioned 'if we are doing that, how are we accounting for that?'" *Id.* ¶ 117. CW 8 reported that Langrock ultimately brought his finding to the Company's outside auditors. *Id*. Similarly, several CWs reported that EY (formerly Ernst & Young) conducted an external audit of Hain around December 2015. *See id*. ¶ 119. CW 4 "heard" that EY had identified the channel stuffing as an accounting issue. *Id*. CW 6 further asserted that EY "caught" Hain during the audit and that "UNFI kept popping up" in the audit. *Id.*

D. Defendants' Class Period Statements

Plaintiffs allege that Hain's failure to disclose that it (1) recorded revenue from inventory forced onto distributors—even though the distributors were not obligated to pay for the shipments and had an absolute right to return the products the next quarter; (2) relied on certain "unsustainable" practices to generate sales (such as offering discounts, cash incentives, extended payment terms, spoilage coverage, and an absolute right of return); and (3) lacked adequate accounting controls rendered a plethora of Defendants' Class Period statements materially false or misleading. The SAC places those statements into three general categories:

- Statements in the Company's SEC filings between November 2013 and May 2016 regarding Hain's sales, including the representation of Hain's sales numbers in Forms 8-K and 10-K. *See id.* ¶¶ 163-250.
- Statements during the Company's investor calls between January 14, 2014 and May 4, 2016 in which the Individual Defendants discussed sales, revenue, inventory, and sales demand. *See id.* ¶¶ 251-292.
- Statements in various SEC filings during the Class Period concerning Hain's accounting policies, revenue recognition practices, sales/promotion incentives, trade promotions, Sarbanes-Oxley certifications, and internal controls. *See id.* ¶¶ 292-319.

The SAC alleges that Hain partially disclosed the effects of its channel stuffing practices in January, August, and November 2016 before fully disclosing the truth of those practices in February 2017.

1. January 2016 Reduced Sales And Earnings Estimates

On January 11, 2016, Hain announced it was cutting its anticipated full year sales and earnings per share. *See id.* ¶ 121. Hain reduced (1) anticipated sales revenues from approximately $3.04 billion to approximately $2.97 billion and (2) estimated earnings from approximately $2.19 per share to approximately $2.02 per share. *Id*. On January 21, 2016, Hain revealed in a Form 8-K that Ross Weiner ("Weiner") had resigned as Vice President of Finance and Chief Accounting Officer. *Id*. ¶ 122. CW 6 asserts that Weiner left because "he did not like what he was seeing regarding [the channel stuffing]." *Id*. The next day, Simon assured Wall Street analysts that there was "nothing wrong with Hain's accounting at all." *Id*. ¶ 123.

Between January 21, 2016 and January 25, 2016, Hain's shares declined 7%—from $36.10 per share to $33.46 per share. *Id*. ¶ 124. Plaintiffs maintain Simon's remarks to Wall Street analysts artificially propped up Hain's stock price and kept it from falling further. *Id*.

2. August 2016 Audit Committee Revenue Recognition Review, Resulting Delay In Filing Financials with the SEC, And Failure To Meet Performance Estimates

On August 15, 2016, Hain announced in a Form 8-K that it "will delay the release of its fourth quarter and fiscal year 2016 financial results." *Id*. ¶ 125. That filing explained that the Company historically "recognized revenue pertaining to the sale of its products to certain distributors at the time the products are shipped" but the Board's Audit

Committee was "evaluating whether the revenue associated with the concessions granted to certain distributors should instead have been recognized at the time the products sell through its distributors to the end customers." *Id*.; Hain 8-K dated August 15, 2016 and attached Exhibit 99.1, filed with the SEC on August 15, 2016 ("August 2016 Form 8-K"). The Company reported that it expected any potential changes in revenue recognition timing "should not impact the total amount of revenue ultimately recognized by the Company with respect to such distributors and does not reflect on the validity of the underlying transactions with respect to such distributors." August 2016 Form 8-K. The Company further disclosed that it "will not be in a position to release financial results until the completion of the independent review of the Audit Committee and of the audit process relating to the 2016 fiscal year." *Id*. Given that ongoing review, Hain cautioned "[t]here can be no assurance that the Company will complete the preparation and filing of the Form 10-K within the extension period." *Id*. The Company also disclosed that "[s]eparately, the Company does not expect to achieve its previously announced guidance for fiscal year 2016." *Id*.

Over the course of the day on August 16, 2016, Hain's shares fell 26%—from $53.40 per share when the market closed on August 15, 2016 to $39.35 per share by the time the market closed on August 16, 2016. SAC ¶ 126. This represented a loss of $1.6 billion in market capitalization, and Wall Street analysts accordingly lowered their price targets for Hain stock. *See id*. ¶¶ 126-27.

On August 30, 2016, Hain filed a Notification of Late Filing with the SEC on Form 12b-25 providing

that the Company was unable to file its Fiscal Year 2016 annual Form 10-K report by the filing deadline. *See id*. ¶ 129. Hain reiterated that the delay resulted from the Company's review of "whether the revenue associated with those concessions was accounted for in the correct period" and its review of "its internal control over financial reporting." *Id.* On November 2, 2016, NASDAQ granted Hain an extension of time to file its reports with the SEC through February 27, 2017. *See id*. ¶ 130.

3. November 2016 Results From Audit Committee Review

On November 16, 2016, Hain issued a press release announcing the completion of the internal review of its accounting. The press release stated that the Audit Committee found no evidence of "intentional" wrongdoing in connection with Hain's financial statements—but nonetheless said that "Hain Celestial has begun to implement a remediation plan to strengthen its internal controls and organization." *Id.* ¶ 132. Hain further stated that it would be unable to release its financial results until it completed the "audit process" and review of accounting procedures. *Id.* ¶ 134.

4. February 2017 Expanded Accounting Review and SEC Investigation

On February 10, 2017, Hain filed another Notification of Late Filing on Form 12b-25—which stated Hain had expanded the scope of its internal accounting review "to perform an analysis of previously-issued financial information in order to identify and assess any potential errors." *Id.* ¶ 137. That filing also revealed that the "SEC has issued a formal order of investigation and, pursuant to such

order, the SEC issued a subpoena to the Company seeking relevant documents." *Id*.

Between the market's close on February 10, 2017 and the close on February 13, 2017, which was the next trading day, Hain's share price fell 8%—from $38.53 to $35.10 per share. SAC ¶ 138.

E. Relevant Periodic Reports Filed After The Class Period

On June 22, 2017 (after obtaining two extensions from NASDAQ and five waivers from its credit facility lenders), Hain filed its Form 10-K for the fiscal year 2016 ending June 30, 2016 ("2016 Form 10-K"), as well as the Company's Forms 10-Q for the first, second, and third quarters of fiscal year 2017. *See id*. ¶ 146. The Company again reported that it delayed those filings to allow the Audit Committee and the Board of Directors to "separately conduct[] an independent review" of (1) revenue recognition on transactions with "additional concessions to certain distributors" and (2) "the Company's internal control over financial reporting." 2016 Form 10-K at 3. The Company reiterated that the Audit Committee's independent review "found no evidence of intentional wrongdoing in connection with the preparation of the Company's financial statements." *Id*.

1. Weaknesses In Financial Reporting

The 2016 Form 10-K disclosed that Hain had material weaknesses in its control environment and revenue recognition. Hain's material weakness in its "Ineffective Control Environment" was that it "did not sufficiently promote effective internal control over financial reporting." *Id.* at 110. Principle contributing factors included:

> (i) an insufficient number of personnel appropriately qualified to perform control design, execution and monitoring activities; (ii) an insufficient number of personnel with an appropriate level of U.S. GAAP knowledge and experience and ongoing training in the application of U.S. GAAP commensurate with our financial reporting requirements; and (iii) in certain instances, insufficient documentation or basis to support accounting estimates.

Id.

As to revenue recognition, the Company's material weakness was that its "internal controls to identify, accumulate and assess the accounting impact of certain concessions or side agreements on whether the Company's revenue recognition criteria had been met were not adequately designed or operating effectively." *Id*. Hain provided further detail on the shortcomings of its controls:

> The Company's controls were not effective to ensure (i) consistent standards in the level of documentation of agreements required to support accurate recording of revenue transactions, and (ii) that such documentation is retained, complete, and independently reviewed to ensure certain terms impacting revenue recognition were accurately reflected in the Company's books and records. In addition, the Company did not design and maintain effective controls over the timing and classification of trade promotion spending.

Id.

However, Hain maintained that those weaknesses in internal controls "did not result in a restatement to previously filed financial statements" and instead "resulted in immaterial adjustments to our consolidated financial statements as of and for the years ended June 30, 2015 and 2014." *Id.* at 110-11. At the same time, Hain implemented various "remediation efforts" to address those systemic weaknesses. *See* 2016 Form 10-K at 111. The Company also announced that Langrock would replace Conte as the Company's CFO. *See* SAC ¶ 146.

2. Adjustments To Financial Results

Adjusted Fiscal 2014 and Fiscal 2015 Revenue. Hain further detailed that the review of its revenue recognition practices concerned "side agreements and concessions provided to distributors in the United States, including payment terms beyond the customer's standard terms, rights of return of product and post-sale concessions, most of which were associated with sales that occurred at the end of the quarter." 2016 Form 10-K at 67. The Company concluded that "its historical accounting policy for these distributors is appropriate as the sales price is fixed or determinable at the time ownership transfers to these distributors, based on the Company's ability to make a reasonable estimate of future returns and certain concessions at the time of shipment." *Id*.

In its note of "Correction of Immaterial Errors to Prior Period Financial Statements," the Company identified and corrected immaterial errors that affected previously issued financial statements. Hain explained that it

- reduced revenue by $26,144,000 in fiscal year 2015 and $630,000 in fiscal year 2014 to

"correct[] errors in the timing of revenue recognition for customers whose ownership transferred when the product is delivered to the customer;"

- reduced revenue by $5,796,000 in fiscal year 2015 and $6,854,000 in fiscal year 2014 "to correct for errors related to the appropriate timing of customer payments and incentives associated with trade promotions;" and
- reduced revenue by $46,962,000 in fiscal year 2015 and $38,305,000 in fiscal year 2014 to "reclassify certain customer payments and incentives related to trade promotions from selling, general and administrative expense and cost of goods sold . . . ."

Id. at 68. "In total, these three revenue corrections reduced revenue $78,902[,000] and $45,789[,000] for the years ended June 30, 2015 and 2014, respectively." *Id*. For context, the Company reported $2,688,515,000 and $2,153,611,000 in revenue for the years ended June 30, 2015 and 2014, respectively. *See id*. at 71 (listing the reported revenue figures as "[n]et sales" and reconciling the financial adjustments with previously reported figures).

Adjusted Fiscal 2014, Fiscal 2015, and Nine Month 2016 Net Sales, Net Income, and Earnings Per Share. The Company acknowledged that, while they "were immaterial" to previously issued financial statements, the "cumulative correction" of the revenue reductions described above "had a material impact." *Id*. Accordingly, Hain adjusted (among other things) its net sales, net income, and diluted earnings per share for fiscal year 2014, fiscal year 2015, and the first nine months of

2016. Altogether, Hain reduced (1) net sales by approximately $166.5 million, or 6.9%; (2) net income by approximately $14 million, or 9.7%; and (3) diluted earnings per share by $0.13, or 8.9%.[6]

Underperforming 2017 U.S. Net Sales, Net Income, and Earnings Per Share. Additionally,

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[6] For fiscal year 2014, Hain reduced (1) its net sales by approximately $45.7 million, or about 2.1%; (2) net income by approximately $9.9 million, or about 7.1%; and (3) diluted earnings per share by approximately $0.10, or about 7%. *See* Hain 10-K for the fiscal year ending June 30, 2015, filed with the SEC August 21, 2015 ("2015 Form 10-K"), at 27 (originally disclosing $1.42 diluted earnings per share for fiscal year 2014); 2016 Form 10-K at 32 (disclosing revised diluted earnings per share of $1.32 for fiscal year 2014); *id*. at 71 (detailing revisions to net sales and net income for fiscal year 2014); *see also* SAC ¶ 148.

For fiscal year 2015, Hain reduced (1) its net sales by approximately $78.9 million, or about 2.9%; (2) net income by approximately $2.9 million, or about 1.7%; and (3) diluted earnings per share by approximately $0.02, or about 1.2%. *See* 2015 Form 10-K at 27 (originally disclosing $1.62 diluted earnings per share for fiscal year 2015); 2016 Form 10-K at 32 (disclosing revised diluted earnings per share of $1.60 for fiscal year 2015); *id.* at 71 (detailing revisions to net sales and net income for fiscal year 2015); *see also* SAC ¶ 148.

For the first nine months of fiscal year 2016, Hain reduced (1) its net sales by approximately $41.8 million, or about 1.9%; (2) net income by approximately $1.2 million, or about 0.9%; and (3) diluted earnings per share by approximately $0.01, or about 0.7%. Hain 10-Q for the quarter ending March 31, 2016, filed with the SEC May 10, 2016 ("2016 Q3 Form 10-Q"), at 9 (originally disclosing $1.32 earnings per share for the first nine months of fiscal year 2016); Hain 10-Q for the quarter ending March 31, 2017, filed with the SEC June 22, 2017 ("2017 Q3 Form 10-Q"), at 16 (disclosing revised diluted earnings per share of $1.31 for the first nine months of fiscal year 2016); *id.* at 12 (detailing revisions to net sales and net income for the first nine months of fiscal year 2016); *see also* SAC ¶ 148.

Hain reported—with respect to the first nine months of fiscal 2017—a 14% decrease in U.S. net sales, a 51.1% decrease in net income, and a 51.1% decrease in diluted earnings per share compared to the first nine months of fiscal 2016.[7] *See* SAC ¶ 153. On the June 22, 2017 earnings call, Hain attributed the sales decline to "an inventory realignment at certain customers and a SKU rationalization." SAC ¶ 154. Further, the 2016 Form 10-K disclosed, with respect to Hain's U.S. business, that "both fiscal 2016 and fiscal 2015 net sales benefited from certain concessions provided to our largest distributors, including payment terms beyond the customer's standard terms, rights of return of product and post-sale concessions, most of which were associated with sales that occurred at the end of each respective quarter." *Id*. ¶ 146.

3. The Relationship To Prior Wall Street Estimates

The SAC alleges that the channel stuffing scheme's true purpose was to meet Wall Street's expectations. *See id*. ¶ 151. To that end, the SAC explains whether certain Class Period quarters originally beat Wall Street estimates but fell short of those estimates when accounting for Hain's adjusted financials—which purportedly "show[s] that the Company relied on undisclosed, unsustainable pull-in sales practices to beat consensus estimates for the third and fourth

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[7] *Compare* 2016 Q3 Form 10-Q at 9, 23 (reporting approximately (1) $137.2 million in net income; (2) $1.025 billion in U.S. net sales; and (3) $1.33 diluted earnings per share for the first nine months of fiscal 2016); *with* 2017 Q3 Form 10-Q at 16, 29 (reporting approximately (1) $67.1 million in net income; (2) $882.2 million in U.S. net sales; and (3) $0.65 diluted earnings per share for the first nine months of fiscal 2017).

quarter of Fiscal Year 2015 and the second quarter of Fiscal Year 2016." *Id*. ¶¶ 151-52.

Hain later issued its fourth quarter 2017 and fiscal year 2017 forecast, which again fell short of Wall Street expectations. *See id*. ¶ 154. Hain projected that its revenue would be between $2.84 billion and $2.86 billion, which was approximately $50 million dollars below the consensus estimate of approximately $2.9 billion. *See id*.

F. The SEC Order Addressing Class Period Conduct

On December 11, 2018, the SEC announced that it reached a settlement with Hain concluding the SEC's investigation of the Company and agreeing to a consent "Order Instituting Cease-And-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order" (the "SEC Order"). *See id*. ¶ 13. More than two years earlier, on August 15, 2016, Hain self-reported to the SEC that the Company was investigating its financial reporting controls and its accounting in connection with quarter end sales incentives granted to certain U.S. distributors.[8] *See* SEC Order ¶ 19. The SEC Order recognizes that Hain "promptly self-reported to the Commission" and "assisted with the Commission's investigation, including by providing regular updates and analyses related to its internal investigation." *Id*. ¶ 25.

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[8] Citations to the SEC Order are to the copy filed with the Declaration Of John M. Hillebrecht In Support Of Hain's Motion To Dismiss ("Hillebrecht Declaration") as Exhibit A, ECF No. 115-1.

Hain admitted in the SEC Order to asking distributors to purchase specific dollar values of inventory by quarter-end in exchange for additional incentives. *See id.* ¶ 5. The SEC investigated four sales practices Hain undertook for its two largest U.S. distributors: (1) cash incentives, (2) extended payment terms, (3) discounts off list price, and (4) "spoils coverage, whereby Hain agreed to reimburse the distributor for products that spoiled or expired before the distributor could sell through to retailers." *Id*. The SEC concluded that "[n]one of these types of incentives are improper; however, they could have financial reporting implications." *Id.*

1. Distributor 1 - UNFI

The SEC investigated Hain's practices with "Distributor 1," which the parties agree is UNFI. *See id*. ¶¶ 6-12 (reporting investigation into "Distributor 1"); SAC ¶ 15 (identifying Distributor 1 as UNFI); Memorandum Of Law In Support Of Defendant The Hain Celestial Group Inc.'s Motion To Dismiss The Second Amended Consolidated Class Action Complaint, ECF No. 114 ("Hain Mem."), at 20 (recognizing that Distributor 1 is UNFI). During the Class Period, Hain executed annual sales contracts with UNFI stipulating to quarterly sales growth targets, totaling up to $90 million per quarter, and providing financial incentives to UNFI if it met those targets. *See* SEC Order ¶ 6.

UNFI communicated to Hain's sales personnel over time that it might not purchase sufficient inventory to meet the relevant quarterly target, potentially missing the target by as little as $10 million or as much as $30 million. *See id*. In response, Hain renegotiated the terms to incentivize UNFI to meet or exceed the sales growth targets. In exchange for

meeting a renegotiated inventory purchasing target, UNFI generally received extra-contractual incentives, such as (1) cash financial incentives, (2) spoils coverage, and/or (3) occasionally extended payment terms. *See id.* ¶ 7.

Regarding the spoils coverage, Hain reimbursed UNFI for products purchased in quarter end sales that expired or spoiled before UNFI sold them to retailers. *See id.* ¶ 8. During the Class Period, Hain paid out increasing amounts to UNFI under that spoils coverage, rising from $0.5 million in fiscal year 2013 to $1.6 million in fiscal year 2016. *See id.* But given that Hain's annual net sales to UNFI during that time period exceeded $325 million, the SEC concluded that "[t]he vast majority of the products purchased in connection with EOQ sales to [UNFI] ultimately sold through to retailers." *Id.*

The SEC, however, found that the quarter end incentives were inappropriately documented because they were typically memorialized only in email correspondence or agreed to orally without formally amending the annual sales contract. *See id.* ¶ 9. In addition, the end of quarter incentives "were not fully communicated . . . to the appropriate personnel in Hain's accounting and finance departments, to take into consideration any relevant accounting implications." *Id*. ¶ 12. Moreover, "Hain lacked clear policies and procedures regarding when distributor incentives required approval and/or notification beyond the sales team (whether based on the concession's size or character)." *Id.*

2. Distributor 2

The SEC also investigated Hain's practices with "Distributor 2," its second-largest U.S. distributor.[9] Unlike UNFI, Distributor 2 was never subject to any contractual provisions related to quarterly sales growth targets. *See id.* ¶ 13. Nonetheless, Hain requested that Distributor 2 purchase a specific amount of inventory by quarter end in exchange for additional incentives. *See id*. Distributor 2 countered Hain's requested volume target with a lower figure due to its pre-existing inventory levels and concerns that additional inventory would expire. *See id.*

In addition to a volume target, Hain's quarter end sales to Distributor 2 included incentives such as (1) off-invoice discounts (increasing from $200,000 to $1.5 million), (2) extended payment terms, and (3) spoils coverage (increasing to a maximum of $430,000). *See id.* ¶ 14. As with UNFI, the SEC similarly found that the "vast majority of the products purchased in connection with EOQ sales to Distributor 2 ultimately sold through to retailers." *Id.*

The SEC also found that Hain utilized the same deficient accounting practices for its quarter end sales to Distributor 2 that the SEC found Hain used for its quarter end sales to UNFI. *See id.* ¶¶ 15–17.

3. The SEC's Conclusions

The SEC concluded that Hain violated Section 13(b)(2)(A) of the Securities Exchange Act of 1934 ("Exchange Act") (which requires Hain to make and

[9] "Plaintiffs believe that . . . 'Distributor 2' is Walmart" based on disclosures in Hain's Class Period SEC filings about its top customers. SAC ¶ 15. Hain has not confirmed the identity of Distributor 2.

keep records which accurately and fairly reflect Hain's transactions) and Section 13(b)(2)(B) of the Exchange Act (which requires Hain to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are executed in accordance with management's authorization and in conformity with GAAP). *See id.* ¶¶ 23–24. Per the SEC Order, Hain agreed to remedial efforts, including establishing an internal audit function; implementing changes to its revenue recognition practices; and developing a revenue recognition and contract review training program. *See id.* ¶¶ 25– 27.

G. Additional Evidence Of Alleged Scienter

1. Personnel Changes

In addition to the previously described executive terminations that occurred during the Class Period, the SAC focuses on the Company's COO change near the end of the Class Period. On December 7, 2016, the Company announced that Meiers would be replaced by Gary Tickle, move to Hain's Pure Protein Corporation, and retain COO responsibilities for Hain's Project Terra.[10] *See* SAC ¶ 344. CW 1 categorized this change as "a demotion for Meiers." *Id*. The SAC also cites several post-Class Period terminations and position changes. *See id.* ¶¶ 345 (alleging the Company removed Carroll on March 6, 2017 as Hain North America's CEO and installed him as Hain's Executive Vice President, Global Brands, Categories and New Business Ventures); 346-47 (describing Hain's June 22, 2017 announcement that

[10] During fiscal year 2016, the Company commenced a strategic review called "Project Terra" that resulted in the Company redefining its core platforms. 2016 Form 10-K at 5.

Conte immediately resigned as Hain's CFO); 348 (alleging that, on an unspecified date in 2018, Hain terminated Hyndman, the former Senior Vice President and Controller); 349 (alleging that, in June 2018, "Hain announced that Simon was leaving Hain").

According to Plaintiffs, this executive turnover after the end of the Class Period "indicates that certain individuals at the Company (e.g., the Board of Directors) had determined that Defendants were aware of the deficiencies in their accounting staff and intentional and/or reckless conduct with respect to its financial reporting . . . ." *Id*. ¶ 350.

2. Carroll and Simon's Stock Sales and Bonusses

During the Class Period, Simon and Carroll allegedly "reaped the rewards of their fraud" by selling Hain stock while its price was artificially inflated. *Id*. ¶ 353. According to Plaintiffs, Simon and Carroll sold a substantially larger number of shares during the 1,193 day long Class Period than they sold during the preceding 1,193 days (the "Control Period"):

	Control Period		Class Period	
Person	Number of Shares Sold	Net Proceeds	Number of Shares Sold	Net Proceeds
Carroll	100,000	$3,816,328	308,916	$24,388,112
Simon	915,000	$42,052,050	983,798	$80,227,263

Id. ¶ 355; *see also id* ¶¶ 356-59 (describing and characterizing these sales).

Simon and Carroll also allegedly were "motivated to misrepresent Hain's financial results" because, as the Company disclosed in its October 9, 2015 proxy statement, "executive compensation was tied to the Company hitting target net sales, diluted earnings per share, and [earnings before interest, taxes, depreciation, and amortization] adjusted." *Id*. ¶ 363. In fiscal year 2015, Simon received a $1.85 million salary, a $5,656,725 bonus, and $8,787,355 in stock awards. *See id*. ¶ 364. That same year, Carroll received a $693,000 salary, a $711,711 bonus, and $1,119,854 in stock awards. *See id*.

3. Hain's Acquisitions Using Company Stock

Plaintiffs assert that "Defendants were further motivated to artificially inflate Hain's share price" to complete acquisitions "using fewer shares than if Defendants had fully revealed the Company's reliance on undisclosed, unsustainable pull-in sales practices to generate sales." *Id*. ¶¶ 366-67. In support of that assertion, the SAC cites four Class Period acquisitions. First, on January 13, 2014, Hain acquired Tilda Limited in exchange for, *inter alia*, 1,646,173 shares of Hain stock valued at $148,400,000. *Id.* ¶ 366. Second, on April 28, 2014, Hain acquired Charter Baking Company in exchange for, *inter alia*, 133,744 shares of Hain stock valued at $11,168,000. *Id*. Third, on July 17, 2014, Hain acquired the remaining 51.3% of Hain Pure Protein Corporation that it did not already own in exchange for, *inter alia*, 231,428 shares of Hain stock valued at $19,690,000. *Id.* Fourth, on July 24, 2015, Hain acquired Formatio Beratungs und Beteiligungs GmbH and its subsidiaries in exchange for, *inter alia*,

240,207 shares of Hain stock valued at $16,308,000. *Id*.

4. Core Operations And Remedial Measures

The SAC argues that the Individual Defendants "had knowledge of" or "had full and unfettered access" to "all material facts" regarding Hain's U.S. business because, as the generator of approximately 60% of Hain's net sales, the U.S. business comprised Hain's "core operations." *Id*. ¶¶ 351-52.

The SAC also argues that Hain's "remediation efforts" described in the 2016 Form 10-K and the SEC Order—generally concerning "organizational enhancements," "Revenue Practices," and "Training Practices"— demonstrate "the utter lack of oversight and control that needed correction" and "strongly support an inference of scienter." *Id*. ¶¶ 360-62.

II. PROCEDURAL HISTORY

The lengthy procedural history of this case includes several decisions from the District Court and the Second Circuit.

A. Original District Court Proceedings

On August 17, 2016, three plaintiffs filed separate securities fraud actions against Hain. *See* Stipulation And Order, ECF No. 12, at 2 (addressing anticipated motions to consolidate cases). On June 5, 2017, District Judge Arthur D. Spatt consolidated the cases and appointed Plaintiffs as the lead plaintiffs. *See* Order For Consolidation, Appointment Of Co-Lead Plaintiffs, And Approval Of Selection Of Co-Lead Counsel, ECF No. 56.

On September 7, 2017, Plaintiffs filed a Corrected Consolidated Class Action Complaint for Violations of Federal Securities Laws that asserted (1) claims

against all Defendants under the Exchange Act for violations of 15 U.S.C. § 78j(b) ("Section 10(b)") and the regulations promulgated thereunder at 17 C.F.R. § 240.10b–5 ("Rule 10b-5"), and (2) claims against the Individual Defendants as control persons under the Exchange Act for violations of 15 U.S.C. § 78t(a) ("Section 20(a)"). *See* ECF No. 75.

On October 3, 2017, Defendants moved to dismiss that complaint for failure to state a claim. *See* ECF No. 81. On April 4, 2018, Judge Spatt ordered additional briefing on whether and how Plaintiffs' claims would be affected if the Court found that Plaintiffs failed to adequately plead that the channel stuffing practices were illegal. *See* Short Form Order, ECF No. 98. On March 29, 2019, after receiving the additional briefing, the Court granted Defendants' motion to dismiss without prejudice and granted Plaintiffs leave to amend their complaint. *See In re The Hain Celestial Grp. Inc. Sec. Litig.*, No. 16-CV-04581, 2019 WL 1429560 (E.D.N.Y. Mar. 29, 2019).

On May 6, 2019, Plaintiffs filed the SAC, which principally added allegations concerning the SEC Order, CW 7, and CW 8 to support the claims described above. *See* SAC. The SAC sets forth three causes of action: Count I alleged violations of Section 10(b) and Rule 10b-5(b) by all Defendants arising from the materially false or misleading statements described above; Count II alleged violations of Section 10(b) and Rule 10b-5(a) and (c) by all Defendants arising from the conduct of the channel stuffing practices; and Count III alleged violations of Section 20(a) by the Individual Defendants as control persons of Hain arising from the foregoing statements and conduct. *See id*. ¶¶ 348-365. On June 20, 2019, Defendants again moved to dismiss for failure

to state a claim. *See* ECF Nos. 113 (Hain's motion to dismiss the SAC), 116 (Individual Defendants' motion to dismiss the SAC). On April 6, 2020, Judge Spatt granted Defendants' motions and dismissed the SAC with prejudice (the "2020 Dismissal Decision"). *See In re Hain Celestial Grp. Inc. Sec. Litig.*, No. 16-CV-04581, 2020 WL 1676762 (E.D.N.Y. Apr. 6, 2020).

B. The Second Circuit Appeal

On May 5, 2020, Plaintiffs noticed their appeal of the 2020 Dismissal Decision to the Second Circuit. *See* Notice Of Appeal, ECF No. 124. Ultimately, Plaintiffs appealed only the dismissal of their Rule 10b-5(b) claim and abandoned their Rule 10b-5(a) and (c) claims. *In re Hain Celestial Grp., Inc. Sec. Litig.*, 20 F.4th 131, 136 (2d Cir. 2021); *see also id.* at 137 (reiterating that the "conclusion that the Complaint could not succeed under [Rule 10b-5] clauses (a) or (c)" was "a question we do not consider as Plaintiffs have not appealed from dismissal of the Complaint under those clauses").

In its December 17, 2021 decision, the Second Circuit recounted that the 2020 Dismissal Decision found that the alleged channel stuffing was not inherently fraudulent—thus not violative of Rule10-b(5)(a) and (c)—and, based on that finding, concluded that Rule 10b-5(b) did not require Hain to disclose the channel stuffing. *See id*. at 136-37 (citing *In re Hain*, 2020 WL 1676762, at *12). But the Second Circuit disagreed and concluded that a "[v]iolation of clause (b), unlike violations of clauses (a) and (c), does not require that the defendant have used a fraudulent or otherwise illegal device, scheme, artifice, act, practice, or course of business. Its focus is rather on whether something said was materially misleading." *Id*. at 136.

Applying that principle, the SAC's assertion that Defendants violated Rule 10b-5(b) when they made false or misleading statements about Hain's strong sales, which omitted to state Hain achieved those sales in the face of increased competition largely by unsustainable channel stuffing, "does not depend on whether the alleged channel stuffing practices themselves were fraudulent or otherwise illegal." *Id*. at 137; *see also Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 325 (2007) (explaining the practice of channel stuffing is illegitimate when a company "writ[es] orders for products customers had not requested" but may be legitimate when a company "offer[s] customers discounts as an incentive to buy"). Accordingly, the Second Circuit concluded that the 2020 Dismissal Decision's disposition of the Rule 10b-5(b) claim, based on the conclusion that the channel stuffing practices did not require disclosure for being fraudulent and violative of Rule 10b-5 (a) and (c), "reflects a misunderstanding of the requirements of clause (b), as well as of Plaintiffs' theory." *In re Hain*, 20 F.4th at 137.

The Second Circuit also vacated the 2020 Dismissal Decision's finding that the SAC failed to adequately plead that Defendants acted with the requisite wrongful state of mind. First, "[t]he district court's mistaken understanding" of the interplay between the channel stuffing and statements challenged under Rule 10b-5(b) "inevitably affected the district court's view" of whether those statements were made with scienter. *Id*. Second, while it separately considered both (1) the allegations of the Individual Defendants' motive and opportunity to act with scienter and (2) the circumstantial allegations of scienter, the 2020 Dismissal Decision failed to assess "the total weight" of all the scienter allegations.

See id. at 137-38. Notably, the Second Circuit "express[ed] no views on whether, when weighed cumulatively, these allegations are sufficient to plead scienter." *Id*. at 138.

In light of Judge Spatt's death during the pendency of the appeal, the Second Circuit instructed that "the newly assigned judge should consider afresh whether the [SAC] adequately stated a claim under Rule 10b-5(b)" and also "reassess the sufficiency of the scienter allegations, considering the cumulative effect of the circumstantial allegations of intent together with the pleaded facts relating to motive and opportunity." *Id*.

C. District Court Proceedings On Remand

On February 1, 2022, the case was reassigned to District Judge Joanna Seybert. ECF No. 128. At Judge Seybert's direction, the parties informed the Court on April 11, 2022 of their positions regarding how to proceed following the Second Circuit's decision. *See* ECF Nos. 129 (Plaintiffs' letter to the Court), 130 (Defendants' letter to the Court).

On April 14, 2022, the parties participated in a conference before Judge Seybert, during which Plaintiffs and Defendants agreed that the pending motions to dismiss the SAC are limited to the SAC's Count I (concerning Section 10(b) and Rule 10b-5(b)) and its Count III (concerning Section 20(a)), and that Plaintiffs had abandoned all of their remaining claims in Count II. *See* FTR Log # 2:06 - 2:16. Judge Seybert then set a supplemental briefing schedule. *See* ECF No. 131.

On May 12, 2022, Defendants filed their supplemental memorandum of law in support of dismissing the SAC. *See* ECF No. 134 ("Supp. Mem."). On June 9, 2022, Plaintiffs filed their supplemental

opposition to dismissing the SAC. *See* ECF No. 136 ("Supp. Opp."). On June 14, 2022, Judge Seybert referred Defendants' motions to dismiss the SAC to the undersigned for a Report and Recommendation. *See* June 14, 2022 Order Referring Motions. Supplemental briefing closed on June 23, 2022, when Defendants filed their supplemental reply in support of dismissing the SAC. *See* ECF No. 137 ("Supp. Reply").

III. LEGAL STANDARDS

A. The Motion to Dismiss

Courts evaluate motions to dismiss under Federal Rule of Civil Procedure ("Rule") 12(b)(6) by determining whether the complaint contains "sufficient factual matter, 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)). That standard requires the Court to accept as true all well-pled factual allegations in the SAC and consider attachments to the SAC, documents incorporated by reference in the SAC, and Hain's public disclosure documents filed with the SEC. *See Gamm v. Sanderson Farms, Inc.*, 944 F.3d 455, 462 (2d Cir. 2019). While the Court accepts the SAC's well-pled allegations as true, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 664; *see also id*. at 678 (explaining that a complaint must contain "more than an unadorned, the defendant-unlawfully-harmed-me accusation"). Determining whether the SAC states a plausible claim for relief is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id*. at 664.

In addition to these universal pleading requirements, Plaintiffs face two additional burdens at this stage of litigation—Rule 9(b), which heightens pleading standards for all allegations of fraud, and the portion of the Private Securities Litigation Reform Act of 1995 codified at 15 U.S.C. § 78u-4 ("PSLRA"), which heightens pleading standards for certain elements of Plaintiffs' Exchange Act claims.

B. The Remaining Claims

Rule 10b-5(b) provides that, in connection with the purchase or sale of any security, it is "unlawful for any person, directly or indirectly, . . . [t]o 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 light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5. To support a claim under that rule, a plaintiff must plead: (1) a material misrepresentation or omission (i.e., materiality and falsity), (2) scienter, (3) a connection between the misrepresentation or omission and the purchase or sale of a security, (4) reliance on the misrepresentation or omission, (5) economic loss, and (6) loss causation. *See, e.g.*, *Noto v. 22nd Century Grp., Inc.*, 35 F.4th 95, 102 (2d Cir. 2022). As discussed further below, "[t]he first two elements must be pled with heightened specificity pursuant to the Private Securities Litigation Reform Act of 1995 and Federal Rule of Civil Procedure 9(b)." *Id*.

Section 20(a) provides that every person "who, directly or indirectly, controls any person liable under any provision of [the Exchange Act] or of any rule or regulation thereunder shall also be liable . . . to the same extent as such controlled person . . . unless the controlling person acted in good faith . . . ." 15 U.S.C.

§ 78t. To state a claim of control person liability under Section 20(a), a plaintiff must show (1) a primary Exchange Act violation by the controlled person, (2) that the defendant controlled the primary violator, and (3) "that the defendant was, in some meaningful sense, a culpable participant in the controlled person's fraud." *E.g.*, *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 750 F.3d 227, 236 (2d Cir. 2014).

IV. DISCUSSION

A. Plaintiffs Abandoned Claims Concerning Hain's Financial Results and Related Accounting Practices

Defendants argue that Hain's Class Period financials were not actionable because the post-Class Period reduction to them was immaterial qualitatively and quantitatively. *See* Hain Mem. at 24-25. According to Plaintiffs, that argument "misrepresents" their position because they reportedly challenge as materially omissive not the financial figures but instead the failure to disclose Hain's "reliance on pull-in sales tactics to generate sales" as the force that generated those figures. *See* Plaintiffs' Opposition to Hain's Motion To Dismiss The SAC, ECF No. 118 ("Opposition" or "Opp."), at 15.

Thus, despite the SAC's challenges to Hain's reported financial numbers, the methods used to calculate them, their compliance with SOX, and their compliance with GAAP, [11] Plaintiffs have now

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[11] *See, e.g.*, SAC ¶¶ 164-247, 250 (alleging financials, including net sales, U.S. sales, net income, and earnings per share were "materially false and misleading when made" because Hain allegedly "improperly . . . book[ed] shipments to distributors as sales and revenue"); *id*. ¶ 250 (alleging that "all

"abandoned this category of claims" in the SAC. *Miao v. Fanhua, Inc.*, 442 F. Supp. 3d 774, 793 (S.D.N.Y. 2020) (dismissing Rule 10b-5(b) claim as to certain statements because the opposition to dismissal asserted plaintiffs did not challenge those statements); *see Doubleline Capital LP v. Odebrecht Fin., Ltd.*, 323 F. Supp. 3d 393, 449 (S.D.N.Y. 2018) ("Defendants argue that Plaintiffs' allegations that [certain statements] were false and misleading . . . fail to state a Section 10(b) claim. Plaintiffs do not oppose this argument and have, therefore, abandoned their Section 10(b) claim in connection with this misstatement.").

That Plaintiffs abandoned their claims concerning Hain's financial results, the methods used to calculate them, their compliance with SOX, and their compliance with GAAP obviates the need for the Court to substantively analyze the SAC's allegations concerning those issues. *See Miao*, 442 F. Supp. 3d at 793-94 (treating Rule 10b-5(b) claims as "withdrawn" and not subject to substantive analysis because they were affirmatively "abandoned" in the opposition to dismissal); *Levitt v. J.P. Morgan Sec., Inc.*, 9 F. Supp. 3d 259, 266 (E.D.N.Y. 2014) ("[G]iven the Plaintiffs' own admission" regarding Section 10(b) and Section 20(a) claims, "the Court need not evaluate either of

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of the announced net sales relating to the corresponding fiscal quarter and fiscal year were artificially overstated . . . during the Class Period"); *id.* ¶¶ 294-97, 302, 305, 310, (alleging statements about the calculation of net sales, calculation of accruals, SOX compliance of reported financials, and GAAP compliance of reported financials were "materially false and misleading when made" because Hain allegedly "improperly . . . book[ed] shipments to distributors as sales and revenue"); *id.* ¶ 318 (alleging "Hain's controls were deficient, *rendering its financial statements false and misleading*") (emphasis added).

these causes of action and dismisses them as abandoned by the Plaintiffs")

As Plaintiffs have abandoned certain claims, the undersigned recommends Plaintiffs' Count I be dismissed to the extent it challenges Hain's financial results, the reported methods of calculating them, their compliance with SOX, and their compliance with GAAP.

B. The Attribution Statements Trigger General Disclosure Obligations

The SAC separately challenges statements in Hain's SEC filings between November 2013 and May 2016 that attributed the financial results to various causes. Specifically, those statements attributed Hain's successful financials to "strong brand contribution;" "expanded distribution;" the "strong demand" and "momentum" for organic and natural products; Hain's "diverse portfolio" of brands; and/or "solid execution of [Hain's] operational initiatives" (together, the "Attribution Statements"). SAC ¶ 248.[12] Plaintiffs allege that the failure to disclose that the earnings resulted from Hain's "unsustainable" business practices rendered the Attribution Statements materially omissive. *See Id*. In turn, Defendants argue that there was no duty to disclose facts reflecting "unsustainable" practices because the Attribution Statements were puffery and were issued with unmanipulated corporate earnings. The Court disagrees with Defendants.

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[12] *See also* SAC ¶¶ 165, 174, 181, 190, 198, 204, 210, 219, 227 (describing individual statements in each SEC filing that explained the reported financial success).

1. The Attribution Statements Are Not Puffery

Under the Exchange Act, disclosure is necessary if (1) the law imposes a particular duty to disclose or (2) it is "necessary to make statements made, in the light of the circumstances under which they were made, not misleading." *Ark. Pub. Emps. Ret. Sys. v. Bristol-Myers Squibb Co.*, 28 F.4th 343, 353 (2d Cir. 2022). As noted above, Plaintiffs rely on the second option to challenge the Attribution Statements, while Defendants contend that the Attribution Statements are non-actionable puffery. *See* Supp. Mem. at 2; Supp. Reply at 4. "Puffery encompasses statements that are too general to cause a reasonable investor to rely upon them and thus cannot have misled a reasonable investor." *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 245 (2d Cir. 2016) (internal quotations and alterations omitted). Quintessential examples of puffery are "general statements about reputation, integrity, and compliance with ethical norms." *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173, 183 (2d Cir. 2014).

Whether statements constitute puffery requires considering the "context" in which they are made, including the "specific[ity]" of the statements and whether the statements are "clearly designed to distinguish the company" to the investing public in some meaningful way. *Ind. Pub. Ret. Sys. v. SAIC, Inc.*, 818 F.3d 85, 98 (2d Cir. 2016); *see also Arkansas Teacher Ret. Sys. v. Bankrate, Inc.*, 18 F. Supp. 3d 482, 485 (S.D.N.Y. 2014) ("[W]hile a term like 'high quality' might be mere puffery or insufficiently specific to support liability in some contexts, it is clearly a material misrepresentation when applied to assets that are entirely worthless . . . ."). "[M]ore

definite statements about a company's business practices may invoke reasonable reliance by investors, particularly if the statements relate to aspects of a company's *brand* or reputation that are *touted as sources of its success*." *In re Inv. Tech. Grp., Inc. Sec. Litig.*, 251 F. Supp. 3d 596, 611 (S.D.N.Y. 2017) (emphasis added).

Reviewing them in context, the Attribution Statements specify the sources of the Company's already-achieved success in a manner designed to distinguish Hain from competitors. Courts generally find similar statements are not puffery. *See Plumbers & Pipefitters Nat'l Pension Fund v. Davis*, No. 1:16-CV-3591, 2020 WL 1877821, at *10 (S.D.N.Y. Apr. 14, 2020) ("Defendants touted its *brand* as a source of PSG's success. Reasonable investors might have relied on those statements when choosing whether to invest in PSG . . . .") (emphasis added); *In re Henry Schein, Inc. Sec. Litig.*, No. 18-CV-01428, 2019 WL 8638851, at *12 (E.D.N.Y. Sept. 27, 2019) (rejecting puffery arguments and finding statements concerning defendants' *distribution* market were actionable); *Cheng v. Canada Goose Holdings Inc.*, No. 19-CV-8204, 2021 WL 3077469, at *7 (S.D.N.Y. July 19, 2021) (rejecting puffery arguments and finding that statements concerning the increase in the *demand* for defendants' products were actionable); *In re Computer Assocs. Class Action Sec. Litig.*, 75 F. Supp. 2d 68, 73 (E.D.N.Y. 1999) (finding statements that there was "strong worldwide *demand*" for defendant's software were actionable) (emphasis added). As such, the Attribution Statements trigger a duty for Hain to disclose any information necessary to make them not

misleading.[13] *See Ark. Pub. Emps. Ret. Sys.*, 28 F.4th at 353.

2. There Is No Rule Categorically Precluding An Obligation To Disclose That Unsustainable Sales Practices Contributed To Unmanipulated Earnings

Defendants next argue that there was no obligation for Hain to disclose facts reflecting unsustainable sales practices—even where such disclosure would be necessary to make the Company's statements about earnings not materially misleading—and rely chiefly on *Boca Raton Firefighters and Police Pension Fund v. Bahash*, 506 F. App'x 32 (2d Cir. 2012), a non-precedential summary order detailed below.[14] *See* Supp. Mem. at 2-4 (arguing that "There Is No Duty to Disclose 'Unsustainable' Practices"); Supp. Reply at 1-4 (arguing "that investors . . . may not maintain a

[13] Having found the Attribution Statements are not puffery, the Court need not reach Plaintiffs' argument that the Attribution Statements fall into an exception making puffery actionable where the statements contradict facts known to a defendant. *See* Supp. Opp. at 3. In any event, the Second Circuit appears to have rejected Plaintiffs' argument. *See SAIC*, 818 F.3d at 97-98 ("Plaintiffs' claim that these [puffery] statements were knowingly and verifiably false when made does not cure their generality, which is what prevents them from rising to the level of materiality required to form the basis for assessing a potential investment.") (quoting *UBS AG*, 752 F.3d at 183); *In re Liberty Tax, Inc. Sec. Litig.*, 828 F. App'x 747, 751 (2d Cir. 2020) (same); *but see Abramson v. Newlink Genetics Corp.*, 965 F.3d 165, 173–74 (2d Cir. 2020) (acknowledging that in the past "[w]e have found 'puffery' . . . actionable only when the speaker 'knew that the contrary was true'" and finding puffery statements non-actionable given possibility that defendants believed them) (quoting *Novak v. Kasaks*, 216 F.3d 300, 315 (2d Cir. 2000)).

[14] "Rulings by summary order do not have precedential effect." 2d Cir. Local R. 32.1.1(a).

securities action based on their opinion that the company's business practices are 'unsustainable.'"). This Court disagrees.

As a threshold matter, Defendants' effort to categorically preclude any obligation under any circumstances to disclose facts constituting unsustainable sales practices, so long as contemporaneously disclosed earnings are unmanipulated, is untenable. "[I]t bears emphasis that § 10(b) and Rule 10b–5(b)" require disclosure "when necessary to make statements made, in the light of the circumstances under which they were made, not misleading." *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44 (2011) (internal alterations and quotations omitted). The Supreme Court has made clear "the rule that half-truths—representations that state the truth only so far as it goes, while omitting critical qualifying information—can be actionable misrepresentations." *Universal Health Servs. v. United States*, 579 U.S. 176, 188 & n.3 (2016) (holding this "rule" applies under the False Claims Act in the same way it applies under "securities law") (citing *Matrixx*, 563 U.S. at 44); *see also Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 192 (2015) ("[L]iteral accuracy is not enough: An issuer must as well desist from misleading investors by saying one [true] thing and holding back another."); *id*. at 193 (rejecting argument that would "punch a hole in the statute for half-truths").

By insisting that statements omitting to disclose facts reflecting "unsustainable" practices issued contemporaneously with unmanipulated earnings are categorically excepted from the rule that half-truths are actionable under the securities laws, Defendants run afoul of the well-recognized mandate that only

the Supreme Court may create exceptions to its holdings. *See United States v. Aquart*, 912 F.3d 1, 49 (2d Cir. 2018) ("[O]nly the Supreme Court can overrule [its precedent] or *recognize exceptions thereto*.") (emphasis added); *Campanale v. Harris*, 724 F.2d 276, 279 (2d Cir. 1983) (refusing to adopt an exception to a Supreme Court standard because doing so "would violate fundamental principles of comity"); *see also State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) ("[I]t is this Court's prerogative alone to overrule one of its precedents."). Such a result would be impermissible.[15]

Even assuming Defendant's position could be consistent with Supreme Court precedent (as noted above, it is not), Defendants' reliance on *Boca Raton* is misplaced because the summary order does not categorically preclude challenging half-truths that fail to disclose facts reflecting unsustainable practices so long as the omissive statements are connected to unmanipulated earnings.

The Circuit in *Boca Raton* considered whether "public statements about the *honesty* and *integrity* of S&P's credit-ratings services" were actionable if the defendants made those statements "while knowing that [the] ratings method was basically a sham." 506

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[15] Defendants' argument would also contravene precedential Second Circuit decisions that acknowledge "the law is well settled that so-called 'half-truths'—literally true statements that create a materially misleading impression—will support claims for securities fraud." *Set Cap. LLC v. Credit Suisse Grp. AG*, 996 F.3d 64, 85 (2d Cir. 2021) (quoting *Wilson v. Merrill Lynch & Co.*, 671 F.3d 120, 130 (2d Cir. 2011)); *see also Noto v. 22nd Century Grp., Inc.*, 35 F.4th 95, 105 (2d Cir. 2022) ("[O]nce a company speaks on an issue or topic, there is a duty to tell the whole truth.") (internal quotations omitted).

F. App'x at 34 (emphasis added). The Court found those statements were "the type of mere 'puffery' that we have previously held to be not actionable." *Id*. at 37. Because those statements were non-actionable puffery, the Court held that similar statements made in connection with unmanipulated earnings were likewise not actionable. *See id*. at 38 ("To the extent that investors might impute a positive corporate outlook from [the] omissions in earnings reports, we have explained that [these] general expressions of corporate optimism are too indefinite to be actionable under the securities laws.") (internal quotations omitted).

After concluding that the statements about the credit services were non-actionable puffery, the *Boca Raton* Court held that the unmanipulated corporate earnings did not present "half-truths" necessitating additional disclosures. *See id*. ("Whatever the scope of the responsibility not to make statements that constitute 'half-truths,' that surely does not apply to the reporting of unmanipulated corporate earnings."). Finding that accurately reported financials alone do not implicate further disclosure obligations is consistent with Second Circuit precedent. *See Plumber & Steamfitters Local 773 Pension Fund, Bos. Ret. Sys. v. Danske Bank A/S*, 11 F.4th 90, 98-99 (2d Cir. 2021) ("[A]ccurately reported financial statements do not automatically become misleading by virtue of the company's nondisclosure of suspected misconduct that may have contributed to the financial results.").

But that is distinct from the circumstances alleged here. Hain issued the Attribution Statements concerning its financials, which this Court has found not to be mere puffery. Under these circumstances, where the challenged statements amount to more

than puffery, *Boca Raton* does not support dismissal. *See In re Goldman Sachs Grp., Inc. Sec. Litig.*, No. 10-CV-3461, 2014 WL 2815571, at *5 (S.D.N.Y. June 23, 2014) (rejecting dismissal arguments relying on *Boca Raton* because the challenged statements were unlike the "open-ended, indefinite" puffery statements in *Boca Raton*); *In re Eletrobras Sec. Litig.*, 245 F. Supp. 3d 450, 463 n.7 (S.D.N.Y. 2017) (finding *Boca Raton* inapplicable where challenged statements were not puffery). In sum, *Boca Raton* does not stand for the broad proposition that the Attribution Statements could not impose a duty to disclose unsustainable business practices.[16]

Moreover, Defendants ignore case law holding that statements attributing corporate earnings to certain factors, as the Attribution Statements did, are

[16] Defendants' other cited cases, *see* Supp. Mem. at 3-4, likewise do no support that overly broad proposition. *See In re AT&T/DirecTV Now Sec. Litig.*, 480 F. Supp. 3d 507, 529 (S.D.N.Y. 2020) (finding disclosure of service subscription numbers did not necessitate disclosures about the distinct subject matter of subscription "churn" rates); *Villare v. Abiomed, Inc.*, No. 19-CV-7319, 2021 WL 4311749, at *12-14 (S.D.N.Y. Sept. 21, 2021) (finding challenged statements about the company's anticipated growth rate "constitute[d] non-actionable puffery"); *City of Sunrise Firefighters' Pension Fund v. Oracle Corp.*, No. 18-CV-04844, 2019 WL 6877195, at *11, *15 (N.D. Cal. Dec. 17, 2019) (rejecting challenges to statements about future growth because, as it turned out, the "revenue concededly grew as predicted"); *Yaron v. Intersect ENT, Inc.*, No. 19-CV-02647, 2020 WL 6750568, at *9 (N.D. Cal. June 19, 2020) (dismissing claims on falsity grounds because plaintiff "fail[ed] to allege facts to show that channel stuffing covered up hidden declining demand"); *Abuhamdan v. Blyth, Inc.*, 9 F. Supp. 3d 175, 184, 194 (D. Conn. 2014) (dismissing claims alleging disclosed earnings drivers were unsustainable—which is distinct from the allegations here that undisclosed earnings drivers were unsustainable, *see* SAC ¶ 248).

actionable when materially omissive. For example, the decision in *Oklahoma Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc.* 367 F. Supp. 3d 16 (S.D.N.Y. 2019) is instructive. There, like here, plaintiffs challenged as materially omissive Lexmark's statements that its revenue growth was primarily attributable to "robust," "good," or "strong" end-user demand because those statements failed to disclose that demand was decreasing and those revenues resulted from channel stuffing. *Id*. at 32. The court acknowledged that the challenged statements were not the reported financials themselves but rather the statements that "misattributed the source of Lexmark's revenue." *Id*. at 33. The court nonetheless held that those statements obligated defendants to disclose the channel stuffing because "a reasonable investor would likely have found it significant that printer supplies revenues were driven by inflated channel inventory and not increased end-user demand because those forces fundamentally differ in *sustainability*." *Id*. at 33 (emphasis added).

Other courts have similarly found that statements are actionable when they misattribute the forces that drove earnings. *See Solomon v. Sprint Corp.*, No. 19-CV-05272, 2022 WL 889897, at *6 (S.D.N.Y. Mar. 25, 2022) (finding that statements attributing growth to increased post-paid phone line subscriptions were actionable for failing to disclose a decrease to those subscriptions); *In re Cannavest Corp. Sec. Litig.*, 307 F. Supp. 3d 222, 239 (S.D.N.Y. 2018) (holding statements attributing earnings to sales to third parties were actionable for failing to disclose sales to a stockholder); *In re VEON Ltd. Sec. Litig.*, No. 15-CV-08672, 2017 WL 4162342, at *6 (S.D.N.Y. Sept. 19, 2017) (finding statements attributing sales

success to "the improving macroeconomic situation, product quality and efficient sales and marketing efforts" were actionable for failing to disclose that the sales resulted from bribery); *In re Virtus Inv. Partners, Inc. Sec. Litig.*, 195 F. Supp. 3d 528, 537 (S.D.N.Y. 2016) (holding statements attributing sales of fund's shares to underlying investment performance were actionable for failing to disclose that those sales were attributable to a certain trading strategy).

As these cases make clear, because Defendants "put the sources of [Hain's] revenue at issue . . . the alleged failure to disclose the true sources of such revenue could give rise to liability under Section 10(b)." *See In re Van der Moolen Holding N.V. Sec. Litig.*, 405 F. Supp. 2d 388, 401 (S.D.N.Y. 2005) (finding that statements asserting that revenues resulted from stock transactions based on "trading volumes and volatility" were actionable for omitting that a substantial portion of those revenues came from trading ahead of clients); *see also In re Marsh & Mclennan Companies, Inc. Sec. Litig.*, 501 F. Supp. 2d 452, 470 (S.D.N.Y. 2006) (recognizing that "a company's misleading statements about the sources of its revenue" may give rise to Rule 10b-5 liability). But as explained below, the SAC's allegations are nonetheless insufficient to withstand the instant motions to dismiss.

C. Plaintiffs Failed To Plead An Actionable Misstatement Or Omission

The SAC challenges the Company's statements as materially false or omissive for failing to disclose that Hain relied on "unsustainable practices" to generate sales and/or that Hain lacked adequate accounting controls. For the reasons provided below, the Court

concludes that the SAC fails to plead an actionable misstatement or omission.

1. Unsustainable Practices

Plaintiffs' Rule 10b-5 claim is premised on Hain's failure to disclose that it undertook certain "unsustainable" practices, such as "offering discounts, cash incentives, extended payment terms, spoilage coverage, and the absolute right of return." *See, e.g.*, SAC ¶ 248. The SAC's allegations focus most on the absolute right of return. The remainder of those practices may be broadly categorized as sales incentives and promotions. As discussed herein, the SAC fails to plead that any statements are actionable for failing to disclose those practices.

a) The SAC Fails To Plead An Absolute Right Of Return

The SAC's falsity allegations are subject to the heightened pleading standards of Rule 9(b) and the PSLRA. Together, "Rule 9(b) and the PSLRA require a securities fraud complaint to (1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." *Gamm*, 944 F.3d at 462; *see also Abramson v. NewLink Genetics Corp.*, 965 F.3d 165, 173 (2d Cir. 2020) (similar). On that last point, "[P]laintiffs must do more than say that the statements . . . were false and misleading; they must demonstrate with specificity why and how that is so." *Okla. Firefighters Pension & Ret. Sys. v. Xerox Corp.*, 300 F. Supp. 3d 551, 564 (S.D.N.Y. 2018) (internal quotations omitted), *aff'd sub nom. Ark. Pub. Emps. Ret. Sys. v. Xerox Corp.*, 771 F. App'x 51 (2d Cir. 2019). Thus, "[a]llegations that are

conclusory or unsupported by factual assertions are insufficient." *ATSI Communs., Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 99 (2d Cir. 2007).

At the heart of Plaintiffs' claims is the allegation that Hain drove sales by granting distributors a right to return Excess Inventory, the exercise of that right in turn increased the deficit between Hain's actual and reported sales each financial quarter, and the failure to disclose this circumstance rendered public statements materially false or misleading. *See* SAC ¶ 65. Plaintiffs rely on CWs for these claims, but the SAC's allegations on this point are too conclusory and/or vague to sufficiently plead that Hain generated sales by relying on such a right of return. For example, CW 3 reported that he "constantly" saw products being returned and credits being issued, "especially" with UNFI. SAC ¶ 75. CW 4 also reported that "Hain would ship inventory to distributors . . . to increase reported revenue and then 'de-load' (i.e., return the product) in the following quarter" and that he "knew" unspecified quarter-end transactions "could not be real." *Id*. ¶¶ 73, 81; *see also id*. ¶¶ 71-72 (CW 6 reported, among other things, that he generally processed $500,000 in returns each quarter, that he once processed a $700,000 return in 2015,[17] and that unnamed distributors were "free to return" Excess Inventory); *id*. ¶75 (CW 7 reported that "Hain had an

[17] Alleging that CW 6 processed $500,000 or even $700,000 in returns in a given quarter does not indicate whether those figures represent abnormal or substantial returns for Hain. To the contrary, as Judge Spatt previously explained, "[r]eturns of $500,000 per quarter would represent .08% of net sales in 2015, and .09% of sales in 2016" and "[r]eturns of $700,000 per quarter would represent and .1% of sales in 2015 or 2016." *Hain*, 2019 WL 1429560, at *16.

agreement with its customers that if the customers could not sell the excess inventory, they could return the unsold inventory").

These CW allegations are too conclusory and generic to support an allegation that Hain relied on the right of return as alleged in the SAC. *See In re IAC/Interactivecorp Sec. Litig.*, 695 F. Supp. 2d 109, 119 (S.D.N.Y. 2010) (finding allegations from confidential witnesses "stated in the most general of terms" and lacking "facts that might corroborate [them]" failed to plead statements were false); *In re Qudian Inc. Sec. Litig.*, No. 17-CV-9741, 2019 WL 4735376, at *6 (S.D.N.Y. Sept. 27, 2019) (finding confidential witness' conclusory statement and dearth of supporting facts "fail[ed] to establish that these statements were false and that Qudian was engaged in a widespread practice of lending to college students at the time of the IPO."); *In re Coty Inc. Sec. Litig.*, No. 14-CV-919, 2016 WL 1271065, at *6 (S.D.N.Y. Mar. 29, 2016) ("Plaintiffs rely on a series of conclusory, nonspecific statements from confidential informants . . . Such generic allegations fail to raise a plausible inference that the Registration Statement omitted a fact, much less a material fact, that required disclosure . . . .").[18] Accordingly, the SAC failed to plead that any statements were omissive for failing to disclose a right of return.

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[18] In addition, the SEC Order undermines Plaintiffs' theory regarding distributors exercising the right of return. The SEC Order concluded that "[t]he vast majority of the products purchased in connection with [end-of-quarter] sales" to major distributors, including UNFI (as Distributor 1), "ultimately sold through to retailers." SEC Order ¶¶ 8, 14; see *also id*. ¶ 8 (explaining that the spoils coverage Hain provided to Distributor 1 amounted to less than 1% of net sales).

b) Hain Disclosed That It Offered Sales Incentives and Promotions

"Although the underlying philosophy of federal securities regulation is that of full disclosure, there is no duty to disclose information to one who reasonably should be aware of it." *In re Bank of Am. AIG Disclosure Sec. Litig.*, 980 F. Supp. 2d 564, 576 (S.D.N.Y. 2013) (quoting *Seibert v. Sperry Rand Corp.*, 586 F.2d 949, 952 (2d Cir. 1978)), *aff'd*, 566 F. App'x 93 (2d Cir. 2014). To be sure, "a misrepresentation is immaterial if the information is already known to the market because the misrepresentation cannot then defraud the market." *Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 167 (2d Cir. 2000); *see Lau v. Opera Ltd.*, 527 F. Supp. 3d 537, 553 (S.D.N.Y. 2021) ("Alleged misstatements are not material where the truth was fully disclosed or concerned a matter of public knowledge."); *In re KeySpan Corp. Sec. Litig.*, 383 F.Supp.2d 358, 377 (E.D.N.Y. 2003) ("Where allegedly undisclosed material information is in fact readily accessible in the public domain, . . . a defendant may not be held liable for failing to disclose this information."). Here, Plaintiffs admit that "if Defendants had simply told the market at the time they disclosed Hain's financial results that Hain had engaged in these business practices in order to make its numbers, there would have been no deception and no fraud." Opp. at 12.

However, that is precisely what Hain did with respect to sales incentives and promotions. The Company's SEC filings disclosed that Hain undertook "[s]ales incentives and promotions" and specified without limitation that those incentives and promotions included "price discounts, slotting fees and coupons" in an effort to "support sales of the

Company's products." Hain 10-K for the fiscal year ending June 30, 2014, filed with the SEC August 27, 2014 ("2014 Form 10-K"), at 37, 54; 2015 Form 10-K at 42, 61. Plaintiffs concede that "[t]hroughout the Class Period" the Company disclosed its use of these sales incentives and specified that its reported sales figures were net of those incentives. SAC ¶ 297; *see also* 2014 Form 10-K at 37 ("Sales are reported net of sales and promotion incentives . . . ."); 2015 Form 10-K at 42 (same).

It is axiomatic that "defendants cannot be held liable for failing to disclose something that they disclosed." *Altayyar v. Etsy, Inc.*, 242 F. Supp. 3d 161, 180 (E.D.N.Y. 2017) (findings statements not actionable for omitting information disclosed in SEC filings), *aff'd*, 731 F. App'x 35 (2d Cir. 2018). That Hain disclosed its reliance on incentives and promotions to support sales precludes challenges to statements for their failure to further disclose that business practice. *See, e.g., Colbert v. Rio Tinto PLC*, 392 F. Supp. 3d 329, 339-40 (S.D.N.Y. 2019) (finding the disclosure of information in the company's annual report filed with the SEC precluded a duty to later disclose the same information); *Monroe Cnty. Emps. Ret. Syst. v. YPF Sociedad Anonima*, 15 F. Supp. 3d 336, 355-56 (S.D.N.Y. 2014) (finding no duty to disclose information that was "disclosed in public filings throughout the Class Period"); *In re IAC/Interactivecorp Secs. Litig.*, 695 F. Supp. 2d 109, 118 (S.D.N.Y. 2010) (finding no duty to disclose information discussed in the company's annual report filed with the SEC).[19]

[19] Plaintiffs' contention that the "truth-on-the-market defense is intensely fact specific and is rarely an appropriate basis for dismissing a § 10(b) complaint" is insufficient to overcome

That Plaintiffs label the sales incentives and promotions as "unsustainable" is of no moment. "Corporations are not required to phrase disclosures in pejorative terms." *Dalberth v. Xerox Corp.*, 766 F.3d 172, 186-87 (2d Cir. 2014). For that reason, disclosures of "factual information" do not become insufficient simply because they did "not use the eye-catching or negative phrasing that plaintiffs would have wished." *Singh v. Schikan*, 106 F. Supp. 3d 439, 448 (S.D.N.Y. 2015) (finding disclosures of a study's design precluded a duty to disclose that it "drastically lessened" its enrollment criteria or was specifically "designed to recruit to a younger age"); *see Dalberth* 766 F.3d at 187 ("That Plaintiffs wish that more was said, perhaps in more evocative language, is simply insufficient to establish a genuine dispute as to whether the market was adequately informed . . . ."); *In re MGT Cap. Invs., Inc. Sec. Litig.*, No. 16-CV-7415, 2018 WL 1224945, at *11 (S.D.N.Y. Feb. 27, 2018) (recognizing that a company's disclosure of "factual matters" regarding performance did not require it to "editorialize on those facts in any particular way") (internal quotations omitted).

2. Accounting Controls

Plaintiffs allege that Hain's statements about its accounting were false and misleading. The Court already has rejected challenges to those statements to the extent they are premised on inaccurate financial reporting or the failure to disclose reliance

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Defendants' disclosures. Supp. Opp. at 6 (internal quotations omitted). "Even at the pleading stage, dismissal is appropriate where the complaint is premised on the nondisclosure of information that was actually disclosed." *In re Curaleaf Holdings, Inc. Sec. Litig.*, 519 F. Supp. 3d 99, 107 (E.D.N.Y. 2021).

on the alleged "unsustainable" business practices. Plaintiffs further assert that the statements about accounting controls were false and misleading because they omitted that these Company controls were inadequate. To establish the falsity of those statements, Plaintiffs rely on the Company's admission in the SEC Order that it violated Section 13(b)(2)(B) of the Exchange Act, which requires Hain to devise and maintain an adequate system of internal accounting controls. *See* SAC ¶¶ 311, 319, 328; SEC Order ¶ 24. While this may appear logical on its face, that argument fails under scrutiny.

a) The SEC Order Does Not Indicate The SOX Statements Were False

Plaintiffs challenge (1) statements in Hain's periodic SEC filings that management "evaluated" the Company's internal controls and "concluded" that they were "effective" and compliant with "Rule 13a-15(e) of the Exchange Act," *see* SAC ¶¶ 313-19; and (2) the SOX certifications signed by Simon, Smith, and Conte attesting to the just-described statements, *see id.* ¶¶ 306-12. The Court will evaluate these collectively as the "SOX Statements." *See Lachman v. Revlon, Inc.*, 487 F. Supp. 3d 111, 125, 135 (E.D.N.Y. 2020) (analyzing collectively as "ICFR Statements" both (1) statements in periodic SEC filings that "management determined that the Company's internal control over financial reporting was effective" and (2) their related SOX certifications); *In re AmTrust Fin. Servs., Inc. Sec. Litig.*, No. 17-CV-1545, 2019 WL 4257110, at *24 (S.D.N.Y. Sept. 9, 2019) (analyzing collectively Form 10-K disclosures regarding internal controls and related SOX certifications).

The SOX Statements "concern the conclusions of management. Accordingly, they are statements of

opinion . . . ." *AmTrust*, 2019 WL 4257110, at *25. The assertion in each of the SOX certifications here that its signatory signed the document "based on my knowledge," SAC ¶ 307, cements that the SOX Statements are statements of opinion. *See In re Turquoise Hill Res. Ltd. Sec. Litig.*, No. 20-CV-08585, 2022 WL 4085677, at *40 (S.D.N.Y. Sept. 2, 2022) (explaining that this qualifier renders SOX certifications statements of opinion); *Lachman*, 487 F. Supp. 3d at 134 (same); *Menaldi v. Och-Ziff Cap. Mgmt. Grp. LLC*, 277 F. Supp. 3d 500, 517 (S.D.N.Y. 2017) (same). An opinion statement is actionable under the Exchange Act only if it (1) contains an affirmative "factual and falsifiable statement" alleged to be false or (2) "implies facts or the absence of contrary facts, *and* the speaker knows or reasonably should know of different material facts that were omitted." *Abramson*, 965 F.3d at 175 (emphasis added).

The SEC Order fails to satisfy either of the two methods for challenging opinion statements under *Abramson*. First, the SEC Order does not even discuss, let alone disprove, the assertions in the SOX Statements that management reviewed Hain's internal controls and concluded that the controls were effective. *See In re PetroChina Co.*, 120 F. Supp. 3d 340, 359 (S.D.N.Y. 2015) (dismissing challenges to SOX certifications partly because plaintiffs failed to plead "that PetroChina failed to evaluate its internal controls"); *In re Gentiva Sec. Litig.*, 932 F. Supp. 2d 352, 370 (E.D.N.Y. 2013) (dismissing challenges to statements in SOX certifications given the failure to "allege any particularized facts which would suggest that the actions articulated in the SOX Certifications were not undertaken"). Second, the post-Class Period SEC Order does not indicate that Defendants "kn[ew] or reasonably should [have known] of different

material facts" about the Company's internal controls contemporaneously with the SOX Statements. *Abramson*, 965 F.3d at 175. Of course, a "post-Class Period identification of control deficiencies" is insufficient to show that the Individual Defendants "knew—at the time they signed their certifications—of any . . . deficiencies in the Company's internal controls." *In re Diebold Nixdorf, Inc., Sec. Litig.*, No. 19-CV-6180, 2021 WL 1226627, at *12 (S.D.N.Y. Mar. 30, 2021); *see Lachman*, 487 F. Supp. 3d at 134 ("Plaintiffs fail to allege that Revlon's SOX certifications were materially false or misleading simply because a weakness in Revlon's ICFR was later discovered.").

b) The SEC Order Does Not Support Falsity of The Audit Committee Results And Simon's Related Statements

Plaintiffs also allege that the SEC Order renders false and misleading (1) the Company's November 16, 2016 disclosure that the Audit Committee's investigation into the Company's accounting practices "found no evidence of intentional wrongdoing in connection with the Company's financial statements" and (2) Simon's related comments that Hain "is committed to transparency of our financial reporting and we are taking concrete measures to remediate as well as strengthen our internal controls." *See* SAC ¶¶ 326-28. In fact, the SEC Order said nothing about whether the Company's deficient accounting controls were intentional. *See* SEC Order ¶ 24. And the SEC Order supports, rather than undermines, Simon's statement that the Company took remedial measures to strengthen its internal controls. The SEC Order contains a section entitled "Hain's Remedial Efforts"

that describes "remedial acts promptly undertaken by [Hain]," including that Hain (1) "made a number of organizational changes, such as hiring staff in compliance positions and establishing an internal audit function;" (2) implemented four changes to revenue recognition practices; and (3) developed a revenue recognition and contract review training program. *Id*. ¶¶ 26-27; *see also, e.g. Cohen v. Capital One Funding, LLC*, 489 F. Supp. 3d 33, 46 (E.D.N.Y. 2020) ("If a plaintiff's allegations are contradicted by a document attached to or incorporated by reference into the complaint, those allegations are insufficient to defeat a motion to dismiss.") (internal quotations and alterations omitted).

* * *

Based on the foregoing, the undersigned recommends that the Court find the unabandoned portion of the SAC's Count I failed to state a claim under Rule 12(b)(6) due to Plaintiffs' failure to plead an actionable misstatement or omission. Given this finding, "the Court need not address [D]efendants' other arguments." *Brady v. Top Ships Inc.*, No. 17-CV-4987, 2019 WL 3553999, at *17 (E.D.N.Y. Aug. 5, 2019), *aff'd sub nom*. *Onel v. Top Ships, Inc.*, 806 F. App'x 64 (2d Cir. 2020). Therefore, this finding obviates the need to address Defendants' other contentions that the SAC fails to adequately plead scienter and loss causation. *See, e.g., Singh v. Cigna Corp.*, 918 F.3d 57, 62 (2d Cir. 2019) ("Because we agree with the District Court regarding the absence of a material, false statement, we need not reach the issue of scienter."); *Oklahoma L. Enf't Ret. Sys. v. Papa John's Int'l, Inc.*, 517 F. Supp. 3d 196, 214 (S.D.N.Y. 2021) ("Because the Court holds that Plaintiff has not adequately pled a material

misrepresentation or omission under Section 10(b) or Rule 10b-5, the Court has no occasion to address Defendants' alternative grounds for dismissal, based on alleged deficiencies in Plaintiff's pleadings as to scienter and loss causation."); *Reiner v. Teladoc Health, Inc.*, No. 18-CV-11603, 2021 WL 4451407, at *17 (S.D.N.Y. Sept. 8, 2021) ("Because plaintiffs have failed to plead any actionable misstatements or omissions, the Court need not reach the issue of scienter."), *report and recommendation adopted*, 2021 WL 4461101 (S.D.N.Y. Sept. 29, 2021).

Nonetheless, in light of the specific mandate from the Second Circuit, the undersigned will "reassess the sufficiency of the scienter allegations" in the SAC. *In re Hain*, 20 F.4th at 138.

D. Plaintiffs Failed To Plead Scienter

Scienter allegations are subject to the heightened pleading standards of Rule 9(b) and the PSLRA. The former requires the SAC to "state with particularity the circumstances constituting fraud . . . ." Fed. R. Civ. P. 9(b). The latter similarly requires that the SAC "shall, with respect to each act or omission alleged to violate [the Exchange Act], 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)(A). "The requisite state of mind in a Rule 10b-5 action is 'an intent to deceive, manipulate or defraud.'" *Setzer v. Omega Healthcare Inv'rs, Inc.*, 968 F.3d 204, 212 (2d Cir. 2020) (quoting *Ganino*, 228 F.3d at 168). A complaint will survive "only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Tellabs*, 551 U.S. at 324.

With respect to the Individual Defendants, Plaintiffs "can satisfy [the scienter] requirement by 'alleging facts (1) showing that the defendants had both motive and opportunity to commit the fraud or (2) constituting strong circumstantial evidence of conscious misbehavior or recklessness.'" *Setzer*, 968 F.3d at 212 (quoting *ATSI*, 493 F.3d at 99). Establishing scienter for Hain "requires pleading facts that give rise to 'a strong inference that someone whose intent could be imputed to the corporation acted with the requisite scienter.'" *Jackson v. Abernathy*, 960 F.3d 94, 98 (2d Cir. 2020) (quoting *Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.*, 531 F.3d 190, 195 (2d Cir. 2008)). Plaintiffs fail to do so.

1. Individual Defendants' Motive and Opportunity

To raise a strong inference of scienter through "motive and opportunity" to defraud, Plaintiffs must allege that Defendants "benefitted in some concrete and personal way from the purported fraud." *ECA, Loc. 134 IBEW Joint Pension Tr. of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 198 (2d Cir. 2009) (quoting *Novak*, 216 F.3d at 307–08). "General allegations that the defendants acted in their economic self-interest are not enough." *Ganino*, 228 F.3d at 170. Plaintiffs claim that Defendants had motive based on (1) their stock sales; (2) their compensation and bonuses; and (3) their use of Company stock in certain acquisitions.

a) Stock Sales

The requisite showing of scienter is generally met when insiders make a misrepresentation to sell shares at a profit. *See ECA*, 553 F.3d at 198. But

"[t]he mere fact that insider stock sales occurred does not suffice to establish scienter." *E.g.*, *Constr. Laborers Pension Tr. for S. California v. CBS Corp.*, 433 F. Supp. 3d 515, 543 (S.D.N.Y. 2020) (internal quotations omitted). Instead, Plaintiffs must establish that the sales at issue were "unusual" or "suspicious." *E.g., In re Weight Watchers Int'l Inc. Sec. Litig.*, 504 F. Supp. 3d 224, 256 (S.D.N.Y. 2020). Relevant factors to that determination include "the amount of profit from the sales, the portion of stockholdings sold, the change in volume of insider sales, and the number of insiders selling." *City of Omaha Police & Fire Ret. Sys. v. Evoqua Water Techs. Corp.*, 450 F. Supp. 3d 379, 419 (S.D.N.Y. 2020) (quoting *In Re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 74 (2d Cir. 2001)). Also relevant is "whether sales occurred shortly before corrective disclosures or materialization of the alleged risk." *Glaser v. The9*, Ltd., 772 F. Supp. 2d 573, 587 (S.D.N.Y. 2011).

Plaintiffs' Fail To Allege Net Profits. "The SAC does not identify the profits realized by either [Carroll or Simon] for any of the sales, which does not help to establish motive and opportunity as 'proceeds alone say nothing about a seller's motive.'" *Chapman v. Mueller Water Prods.*, 466 F. Supp. 3d 382, 411 (S.D.N.Y. 2020) (quoting *Glaser*, 772 F. Supp. 2d at 592); *City of N. Miami Beach Police Officers' & Firefighters' Ret. Plan v. Nat'l Gen. Holdings Corp.*, No. 19-CV-10825, 2021 WL 212337, at *8 (S.D.N.Y. Jan. 21, 2021) (finding no scienter because plaintiffs alleged the "*proceeds* from the sales, rather than profit"), *aff'd sub nom. Town of Davie Police Officers Ret. Sys. v. City of N. Miami Beach Police Officers' & Firefighters' Ret. Plan*, No. 21-909-CV, 2021 WL

5142702 (2d Cir. Nov. 5, 2021);[20] *see also In re Inv. Tech. Grp., Inc. Sec. Litig.*, 251 F. Supp. 3d 596, 622 (S.D.N.Y. 2017) ("A number of courts in this district have found that allegations do not support a finding of 'motive and opportunity' when net profits are not pleaded") (collecting cases).

Timing Of The Sales Cut Against Scienter. "[C]ourts in this Circuit are frequently skeptical that stock sales are indicative of scienter where no trades occur in the months immediately prior to a negative disclosure." *Chapman*, 466 F. Supp. 3d at 412 (internal quotations omitted); *Reilly v. U.S. Physical Therapy, Inc.*, No. 17-CV-2347, 2018 WL 3559089, at *14 (S.D.N.Y. July 23, 2018) (collecting cases). Here, neither Carroll nor Simon "sold any stock in the final 100 days of the class period—the exact timing 'when insiders would have rushed to cash out.'" *Chapman*, 466 F. Supp. 3d at 412 (quoting *City of Taylor Gen. Emps. Ret. Sys. v. Magna Int'l Inc.*, 967 F. Supp. 2d 771, 800 (S.D.N.Y. 2013)); *see City of Brockton Ret. Sys. v. Shaw Grp. Inc.*, 540 F. Supp. 2d 464, 475 (S.D.N.Y. 2008) (similar). Instead, Plaintiffs allege that Carroll and Simon's last Class Period stock sales were on March 5, 2015 and April 30, 2015, respectively—each over eight months before the first allegedly negative disclosure in January 2016 (which reduced sales and earnings estimates) and over twenty-one months before the end of the Class Period. These circumstances undermine any inference of scienter. *See, e.g., Chapman*, 466 F. Supp. 3d

[20] *See also Woolgar v. Kingstone Cos.*, 477 F. Supp. 3d 193, 235-36 (S.D.N.Y. 2020) (rejecting scienter allegation that defendant "made 'net proceeds' of approximately $1.3 million" because "proceeds alone are insufficient to demonstrate unusual or suspicious trading activity;" collecting similar cases).

at 412-13 (finding stock sales not "unusual" because they occurred eight months before the end of the class period); *Woolgar*, 477 F. Supp. 3d at 235 (finding stock sales not "unusual" or "suspicious" because they occurred more than three months before the first disclosure); *Evoqua*, 450 F. Supp. 3d at 420 (finding stock sales not indicative of scienter because they occurred more than seven months before the end of the class period and did not occur "in the weeks surrounding the first allegedly negative disclosure").

Absence of Challenged Sales By Smith, Conte, And Other Insiders. "Plaintiffs do not allege that [Smith and Conte] made suspicious sales during the Class Period," which "'undermines plaintiffs' claim that defendants delayed notifying the public so that they could sell their stock at a huge profit.'" *Chapman*, 466 F. Supp. 3d at 412 (quoting *Acito v. IMCERA Grp., Inc.*, 47 F.3d 47, 54 (2d Cir.1995)). To be sure, "Plaintiffs have alleged insider trading by only two [Company] insiders; the absence of any allegations of other insider trades before [the Company] announced the impact of the issues . . . undercuts any finding of the requisite strong inference of scienter." *In re Gildan Activewear, Inc. Sec. Litig.*, 636 F. Supp. 2d 261, 271-72 (S.D.N.Y. 2009); *see also Scholastic Corp.*, 252 F.3d at 75 (noting that the failure to challenge sales by some individual defendants undermined the plaintiffs' allegations that any defendant intended to inflate stock for personal profit); *San Leandro Emergency Med. Group Profit Sharing Plan v. Philip Morris Cos., Inc.,* 75 F.3d 801, 814 (2d Cir.1996) (similar).

Portion of Stockholdings Sold and Volume Of Sales. The parties disagree about the number and percentage of shares that Carroll and Simon sold

during the class period (based on SEC filings). Plaintiffs allege Carroll sold 308,916 shares, representing 74% of his holdings, and that Simon sold 983,798 shares, representing 66% of his holdings. *See* SAC ¶¶ 355-59; Opp. at 22-23; Supp. Opp. at 8. Defendants contend that Carroll sold 512,524 shares, representing 49% of his holdings, and that Simon sold 2,260,797 shares, representing 55% of his holdings. *See* Hain Mem. at 21-22. Plaintiffs also contend that Carroll sold 300% more shares during the Class Period than in the Control Period. SAC ¶ 357. For purposes of this analysis, the Court takes Plaintiffs' calculations as true and assumes (without deciding) that this factor supports an inference of scienter because (as explained below) it would not change the result of the "motive and opportunity" analysis.

Collective Evaluation. Viewing the above factors collectively, Plaintiffs' "motive and opportunity" allegations fail to raise an inference of scienter as compelling as the competing non-fraudulent inference. As discussed above, the failure to plead (1) profits from the challenged sales, (2) that any challenged sales occurred close in time to corrective disclosures or the end of the class period, and (3) that more than two executives allegedly engaged in unusual or suspicious sales all undermine an inference that the subject stock sales were undertaken with scienter.

The only factor that, for purposes of the analysis, the Court assumes could favor an inference of scienter is the sales volume and the holdings portion they constituted. But "without more, the amount of stock sold cannot be determinative. Otherwise, any corporate insider who divests his stock holdings

would furnish opportunistic plaintiffs with the requisite scienter to survive a motion to dismiss." *Reilly*, 2018 WL 3559089, at *15. For that reason, "courts agree that the mere fact that insiders sold a large quantity of stock during the Class Period, by itself, is insufficient to establish an inference of motive" for scienter. *City of Coral Springs Police Officers' Ret. Plan v. Farfetch Ltd.*, 565 F. Supp. 3d 478, 488 (S.D.N.Y. 2021) (internal quotations and alterations omitted); *see Reilly*, 2018 WL 3559089, at *15 (similar; collecting cases). Thus, even when insider stock sales are substantial, "Plaintiffs would still need to plausibly allege that the sales are connected to some kind of plan to defraud, for example by alleging that the timing of the sales matches up with the alleged material false statements or omissions." *Coral Springs*, 565 F. Supp. 3d at 488; *see In re Lululemon Sec. Litig.*, 14 F. Supp. 3d 553, 585 (S.D.N.Y. 2014) ("Though the proceeds of the alleged stock sales are, by any measure, considerable, more is required in order for these trades to give rise to a strong inference that Wilson and Day acted with an intent to deceive through their public statements during the Class Period"), *aff'd*, 604 F. App'x 62 (2d Cir. 2015). Plaintiffs have not sufficiently alleged that Carroll and Simon's stock sales reflect the motive sufficient to establish their scienter.[21]

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[21] Given that Plaintiffs failed to adequately plead Simon and Carroll's stock sales reflect a motive sufficient to raise an inference of scienter, the Court will not consider Defendants' arguments that any such inference is undermined by the statements in the relevant Forms 4 (submitted as Exhibits F and G to the Hillebrecht Declaration) that the sales were undertaken to pay taxes on the vesting of restricted stock and the exercise of expiring stock options. *See* Hain Mem. at 22; Supp. Mem. at 7. Further, Defendants' argument would require the Court to

b) Bonuses

The Second Circuit has repeatedly held that yearning for an increase in stock prices to improve executive compensation does not support scienter because virtually all corporate insiders share that desire. *See, e.g., S. Cherry St., LLC v. Hennessee Grp. LLC*, 573 F.3d 98, 109 (2d Cir. 2009) ("[I]t is not sufficient to allege goals that are possessed by virtually all corporate insiders, such as . . . the desire to maintain a high stock price in order to increase executive compensation.") (internal quotations omitted). Otherwise stated, "[i]f performance-based compensation were a sufficient predicate for fraud, then 'virtually every company in the United States that experiences a downturn in stock price could be forced to defend securities fraud actions.'" *In re HEXO Corp. Sec. Litig.*, 524 F. Supp. 3d 283, 313 (S.D.N.Y. 2021) (quoting *In re Bristol-Myers Squibb Sec. Litig.*, 312 F. Supp. 2d 549, 561 (S.D.N.Y. 2004)) (internal alterations omitted). Therefore, Plaintiffs' allegation that the Individual Defendants were motivated to inflate the Company's stock price to increase their compensation is doomed because "the law is clear that the desire of individual defendants to keep their jobs or increase their compensation by

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accept the truth of the statements in the Forms 4 regarding why the sales were undertaken—but Courts disagree about whether that is appropriate for a motion to dismiss. *Compare Gagnon v. Alkermes PLC*, 368 F. Supp. 3d 750, 764 (S.D.N.Y. 2019) ("Courts in this district have regularly considered Forms 4 on motions to dismiss, even for the truth of their contents.") *with Donoghue v. Gad*, No. 21-CV-7182, 2022 WL 3156181, at *5 & n.7 (S.D.N.Y. Aug. 8, 2022) (explaining that courts can consider Forms 4 "'only to determine what the documents stated,' and 'not to prove the truth of their contents'") (quoting *Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007)).

artificially inflating stock price is not sufficient to establish motive." *Lipow v. Net1 UEPS Techs., Inc.*, 131 F. Supp. 3d 144, 160 (S.D.N.Y. 2015) (internal quotations omitted).

c) Using Hain Stock For Acquisitions

"Courts . . . recognize that inflation of stock value to compete more effectively in the acquisition market can redound to shareholders' benefit and thus figure within a general, non-fraudulent scheme of corporate growth." *In re Agnico-Eagle Mines Ltd. Sec. Litig.*, No. 11-CV-7968, 2013 WL 144041, at *12 (S.D.N.Y. Jan. 14, 2013) (collecting cases), *aff'd sub nom. Forsta AP-Fonden v. Agnico-Eagle Mines Ltd.*, 533 F. App'x 38 (2d Cir. 2013); *see Kalnit v. Eichler*, 264 F.3d 131, 141 (2d Cir. 2001) (explaining that aiming to achieve "a superior merger" is a "generalized desire [that does] not establish scienter" because it pursues an end that "benefits all shareholders"). Nonetheless, "the artificial inflation of stock prices in order to acquire another company may, 'in some circumstances,' be sufficient for scienter." *ECA*, 553 F.3d at 201 n.6 (quoting *Rothman v. Gregor*, 220 F.3d 81, 93 (2d Cir. 2000)). The requisite showing requires "extremely contextual" allegations demonstrating "a unique connection between the fraud and the acquisition." *Id.* Courts interpret that rule "narrowly," *Born v. Quad/Graphics, Inc.*, 521 F. Supp. 3d 469, 492 (S.D.N.Y. 2021) (quoting *Agnico-Eagle Mines*, 2013 WL 144041, at *12), and "ordinarily require evidence that the allegedly fraudulent inflation of stock prices was aimed at the specific acquisitions identified in the pleadings," *Agnico-Eagle Mines*, 2013 WL 144041, at *12 (collecting cases). For example, in *Ontario Teachers' Pension Plan Bd. v. Teva Pharm. Indus. Ltd.*, the plaintiffs' allegations

were sufficient because they directed the Court to statements that the company's "stock price would increase in such a way to allow for its use as currency to fund transactions," including the subject acquisition. 432 F. Supp. 3d 131, 169 (D. Conn. 2019).

Plaintiffs fail to make the requisite showing in the SAC. They assert in a conclusory fashion that Defendants acted with scienter to inflate Hain stock to complete three acquisitions in 2014 and one acquisition in 2015. *See* SAC ¶¶ 366-67. That these acquisitions concluded over five months before the first alleged corrective disclosure and over eighteen months before the end of the class period "renders any connection between the[se] events dubious at best." *ECA*, 553 F.3d at 201 (rejecting allegation defendants inflated company stock with scienter to complete an acquisition because the alleged misstatements "ended years afterward"). And while Plaintiffs allege the number of shares used in the acquisitions and their value, Plaintiffs offer nothing to demonstrate that Defendants made material misstatements or omissions to inflate Company stock price for any of the acquisitions. The same circumstances arose in *Born*, where the plaintiffs failed to establish scienter with their allegations that an inflated stock price allowed the company to use fewer shares to fund a $1.4 billion acquisition. *See* 521 F. Supp. 3d at 491. There, as here, plaintiffs offered no connection between the acquisition and the challenged statements "such as facts demonstrating that the inflation of [the company]'s stock price was necessary" to consummate the acquisition. *Id*. And *Born* recognized the common sense notion that an acquisition-based motive to inflate stock, even if substantiated, would not apply to statements made in the lengthy period after the subject acquisitions. *See id.* at 492 ("Even

were the Court to credit Plaintiffs' theory of motive with respect to Defendants' actions and statements leading up to the announcement of the LSC acquisition, it does not explain Defendants' motive with respect to their statements *after* Quad announced the LSC acquisition.").

Thus, Plaintiffs fail to adequately plead motive and opportunity to satisfy this prong of scienter.

2. Individual Defendants' Conscious Misbehavior or Recklessness

Plaintiffs also seek to establish scienter through circumstantial evidence of recklessness, which requires "a showing of reckless disregard for the truth, that is, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care." *SEC v. Sourlis*, 851 F.3d 139, 144 (2d Cir. 2016); *see UBS AG*, 752 F.3d at 184 (explaining that sufficient recklessness is shown by "conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it"). The Second Circuit recognizes four circumstances that, when sufficiently alleged, give rise to a strong inference of the requisite recklessness: where the defendant "(1) benefitted in a concrete and personal way from the purported fraud; (2) engaged in deliberately illegal behavior; (3) knew facts or had access to information suggesting that their public statements were not accurate; or (4) failed to check information they had a duty to monitor." *ECA*, 553 F.3d at 199 (internal quotations omitted). Because Plaintiffs here have not shown motive (even taking the motive allegations collectively), "the circumstantial evidence of con-

scious misbehavior must be correspondingly greater." *Ark. Pub. Emps. Ret. Sys.*, 28 F.4th at 355.

Plaintiffs' remaining scienter arguments rely on the theory that Defendants knew or had access to information suggesting the inaccuracy of the challenged statements. Critical to this analysis is that "[w]here plaintiffs contend defendants had access to contrary facts, they must specifically identify the reports or statements containing this information." *Jackson*, 960 F.3d at 99 (quoting *Dynex*, 531 F.3d at 196). The Court concludes that Plaintiffs fail to do so sufficiently to survive dismissal.

a) The Absolute Right Of Return

In addition to failing to adequately plead that Hain offered the right of return alleged in the SAC, Plaintiffs fail to set forth sufficient facts to support an inference of scienter in connection with those allegations. The SAC's allegations regarding the right of return rely entirely on the CWs. "As with all allegations going to scienter, confidential source allegations must show that individual defendants actually possessed the knowledge highlighting the falsity of public statements; conclusory statements . . . are insufficient." *In re Deutsche Bank Aktiengesellschaft Sec. Litig.*, No. 16-CV-3495, 2017 WL 4049253, at *8 (S.D.N.Y. June 28, 2017) (quoting *Glaser*, 772 F. Supp. 2d at 591) (internal alterations omitted), *aff'd sub nom. Sfiraiala v. Deutsche Bank Aktiengesellschaft*, 729 F. App'x 55 (2d Cir. 2018).

The SAC's allegations regarding Defendants' knowledge of the right of return are too sparse. *See, e.g., id.* ¶¶ 91-92 (CW 4 reporting Carroll asked unnamed "employees" and "executives" to stop referring to unspecified "sales practices" as "loading"); *id.*

¶ 93 (CW 6 reporting that Carroll provided unspecified "concessions" and "incentives" to UNFI at unspecified times); *id*. ¶ 95 (CW 7 reporting Carroll and Simon's furtive conversations about unspecified "financial arrangements" with UNFI); *id.* ¶ 96 (CW 2 reporting that he "believed" that "upper management" directed employees to engage in "undisclosed, unsustainable pull-in sales practices"). The most direct allegation on this point—that, according to CW 7, Simon at some point negotiated a right of return with UNFI—is bereft of particulars. *See id*. ¶ 94.

Accordingly, as to the right of return that Hain offered to its distributors, "the confidential witnesses' allegations are too vague, speculative, and conclusory to contribute to an inference of scienter." *Schiro v. Cemex*, 396 F. Supp. 3d 283, 305 (S.D.N.Y. 2019); *see In re Fed Ex Corp. Sec. Litig.*, 517 F. Supp. 3d 216, 232, 237 (S.D.N.Y. 2021) (finding confidential witness's "vague and conclusory" allegations failed to establish falsity and scienter); *see also Campo v. Sears Holdings Corp.*, 635 F. Supp. 2d 323, 336 (S.D.N.Y. 2009) ("[G]eneric and conclusory allegations based upon rumor or conjecture are undisputedly insufficient to satisfy the heightened pleading standard of [the PSLRA]."), *aff'd*, 371 F. App'x 212 (2d Cir. 2010).[22]

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[22] Plaintiffs' misplace their reliance on *Lexmark* and *Salix* to argue that Plaintiffs need not show scienter as to the right of return. *See* Supp. Opp. at 7. Here, Plaintiffs put the right of return at issue by challenging Hain's failure to disclose it. The plaintiffs in *Lexmark* and *Salix*, on the other hand, challenged statements for failing to accurately disclose inventory levels, which were not alleged to be manipulated based on any right of return. *See Lexmark*, 367 F. Supp. 3d at 37 ("Plaintiffs allege that the Individual Defendants were reckless in ignoring those spiraling inventory levels . . . ."); *In re Salix Pharms., Ltd.*, No.

b) Hain's Reliance On Sales Incentives and Promotions.

As discussed above, Defendants contemporaneously disclosed Hain's use of incentives and promotions to support sales. That finding "precludes scienter" because making an adequate disclosure is the antithesis of the "reckless conduct [that] must be 'highly unreasonable' and constitute 'an extreme departure from ordinary standards of care'" needed to substantiate scienter. *Bank of Am.*, 980 F. Supp. 2d at 586 (quoting *Chill v. GE*, 101 F.3d 263, 269 (2d Cir. 1996)). Moreover, even assuming the Individual Defendants pushed the Company to offer sales and promotions to meet revenue targets, that would "contribute[] little to a strong inference of fraud because such actions are common practice." *S.E.C. v. Espuelas*, 698 F. Supp. 2d 415, 430 (S.D.N.Y. 2010) (internal quotations and alterations omitted); *see Bristol-Myers Squibb*, 312 F. Supp. 2d at 566 ("Offering incentives to meet sales or earnings goals is a common practice, and, without additional allegations not present here, the allegation that the sales at issue were made pursuant to incentives to meet goals set by management is an insufficient basis on which to infer conscious misbehavior or recklessness."); *Gavish v. Revlon, Inc.*, No. 00-CV-7291, 2004 WL 2210269, at *15 (S.D.N.Y. Sept. 30, 2004) (same).

c) SOX Certifications and Internal Controls

Plaintiffs argue that the Individual Defendants made the SOX Statements with scienter because the Individual Defendants signed SOX certifications and

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14-CV-8925, 2016 WL 1629341, at *15 (S.D.N.Y. Apr. 22, 2016) (alleging scienter in connection with "true inventory levels").

Hain later admitted that it lacked adequate accounting controls and undertook remedial efforts to strengthen its internal controls. *See* SAC ¶¶ 311, 319, 328, 360-62. These arguments fail too.

"[C]ourts in this circuit regularly hold that the signing of a SOX certification, without more, is insufficient to plead scienter." *Zheng v. Pingtan Marine Enter.*, 379 F. Supp. 3d 164, 181 (E.D.N.Y. 2019) (collecting cases). "Indeed, 'these certifications typically add nothing substantial to the scienter calculus because allowing Sarbanes-Oxley certifications to create an inference in every case would eviscerate the pleading requirements for scienter set forth in the PSLRA.'" *Id*. (quoting *Reilly*, 2018 WL 3559089, at *19); *Int'l Ass'n of Heat v. Int'l Bus. Machines Corp.*, 205 F. Supp. 3d 527, 536 (S.D.N.Y. 2016) (similar). For that reason, "[a] Sarbanes–Oxley certification is probative of scienter only if the complaint alleges specific contrary information, such as glaring accounting irregularities or other red flags, of which the certifying defendant had reason to know." *In re Take-Two Interactive Sec. Litig.*, 551 F. Supp. 2d 247, 304–05 (S.D.N.Y. 2008) (internal quotations omitted); *see Reilly*, 2018 WL 3559089, at *19 (similar). That is why SOX certifications are actionable only when plaintiffs plead facts supporting a "concomitant awareness of or recklessness to the materially misleading nature of the statement." *Diebold*, 2021 WL 1226627, at *14 (quoting *Plumbers & Pipefitters Nat. Pension Fund v. Orthofix Int'l N.V.*, 89 F. Supp. 3d 602, 615 (S.D.N.Y. 2015)).

As discussed above, Plaintiffs neither undermined the assertions in the SOX Statements that management reviewed Hain's internal controls and concluded that the controls were effective nor

adequately pled that Defendants knew or were reckless in not knowing that the Company's internal controls were deficient. To this point, Plaintiffs "have not adequately alleged that defendants had any knowledge of 'glaring accounting irregularities' when they executed the SOX certifications . . . ." *Reilly*, 2018 WL 3559089, at *19. Instead, Plaintiffs "rel[y] only on facts occurring after Individual Defendants signed their certifications, namely the post-Class Period disclosures of material weaknesses in [Hain]'s internal controls . . . That dog won't hunt." *Diebold*, 2021 WL 1226627, at *14.

That Hain undertook remedial efforts after the Class Period to strengthen its internal controls "was a prudent course of action that weakens rather than strengthens an inference of scienter." *Slayton v. Am. Express Co.*, 604 F.3d 758, 777 (2d Cir. 2010) (internal quotations omitted) (discussing remedial act of ordering an investigation). Further, the Company's remediation efforts and the SEC Order do not support an inference of scienter "because they do not establish what specific contradictory information the makers of the statements had" at the time they made the challenged statements. *Lachman*, 487 F. Supp. 3d at 137 (internal quotations omitted); *see Stevelman v. Alias Research Inc.*, 174 F.3d 79, 84 (2d Cir. 1999) (rejecting argument that a company's remediations to its accounting policy supported scienter); *In re Magnum Hunter Res. Corp. Sec. Litig.*, 26 F. Supp. 3d 278, 295 (S.D.N.Y. 2014) ("The fact that defendants recognized problems, announced that they were implementing effective controls and procedures, and then recognized more problems does not indicate that their statements were false at the time that they were made."), *aff'd*, 616 F. App'x 442 (2d Cir. 2015).

Rather than pleading an inference of scienter, "the more plausible inference—based on the facts alleged in the [SAC]—is a 'nonculpable' one: any inadequacy in [the Company]'s . . . internal controls were, at the most, a result of inactionable corporate mismanagement. And it is well established that mismanagement is not actionable under the securities laws." *Woolgar*, 477 F. Supp. 3d at 240; *see Lefkowitz v. Synacor, Inc.*, No. 18-CV-2979, 2019 WL 4053956, at *10 (S.D.N.Y. Aug. 28, 2019) (rejecting scienter allegations regarding internal control deficiencies because "an equally plausible inference is that Defendants believed that any deficiencies were not so acute as to rise to the level of an internal control weakness."), *aff'd sub nom.*, *Shreiber v. Synacor, Inc*, 832 F. App'x 54 (2d Cir. 2020).

d) Senior Executive Employment Changes

Plaintiffs argue that the terminations and resignations of several Hain senior employees (Conte, Smith, Simon, Ng, Powhida, Weiner, and Hyndman) and the demotions of Carroll and Meiers support an inference of scienter. However, "[t]erminations or resignations of corporate executives are insufficient alone to establish an inference of scienter." *Woolgar*, 477 F. Supp. 3d at 240; *see Gillis v. QRX Pharma Ltd.*, 197 F. Supp. 3d 557, 605 (S.D.N.Y. 2016) ("Courts, however, have consistently held that an officer's resignation, without more, is insufficient to support a strong inference of scienter."). To raise a strong inference of scienter, the employment change "must be highly unusual and suspicious." *E.g.*, *Schiro*, 396 F. Supp. 3d at 303 (quoting *Wilbush v. Ambac Fin. Grp., Inc.*, 271 F. Supp. 3d 473, 499 (S.D.N.Y. 2017)). That is, an employment change can

establish scienter only where plaintiffs plead "independent evidence" corroborating that the employee whose employment circumstances changed "held a culpable state of mind." *Francisco v. Abengoa, S.A.*, 559 F. Supp. 3d 286, 321 (S.D.N.Y. 2021) (quoting *Schiro*, 396 F. Supp. 3d at 303). This arises when independent facts indicate that the employment change was "tied to" the alleged fraud, the employment change alerted others to the alleged fraud, or the employee's scienter "was otherwise evident." *Glaser*, 772 F. Supp. 2d at 598. Plaintiffs fail to make this showing.

Plaintiffs assert Smith's September 2015 resignation supports scienter because he resigned after "only two years" as CFO, he was still unemployed as of December 2016, and CW 1 "believed" Smith was forced out because he was "not willing to be one of Simon's puppets." *See id*. ¶¶ 109-10, 340. Courts routinely hold that, without more, resigning after an even shorter tenure than Smith's does not support scienter. *See Woolgar*, 477 F. Supp. 3d at 240 (rejecting scienter arguments based on executive's resignation seven months into a three-year employment period); *In re DRDGold Ltd. Sec. Litig.*, 472 F. Supp. 2d 562, 575 (S.D.N.Y. 2007) (rejecting scienter arguments based on director's resignation "after being in the position just three weeks"). Plaintiffs cite no authority for the proposition that Smith's post resignation unemployment supports scienter. And the SAC provides an insufficient basis for CW 1's subjective belief that Smith was forced out for unwillingness to support Simon. *See Tyler v. Liz Claiborne, Inc.*, 814 F. Supp. 2d 323, 340 (S.D.N.Y. 2011) (holding that "the unsupported belief" of a confidential witness does not contribute to scienter); *see also Campo v. Sears Holdings Corp.*, 635

F.Supp.2d 323, 330 n.50 (S.D.N.Y. 2009) ("No amount of investigation can transform information and belief-hearsay, essentially-into personal knowledge.") (internal quotations omitted), *aff'd*, 371 F. App'x 212 (2d Cir. 2010).

Similarly, Plaintiffs point to the Company's March 6, 2017 announcement that it was removing Carroll as Executive Vice President and CEO for Hain North America and moving him to Executive Vice President, Global Brands, Categories and New Business Ventures of Hain—which allegedly removed Carroll from involvement with U.S. sales. SAC ¶ 345. This change is not "highly unusual and suspicious." *Schiro*, 396 F. Supp. 3d at 303. Plaintiffs pled that Carroll regularly changed positions within Hain. *See id.* ¶ 29 (alleging Carroll became Hain's Executive Vice President of Melville Businesses in February 2004; President of Grocery and Frozen in July 2004; CEO of Hain Celestial United States, President of Grocery and Snacks Division in September 2005; and President of Personal Care in May 2008 before he became Executive Vice President and CEO for Hain Celestial North America in February 2015). And Plaintiffs do not allege that Carroll's move to another Executive Vice President position was a demotion. In fact, given that Carroll's prior position was limited to Hain North America and his new position concerned "Global Brands" for all of Hain, this change may have been a promotion. Plaintiffs failed to plead independent facts indicating that Carroll's employment change was tied to the alleged fraud, alerted defendants to the alleged fraud, or that Carroll's

scienter was otherwise evident.[23] *Glaser*, 772 F. Supp. 2d at 598.

Plaintiffs allege Conte resigned from his position as CFO and Executive Vice President, Finance on June 22, 2017—the same day Hain filed the 2016 Form 10-K that announced it was taking remedial measures to correct material weaknesses in its internal controls. *See* SAC ¶¶ 12, 346. However, Plaintiffs fail to allege sufficient facts to support that Conte acted with scienter in connection with the challenged statements, that his resignation somehow alerted anyone at Hain to the alleged fraud, or that his scienter was otherwise evident. *See Glaser*, 772 F. Supp. 2d at 598. The more cogent inference is not of scienter, but that Conte resigned because the 2016 Form 10-K indicated he may have been "negligent in overseeing the responsible employees" or because he believed that, in the wake of the 2016 Form 10-K, "the optics of changing management are better for investors and regulators." *Schiro*, 396 F. Supp. 3d 283 at 303 (confirming that "Section 10(b), however, requires more than mere negligence: it requires recklessness"); *see Lighthouse Fin. Grp. v. Royal Bank of Scotland Grp., PLC*, 902 F. Supp. 2d 329, 343 (S.D.N.Y. 2012) (finding resignations were "con-

[23] At first blush, it might seem notable that this employment change occurred one month after Hain's February 2017 disclosure of the SEC inquiry. *See* SAC ¶ 137. But this timing is not suspect because, assuming Hain wanted to move Carroll due to his involvement with the alleged misconduct, Hain could have moved Carroll much earlier in the Class Period. Carroll changed jobs seven months after Hain's August 2016 disclosure of its accounting review and disclosure of that review to the SEC, *see* SAC ¶ 125; SEC Order ¶ 19, and four months after Hain's November 2016 disclosure that the Audit Committee completed its review. *See* SAC. ¶ 132.

sistent with punishing those at the helm for their poor judgment and leadership" rather than "concocting a scheme to defraud shareholders"), *aff'd sub nom. IBEW Loc. Union No. 58 Pension Tr. Fund & Annuity Fund v. Royal Bank of Scotland Grp., PLC*, 783 F.3d 383 (2d Cir. 2015). Even if the Court found the timing of Conte's resignation suspicious, it would not contribute to a finding of scienter. *See Francisco v. Abengoa, S.A.*, No. 15-CV-6279, 2022 WL 3902852, at *26 (S.D.N.Y. Aug. 30, 2022) ("As there is no other circumstantial evidence of fraud, even if the Court were to find [the timing of] Sanchez Ortega's resignation suspicious, it would not be enough to rescue plaintiffs' claims.").

Plaintiffs next allege that in June 2018 the Company "announced that Simon was leaving Hain." SAC ¶ 349. Plaintiffs do not explain why Simon's resignation supports an inference of scienter. Under these circumstances, the timing of Simon's resignation—sixteen months after the Class Period ended—cuts against such an inference. *See Wilbush*, 271 F. Supp. 3d at 499 (finding resignations were not "highly unusual or suspicious" because they occurred eight and eleven months after the class period); *see N. Collier Fire Control & Rescue Dist. Firefighter Pension Plan & Plymouth Cnty. Ret. Ass'n v. MDC Partners, Inc.*, No. 15-CV-6034, 2016 WL 5794774, at *21 (S.D.N.Y. Sept. 30, 2016) (finding defendants' resignations that occurred "several months after the Class Period ended" were not highly unusual or suspicious).

Finally, Plaintiffs' allegations regarding the demotion of Meiers and the terminations of Powhida, Ng, and Hyndman are irrelevant to the Individual Defendants' scienter because Plaintiffs do not allege

the Individual Defendants were involved in those employment changes. *See Das v. Rio Tinto PLC*, 332 F. Supp. 3d 786, 815 (S.D.N.Y. 2018) (finding that an inference of scienter on the part of defendants "would be inappropriate" because plaintiff "does not allege that [defendants] were involved" in the subject terminations); *In re UBS AG Sec. Litig.*, No. 07-CV-11225, 2012 WL 4471265, at *18 (S.D.N.Y. Sept. 28, 2012) (finding that the "terminations do not support a strong inference of scienter" given the lack of "additional factual allegations" linking the defendants to the employee terminations and the fraud).[24]

e) Access To Reports and Core US Business

The SAC argues that the Individual Defendants "had knowledge of" or "had full and unfettered access" to "all material facts" regarding Hain's U.S. business because, as the generator of approximately 60% of Hain's net sales, the U.S. business comprised Hain's "core operations." *Id*. ¶¶ 351-52. These generic

[24] Non-party Weiner's resignation is likewise not relevant to the Individual Defendants' scienter. *See Malin v. XL Cap. Ltd.*, 499 F. Supp. 2d 117, 162 (D. Conn. 2007) ("Madsen and Bannerman are not named as Defendants in this action. Therefore, even if Plaintiffs had alleged facts linking their terminations to the alleged fraud, 'it is hard to see how the resignation of an executive who has not been named as a defendant in this action could create an inference of scienter with respect to the . . . individuals who have been named.'") (quoting *In re BISYS Sec. Litig.*, 397 F. Supp. 2d 430, 447 (S.D.N.Y. 2005)), *aff'd*, 312 F. App'x 400 (2d Cir. 2009); *In re CRM Holdings, Ltd. Sec. Litig.*, No. 10 CIV. 975 RPP, 2012 WL 1646888, at *29 (S.D.N.Y. May 10, 2012) (finding a non-party director's resignation "creates no inference of scienter on the part of any of the named defendants.").

allegations are insufficient to raise the requisite inference of scienter. *See Dynex*, 531 F.3d at 196 (rejecting scienter allegations asserting that senior executives "had access to 'collection data'" that revealed certain undisclosed facts about bond collateral); *IKB Int'l S.A. in Liquidation v. Bank of Am. Corp.*, 584 F. App'x 26, 28 (2d Cir. 2014) (finding scienter allegations insufficient because "IKB's complaint does not specifically identify the contemporaneous Clayton reports containing inconsistent information"); *San Leandro Emergency*, 75 F.3d at 812-13 ("Plaintiffs' unsupported general claim of the existence of confidential company . . . reports . . . is insufficient to survive a motion to dismiss.").

Plaintiffs contend that these allegations are sufficient to invoke the "core operations" theory of scienter, i.e. the core operations doctrine. *See* Opp. at 21. The core operations doctrine provides that plaintiffs who "plead that a defendant made false or misleading statements when contradictory facts of *critical importance* to the company either were apparent, or should have been apparent" can rely on "an inference . . . that high-level officers and directors had knowledge of those facts by virtue of their positions within the company." *Zheng*, 379 F. Supp. 3d at 181 (emphasis added). "In other words, this doctrine allows courts to draw an inference of scienter where the misrepresentations and omissions allegedly made by defendants were about their core operations." *Evoqua*, 450 F. Supp. 3d at 423. But "the plain language of the PSLRA, which requires facts supporting the scienter inference to be 'state[d] with particularity,' would seem to limit the force of general allegations about core company operations." *In re Wachovia Equity Sec. Litig.*, 753 F. Supp. 2d 326, 353 (S.D.N.Y. 2011) (Sullivan, J.) (quoting 15 U.S.C.

§ 78u–4(b)). "The Second Circuit has not expressly determined if the 'core operations' doctrine remains applicable to provide scienter after the enactment of the PSLRA." *Francisco*, 559 F. Supp. 3d at 320 (citing *Frederick v. Mechel OAO*, 475 F. App'x 353, 356 & n.5 (2d Cir. 2012) ("[W]e have not yet expressly addressed whether, and in what form, the 'core operations' doctrine survives as a viable theory of scienter")). On this issue, "courts within the Second Circuit have come to conflicting decisions, with the majority finding that the 'core operations' doctrine may provide support for but not an independent basis of scienter." *Lipow*, 131 F. Supp. 3d at 163 n.11 (collecting cases); *see Zheng*, 379 F. Supp. 3d at 181 (similar). "Moreover, in deciding whether to apply the core operations doctrine, courts in this District have required that the operation at issue make up nearly all of a company's business or be essential to its survival." *Francisco*, 559 F. Supp. 3d at 320.

Even assuming the U.S. business is essential to Hain's survival because it generates approximately 60% of the Company's net sales, Plaintiffs' reliance on the core operations doctrine is misplaced given that the SAC fails to plead separate facts raising an inference of scienter to be supplemented by the core operations doctrine. *See id*. at 320-21 (assuming *arguendo* a business unit generating 60% of sales could invoke the core operations doctrine but finding the allegations "insufficient, on the basis of the core operations doctrine alone, to establish scienter . . . ."); *Evoqua*, 450 F. Supp. 3d at 424 ("But even if Plaintiffs' Complaint did support this theory, the core-operations doctrine would be insufficient by itself to support strong circumstantial evidence of scienter."); *Sachsenberg v. IRSA Inversiones Y Representaciones Sociedad Anónima*, 339 F. Supp.

3d 169, 184 (S.D.N.Y. 2018) ("Therefore, without other evidence of conscious misbehavior or recklessness, Plaintiff cannot exclusively rely on the 'core operations' doctrine to save his claim."). In other words, Plaintiffs' core operations doctrine arguments fail because they "could not substitute specific factual allegations linking [the Individual Defendants] to the alleged . . . fraud." *Francisco*, 559 F. Supp. 3d at 320–21.

3. Collective Evaluation

Even though the Court has rejected all of Plaintiffs' scienter arguments individually, it must still consider whether the allegations and other proper sources of facts "give rise to a strong inference of scienter" when "taken collectively." *Tellabs*, 551 U.S. at 322-23. The SAC "will survive . . . only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Id*. at 324. At most, and taken as a whole, the SAC shows that the Individual Defendants signed Class Period SOX certifications regarding the sufficiency of Hain's internal controls but, after the Company undertook an accounting review and self-reported that review to the SEC, Hain admitted in the post-Class Period SEC Order that its internal controls were deficient. The remaining scienter allegations wilt under examination. The Court is mindful that scienter allegations "need not be irrefutable" or "even the most plausible of competing inferences" to withstand a motion to dismiss. *Tellabs*, 551 U.S. at 324 (internal quotations omitted). But after viewing the scienter allegations collectively, the Court finds "that any reasonable shareholder would deem the inference of scienter to be far less compelling than an inference of, at most,

non-actionable mismanagement and negligence" on the part of the Individual Defendants. *Sachsenberg*, 339 F. Supp. 3d at 185; *see Wachovia*, 753 F. Supp. 2d at 367 (finding that scienter allegations collectively reflected "[b]ad judgment and poor management . . . not fraud").

4. Hain's Corporate Scienter

There are two ways for Plaintiffs to plead Hain's corporate scienter. The first and "most straightforward" way is to impute scienter from an individual defendant, director, or officer who either "made" the challenged misstatement or who, while "not the actual speaker," was "involved in the dissemination of the fraud." *Jackson*, 960 F.3d at 98. The second and "exceedingly rare" way provides "collective corporate scienter may be inferred" where the statement's falsity is exceedingly "dramatic." *Id*. at 99 (internal quotations omitted).

Plaintiffs ask the Court to find corporate scienter by "imput[ing] each Individual Defendant's scienter to Hain." Supp. Opp. at 6. But as explained above, Plaintiffs failed to plead a strong inference of scienter on the part of the Individual Defendants. Accordingly, Plaintiffs' sole proffered basis for finding corporate scienter fails. *See In re Skechers USA, Inc. Sec. Litig.*, 444 F. Supp. 3d 498, 529 (S.D.N.Y. 2020) ("As to the first prong, we have already concluded that plaintiffs have failed to adequately plead scienter as to any of the Individual Defendants. Accordingly, plaintiffs cannot plead the corporate scienter by imputing an individual's scienter to the Company.").

Even if Plaintiffs had argued for corporate scienter under the second method, i.e. by way of inference,

that argument would fail. While "it is possible to raise the required inference with regard to a corporate defendant without doing so with regard to a specific individual defendant," such an inference requires a false statement "so dramatic" that "it would have been approved by corporate officials sufficiently knowledgeable about the company to know that the announcement was false." *Dynex*, 531 F.3d at 195-96 (internal quotations omitted). The classic example of a false statement sufficiently dramatic to allow for an inference of corporate scienter supposes, for example, that an automobile company announces that it sold one million cars in a year but actually sold none. *See id.*; *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1063 & n.13 (9th Cir. 2014) (finding no inference of corporate scienter because the statements were not as dramatic as the automobile manufacturer example). In this Circuit, courts have found an inference of corporate scienter where a company failed to disclose an $8.1 billion exposure to collateralized debt obligations, *see In re MBIA, Inc., Sec. Litig.*, 700 F. Supp. 2d 566, 574 (S.D.N.Y. 2010), and where a company misrepresented $4.4 billion in capital costs, *see In re NovaGold Res. Inc. Sec. Litig.*, 629 F. Supp. 2d 272, 299-300 (S.D.N.Y. 2009). Here, Hain's alleged misrepresentations do not even remotely approach that magnitude. They are "plainly insufficient to raise a strong inference of collective corporate scienter." *Jackson*, 960 F.3d at 99.

* * *

Based on the foregoing, the undersigned recommends that the Court find the unabandoned portion of the SAC's Count I failed to state a claim under Rule 12(b)(6) not only due to Plaintiffs' failure to

plead an actionable misstatement or omission, but also due to Plaintiff's failure to raise a strong inference of scienter as to any of the Defendants.

E. Section 20(a)

As noted above, the Section 20(a) claim in Count III requires a predicate Exchange Act violation by the controlled person. *E.g.*, *Carpenters*, 750 F.3d at 236. That Plaintiffs failed to plead their predicate Section 10(b) and Rule 10b-5 violation in Count I for want of an actionable misstatement or omission and want of scienter necessitates dismissal of their Section 20(a) claim in Count III. *See e.g., Ark. Pub. Emps. Ret. Sys.*, 28 F.4th at 356-57; *Danske Bank*, 11 F.4th at 98 n.3; *SRM Glob. Master Fund Ltd. P'ship v. Bear Stearns Cos.*, 829 F.3d 173, 177 (2d Cir. 2016).

V. CONCLUSION

The Court recommends that Defendants' motions to dismiss the SAC with prejudice be granted. For the reasons described above, the SAC fails to state a claim. And dismissal with prejudice is appropriate given the posture of this case, which was filed more than six years ago. Plaintiffs had numerous opportunities to plead a case adequate to survive dismissal. Plaintiffs filed the SAC without sufficiently bolstering their allegations—after they were expressly afforded the opportunity to do so. *See Hain*, 2019 WL 1429560, at *22 (dismissing the Corrected Consolidated Class Action Complaint without prejudice and affording Plaintiffs leave to amend because they "represent[ed] that they have acquired information from additional former employees that were uncovered during Lead Plaintiffs' investigation"). And most recently, since the Second Circuit vacated the 2020 Dismissal Decision, Plaintiffs have neither sought

leave to further amend the SAC nor communicated that they possess facts that would bolster it. The Court therefore recommends dismissal of the SAC with prejudice.

VI. OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. *See also* Fed. R. Civ. P. 6(a) & (d) (addressing computation of days). Any requests for an extension of time for filing objections must be directed to Judge Seybert. FAILURE TO FILE TIMELY OBJECTIONS SHALL CONSTITUTE A WAIVER OF THOSE OBJECTIONS BOTH IN THE DISTRICT COURT AND ON LATER APPEAL TO THE UNITED STATES COURT OF APPEALS. *See Thomas v. Arn*, 474 U.S. 140, 154-55 (1985); *Frydman v. Experian Info. Sols., Inc.*, 743 F. App'x 486, 487 (2d Cir. 2018); *McConnell v. ABC-Amega, Inc.*, 338 F. App'x 24, 26 (2d Cir. 2009); *F.D.I.C. v. Hillcrest Assocs.*, 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED:

Dated: Central Islip, New York
November 4, 2022

/s/Lee G. Dunst
LEE G. DUNST
United States Magistrate Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No: 23-7612

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of December, two thousand twenty-five.

SALAMON GIMPEL, ROSEWOOD FUNERAL HOME,

Lead Plaintiffs-Appellants,

JAMES SPADOLA, RODNEY LYNN,

Consolidated Plaintiffs,

BRADLEY D. FLORA, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

THE HAIN CELESTIAL GROUP, INC., IRWIN D. SIMON, PASQUALE CONTE, JOHN CARROLL, STEPHEN J. SMITH,

Defendants-Appellees.

ORDER

Appellees filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for

panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

[Seal] /s/Catherine O'Hagan Wolfe

APPENDIX E

15 U.S. Code § 78u-4 provides in pertinent part

(b) Requirements for securities fraud actions

(1) Misleading statements and omissions

In any private action arising under this chapter in which the plaintiff alleges that the defendant—

(A) made an untrue statement of a material fact; or

(B) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the 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.

(2) Required state of mind

(A) In general

Except as provided in subparagraph (B), in any private action arising under this chapter in which the plaintiff may recover money damages only on proof that the defendant acted with a particular 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.

(B) Exception

In the case of an action for money damages brought against a credit rating agency or a controlling person under this chapter, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed—

(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or

(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.

(3) Motion to dismiss; stay of discovery

(A) Dismissal for failure to meet pleading requirements

In any private action arising under this chapter, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of paragraphs (1) and (2) are not met.

(B) Stay of discovery

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is

necessary to preserve evidence or to prevent undue prejudice to that party.

(C) Preservation of evidence

(i) In general

During the pendency of any stay of discovery pursuant to this paragraph, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

(ii) Sanction for willful violation

A party aggrieved by the willful failure of an opposing party to comply with clause (i) may apply to the court for an order awarding appropriate sanctions.

(D) Circumvention of stay of discovery

Upon a proper showing, a court may stay discovery proceedings in any private action in a State court, as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this paragraph.

(4) Loss causation

In any private action arising under this chapter, the plaintiff shall have the burden of proving that the

act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages.

APPENDIX F

Fed. R. Civ. P. 9 provides in pertinent part:

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.