UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MENACHEM MAIMAN, et al.,

Plaintiffs,

v.

GREGORY C. TALBOTT and KEVIN MCCARTHY,

Defendants.

CASE NO. SACV 09-0012 AG (ANx)

ORDER DENYING MOTION TO DISMISS

This case concerns allegations that Defendants Kevin McCarthy ("McCarthy") and Gregory C. Talbott ("Talbott") (collectively "Defendants") committed securities fraud by concealing their company's unsafe lending practices and making misleading statements about their company's financial condition. Defendants filed a Motion to Dismiss ("Motion"). After considering the parties' arguments, the Court DENIES the Motion.

BACKGROUND

The following facts are taken from Plaintiffs' Second Amended Complaint ("SAC"). As it must for this Motion, the Court assumes factual allegations in the SAC to be true.

This case arises from the downfall of PFF Bancorp, Inc. ("PFF"), a holding company that provided banking services in Southern California, including the area known as the "Inland Empire." (SAC ¶¶ 9, 13.) Plaintiffs are entities and individuals "who purchased or otherwise acquired the common stock of PFF Bancorp, Inc. . . . between October 23, 2006 and April 30, 2008." (SAC ¶ 5.) McCarthy was PFF's president and chief executive officer, while Talbott was PFF's executive vice president, treasurer, chief operating officer, and chief financial officer. (*Id.*)

Plaintiffs allege that Defendants "participated in a scheme to defraud investors by concealing PFF's unsafe lending practices and making false statements . . . ." (SAC ¶ 6.) The SAC identifies numerous purportedly false or misleading statements Defendants allegedly made. (SAC ¶¶ 99-211.)

Plaintiffs' allegations will be explained in more detail in the Court's analysis. For now, it suffices to restate Plaintiffs' well-stated summary of their allegations: "In sum, the [SAC] alleges defendants' statements were false and misleading when made because PFF's loan loss reserves and capital levels were deficient . . . due to the heavy concentration of risky construction and land loans concentrated in the declining Inland Empire market . . . ." (Opp'n 8:8-13.)

A pause to explain terminology. Plaintiffs allege that Defendants falsely stated that PFF's "Allowance for Loan and Lease Losses" (also referred to as "ALLL") was adequate. (SAC ¶ 6.) There is a concept related to ALLL known as "loan loss reserves." The SAC explains that "loan loss reserves" refers to both "the reserve for ALLL, which appeared on PFF's balance sheet," as well as "the corresponding provision for loan and lease losses which appeared on PFF's income statement as a direct reduction of pre-tax earnings." (SAC at 2, n.1.)

Based on these allegations and many, many others, Plaintiffs filed this lawsuit. They assert claims for (1) violation of "Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder," and (2) violation of Section 20(a) of the Exchange Act.

A while ago, Defendants filed a motion to dismiss Plaintiffs' original Complaint, which the Court granted. The Court found that the Complaint amounted to "puzzle pleading," which inappropriately required Defendants to mix-and-match pieces of the Complaint to decipher their alleged misdeeds. The Court noted that the Complaint did not give Defendants clear notice of what they allegedly did wrong, so it dismissed the Complaint with leave to amend.

Plaintiffs then filed the SAC asserting the same two claims. The SAC grew a few pages in length, but also clarified multiple allegations.

Defendants then filed this Motion, arguing the SAC should be dismissed. Defendants contend that the SAC is "puzzle pleading" like the original Complaint. But despite Defendants' protestations, the SAC now gives them sufficient notice of what they allegedly did wrong.

Defendants also contend that the SAC should be dismissed on its merits for failure to state a claim. The Court now considers whether the SAC can survive Defendants' Motion.

LEGAL STANDARD

A court should dismiss a complaint when its allegations fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "'[D]etailed factual allegations' are not required." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (May 18, 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). The Court must accept as true all factual allegations in the complaint and must draw all reasonable inferences from those allegations, construing the complaint in the light most favorable to the plaintiff. *Westlands Water Dist. v. Firebaugh Canal*, 10 F.3d 667, 670 (9th Cir. 1993).

But the complaint must allege "sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). "A

claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1940 (citing *Twombly*, 550 U.S. at 556). A court should not accept "threadbare recitals of a cause of action's elements, supported by mere conclusory statements," *Iqbal*, 129 S. Ct. at 1940, or "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences," *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Dismissal without leave to amend is appropriate only when the Court is satisfied that the deficiencies of the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

Beyond Rule 8(a)(2), various laws on securities litigation impose heightened pleading requirements. These requirements are discussed in detail in the Court's analysis.

ANALYSIS

1. SECTION 10(b) AND RULE 10b-5

Defendants argue that the Court should dismiss Plaintiffs' claim for violation of Section 10(b) and Rule 10b-5. The Court disagrees.

To state a claim under Section 10(b) and Rule 10b-5, a plaintiff must allege "(1) a material misrepresentation or omission of fact, (2) scienter, (3) a connection with the purchase or sale of a security, (4) transaction and loss causation, and (5) economic loss." *In re Daou Sys. Inc.*, 411 F.3d 1006, 1014 (9th Cir. 2005) (citing *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005)); *Metzler Inv. GMBH v. Corinthian Coll., Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008). Under these standards, Defendants argue that Plaintiffs' first claim fails for three separate reasons: (1) failure to allege a material misrepresentation; (2) failure to sufficiently allege scienter; and (3) failure to allege loss causation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.1 Material Misrepresentation

Defendants argue that Plaintiffs' first claim should be dismissed for failure to allege a material misrepresentation. The Court disagrees.

Under the Private Securities Litigation Reform Act ("PSLRA"), a plaintiff must plead with particularity the statements alleged to have been misleading and the reason or reasons why such statements are, in fact, misleading. 15 U.S.C. § 78u-4(b)(1). In other words, the complaint must set forth "a list of all relevant circumstances in great detail." *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970, 984 (9th Cir. 1999).

The "falsity requirement is not satisfied by conclusory allegations that a company's class period statements regarding its financial well-being are *per se* false based on the plaintiff's allegations of fraud generally." *Metzler*, 540 F.3d at 1070. Rather, a pleading must "sufficiently allege facts that demonstrate the falsity of [a defendant's] characterizations of its financial health and business practices . . . ." *Id.* at 1071.

Plaintiffs argue that they meet the material misrepresentation element by alleging two types of misstatements, among other things. In the first type of misstatements, Plaintiffs allege that Defendants falsely characterized PFF's loan practices as "cautious," "conservative," and "very prudent." In the second type of misstatements, Plaintiffs allege that Defendants falsely stated that PFF's loan loss reserves were adequate. The Court finds that Plaintiffs meet the material misrepresentation requirement based on the second type of misstatements, but not the first.

To repeat, Plaintiffs allege that Defendants characterized PFF's loan practices as "cautious," conservative," and "very prudent." (*See, e.g.*, SAC ¶¶ 113, 121, 126.) Plaintiffs also allege that such characterizations were false. According to Plaintiffs, "PFF's loan portfolio was actually at risk because it was based on a high concentration of construction and land loans, and . . . the loans were concentrated within a small group of borrowers in the same geographic area." (*See, e.g.*, SAC ¶¶ 114(a), 122(a), 127(a).)

1 Defendants argue that the SAC fails to provide the requisite level of particularity
2 concerning the falsity of Defendants' alleged statements. The Court agrees. While Plaintiffs
3 allege great detail concerning the circumstances of Defendants' alleged statements, (*see, e.g.*,
4 SAC ¶¶ 113, 121, 126), Plaintiffs do not allege with particularity the reasons those statements
5 were false.
6 The Court agrees with Defendants that the alleged statements concerning PFF's lending
7 practices are too "ill-defined" to establish that they were false, relying on *In re Vantive Corp.*
8 *Secs. Litig.*, 283 F.3d 1079 (9th Cir. 2002), *abrogated on other grounds as recognized by South*
9 *Ferry LP, No. 2 v. Killinger*, 542 F.3d 776 (9th Cir. 2008). In *Vantive*, the complaint alleged
10 that the defendants, officers of Vantive, stated that "the growth and performance of" Vantive's
11 sales team was "on plan," "extremely strong," and growing successfully. *Id.* at 1086. The
12 complaint then alleged that the defendants' statements were false because Vantive could not hire
13 or train sufficient qualified salespeople, and the sales team had "continual disagreements and
14 infighting." *Id.* The Court upheld dismissal of the complaint for failure to allege falsity with
15 particularity under the PSLRA. It found that the complaint failed to "indicate what it means for
16 a management team to be 'extremely strong,'" and left "unclear what it would mean for Vantive
17 to 'adequately train' an employee, [or] what 'sufficient numbers' of hirees would be[.]" *Id.* at
18 1086-87.
19 Similarly, here the SAC does not specify any objective benchmark for how lending
20 practices would qualify as "cautious," "conservative," or "very prudent." This failure dooms
21 this part of their claim. *See Vantive*, 283 F.3d at 1086-87.
22 Plaintiffs disagree. They argue that Defendants' statements "are assertions of verifiable
23 fact, not opinion." (Opp'n 11, n.7.) But opinion is precisely what Defendants' statements are.
24 This is clear because Defendants revealed the raw data concerning PFF's loan practices in public
25 statements. Indeed, the SAC itself alleges that Defendants repeatedly told investors that PFF's
26 loan practices concentrated on a limited number of borrowers in a small geographic area. And
27 the SAC further alleges that Defendants disclosed the data underlying PFF's financial problems
28 as that data became available. (*See, e.g.*, SAC ¶¶ 99, 105-06, 111, 113, 139, 142, 162.) As

1 Defendants state, "Plaintiffs fail to specify any financial information or data that they claim
2 should have been disclosed to the public but was instead concealed by either Defendant."
3 (Reply 2:17-19.)

4 While revealing the raw data, Defendants chose to characterize PFF's lending practices as
5 "conservative" and "prudent" in light of the raw data. Plaintiffs now characterize PFF's
6 practices differently, as hindsight often permits. But Defendants' subjective statements are not
7 materially false under the PSLRA, especially because the objective data underlying those
8 statements were disclosed to the public. *See Vantive*, 283 F.3d at 1086-87; *cf. Grossman v.*
9 *Novell, Inc.*, 120 F.3d 1112, 1119 (10th Cir. 1997) ("Statements classified as 'corporate
10 optimism' or 'mere puffing' are typically forward-looking statements, or are generalized
11 statements of optimism that are not capable of objective verification.")

12 Aside from Defendants' characterization of PFF's lending practices, Plaintiffs also argue
13 that Defendants falsely characterized the level of PFF's loan reserves as adequate. Here, the
14 Court agrees. While this argument may at first seem to also be based on subjective statements,
15 Plaintiffs provide specific data underlying those statements to show that they were misleading
16 when made.

17 Plaintiffs rely on *Jones v. Corus Bankshares, Inc.*, No. 09 C 1538, 2010 U.S. Dist. LEXIS
18 33579 (N.D. Ill. Apr. 6, 2010), which is analogous to this case. Like here, the plaintiffs in *Jones*
19 alleged the defendants falsely stated their company's loan reserves were adequate. *Id.* at *13.
20 Further, in *Jones* the plaintiffs "set forth in very clear and specific terms the information
21 available to [the company] and why, given its possession of this information, [the company's]
22 statements about the adequacy of its reserves were misleading." *Id.* For instance, the plaintiffs
23 alleged that the company's noncurrent loans nearly quadrupled in about a year, and in that same
24 time period the company cut its percentage of loan loss reserves compared to noncurrent loans
25 by 17%. *Id.*

26 Here, PFF cut its percentages of loan reserves by much more than the company did in
27 *Jones*. As Defendants admit, "PFF's ALLL had . . . doubled in the span of six months," while
28 "non-accrual loans increased twenty-fold . . . over the same period." (Reply 2, n.3.) And at that

same time, Plaintiffs allege, "the [Office of Thrift Supervision] was continuing to warn defendants about PFF's increasing risk profile, and PFF loan customers were experiencing a sharp rise in foreclosures, defaults and economic trouble . . . ." (Opp'n 12:15-18 (citing SAC ¶¶ 140, 143, 145, 149).) These circumstances are sufficient to show that Defendants' statements about the adequacy of PFF's loan reserves were false when made.

Thus, Plaintiffs meet the material misrepresentation element.

1.2 Facts Giving Rise to a Strong Inference of Scienter

Defendants also argue that the SAC should be dismissed for failure to adequately plead scienter. The Court disagrees.

Under the PSLRA, a securities fraud complaint "must raise a 'strong inference' of scienter – i.e., a strong inference that the defendant acted with an intent to deceive, manipulate, or defraud." *Metzler*, 540 F.3d at 1061 (quoting 15 U.S.C. § 78u-4(b)(2)). "This examination requires the court to survey the complaint in its entirety, not to simply scrutinize individual allegations in isolation." *Id.*

"[T]o plead scienter, the PSLRA requires the complaint to 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" *Siracusano v. Matrixx Initiatives, Inc.*, 585 F.3d 1167, 1180 (9th Cir. 2009) (quoting 15 U.S.C. § 78u-4(b)(2)). "[I]n determining whether the pleaded facts give rise to a 'strong' inference of scienter, the court must take into account plausible opposing inferences." *Id.* (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 310 (2007)) (brackets in *Siracusano*); *Metzler*, 540 F.3d at 1061 ("In reviewing a complaint under this standard, 'the court must consider all reasonable inferences to be drawn from the allegations, including inferences unfavorable to the plaintiffs.'") (quoting *Gompper v. VISX, Inc.*, 298 F.3d 893, 895 (9th Cir. 2002)). "The complaint will survive a motion to dismiss '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.'" *Siracusano*, 585 F.3d at 1180 (quoting *Tellabs*, 551 U.S. at 324);

1 *Commc'ns Workers of Am. Plan for Employees' Pensions & Death Benefits v. CSK Auto Corp.*,
2 525 F. Supp. 2d 1116, 1120 (D. Ariz. 2007) ("The Supreme Court has now made clear . . . that a
3 tie goes to the Plaintiff.").

4 In pleading scienter, a securities fraud plaintiff "must 'allege that the defendants made
5 false or misleading statements either intentionally or with deliberate recklessness.'" *Siracusano*,
6 585 F.3d at 1180 (quoting *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 991 (9th Cir.
7 2009)); *Daou*, 411 F.3d at 1015. A court deciding a motion to dismiss "must first 'determine
8 whether any of the plaintiff's allegations, standing alone, are sufficient to create a strong
9 inference of scienter.'" *Siracusano*, 585 F.3d at 1180 (quoting *Zucco*, 552 F.3d at 991). If they
10 do not, the court then conducts a holistic review of the complaint's allegations "to determine
11 whether the insufficient allegations combine to create a strong inference of intentional conduct
12 or deliberate recklessness." *Id.* (quoting *Zucco*, 552 F.3d at 991); *South Ferry*, 542 F.3d at 782
13 (recklessness meets the PSLRA's requirements "'to the extent it reflects some degree of
14 intentional or conscious misconduct'") (quoting *Silicon Graphics*, 183 F.3d at 976). In
15 discussing scienter, the Ninth Circuit defined recklessness as:
16

17 a highly unreasonable omission, involving not merely simple, or
even inexcusable negligence, but an extreme departure from the
18 standards of ordinary care, and which presents a danger of
misleading buyers or sellers that is either known to the defendant or
19 is so obvious that the actor must have been aware of it.

20

21 *Siracusano*, 585 F.3d at 1180 (quoting *Silicon Graphics*, 183 F.3d at 976).

22 Plaintiffs adequately plead scienter under these standards. The adequacy of their
23 allegations stems from a pleading approach recognized as acceptable by the Ninth Circuit in
24 *South Ferry*. There, the Ninth Circuit stated,
25

26 [a]llegations regarding management's role in a corporate structure
and the importance of the corporate information about which
27 management made false or misleading statements may also create a
strong inference of scienter when made in conjunction with detailed
28

> and specific allegations about management's exposure to factual information within the company.

South Ferry, 542 F.3d at 785.

Here, the SAC's allegations permit a strong inference of scienter under *South Ferry*. First, Plaintiffs allege that Defendants played an active role in running PFF as PFF's key officers. (*See, e.g.*, SAC ¶¶ 21-22, 40, 50-51, 57-59, 61, 75, 84, 95, 264-266.) Second, Plaintiffs allege that the "corporate information about which management made false or misleading statements" was very important to PFF. *See South Ferry*, 542 F.3d at 785; *see, e.g.*, SAC ¶¶ 71-73, 76, 80, 84. And third, Plaintiffs make "detailed and specific allegations" that Defendants were exposed to "factual information within the company" contradicting Defendants' misleading statements. *See South Ferry*, 542 F.3d at 785; *see, e.g.*, SAC ¶¶ 15, 62, 83, 216-217, 233-242, 266.

These allegations permit the inference that Defendants knew PFF's loan practices were risky and that PFF had inadequate loan loss reserves, yet told investors that the loan loss reserves were adequate. While other inferences may be permissible from the facts alleged, under the detailed allegations of the SAC, the inference identified is at least as plausible as any other inference. Thus, Plaintiffs' allegations allow the Court to draw a strong inference of scienter. *See CSK Auto*, 525 F. Supp. 2d at 1120 ("[A] tie goes to the Plaintiff.").

Defendants argue that this cannot be so, since Defendants owned PFF's stock but did not sell any of it during the class period. This argument fails, because a plaintiff need not allege stock sales to establish a strong inference of scienter. *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 944 (9th Cir. 2003) ("Scienter can be established even if the officers who made the misleading statements did not sell stock during the class period. In other words, the lack of stock sales by a defendant is not dispositive as to scienter.") (citations omitted).

Defendants also argue that there can be no strong inference of scienter because Defendants actually purchased PFF's allegedly artificially inflated stock during the class period. While Defendants' stock purchases are not alleged in the SAC, Defendants argue that the Court

1 should take judicial notice SEC Forms 4 called "Statement[s] of Changes in Beneficial
2 Ownership of Securities," which reflect the fact that Defendants purchased PFF's shares. (*See*
3 Ebenshade Decl. Ex. E.) Plaintiffs respond that, while the Court may take judicial notice that
4 statements were made in SEC fillings, it should not take judicial notice of the truth of statements
5 made in such filings. (Plaintiffs' Response to Request for Judicial Notice.) Thus, Plaintiffs
6 assert, the Court should not consider that Defendants purchased PFF's stock when determining
7 whether there is a sufficient inference of scienter.

8 Courts that have faced this issue before have split on whether judicial notice is
9 appropriate. *Compare Patel v. Parnes*, 253 F.R.D. 531, 546 (C.D. Cal. 2008) ("It is appropriate
10 for the court to take judicial notice of the content of the SEC Forms 4 and the fact that they were
11 filed with the agency. *The truth of the content, and the inferences properly drawn from them,*
12 *however, is not a proper subject of judicial notice* . . . .") (emphasis added); *In re Adaptive*
13 *Broadband Sec. Litig.*, No. C 01-1092 SC, 2002 U.S. Dist. LEXIS 5887, at *60-63 (N.D. Cal.
14 Apr. 2, 2002) (declining to take judicial notice of Forms 4); *Jones v. Corus Bankshares, Inc.*,
15 2010 U.S. Dist. LEXIS 33579, at *30 n.3 (N.D. Ill. Apr. 6, 2010) (declining to take judicial
16 notice of a securities fraud defendant's stock purchases); *Riggs Partners, LLC v. Hub Group,*
17 *Inc.*, No. 02 C 1188, 2002 U.S. Dist. LEXIS 20649, at * 16 n.7 (N.D. Ill. Oct. 23, 2005) (same);
18 *In re Digi Int'l Inc. Secs. Litig.*, 6 F. Supp. 2d 1089, 1098 (D. Minn. 1998) (the defendant
19 "cannot rely on the alleged purchase of shares . . . – evidence outside the four corners of the
20 complaints – to support its motion to dismiss") *with In re Intrabiotics Pharms., Inc. Secs. Litig.*,
21 2006 U.S. Dist. LEXIS 15753, at *39 (N.D. Cal. Jan. 23, 2006) (courts may take judicial notice
22 of "documents . . . which indicate that [securities fraud defendants] purchased" their company's
23 stock, and such purchases may undermine an inference of scienter); *Allison v. Brooktree Corp.*,
24 999 F. Supp. 1342, 1352 and n.3 (S.D. Cal. 1998) (taking judicial notice of a defendant's "Form
25 4 wherein he reported [stock] purchases to the SEC"); *In re Humphrey Hospitality Trust, Inc.*
26 *Secs. Litig.*, 219 F. Supp. 2d 675, 686 (D. Md. 2002).

27 The Court joins the courts that decline to take judicial notice of defendants' stock
28 purchases reflected in Forms 4. Judicial notice is appropriate only for facts "not subject to

reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201. Courts may take judicial notice of "*undisputed* matters of public record," but generally may not take judicial notice of "*disputed* facts stated in public records." *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (emphasis in original). Here, while it may be appropriate to judicially notice the existence of SEC filings and their contents, judicial notice should not be taken of the *truth* of their contents. *Patel*, 253 F.R.D. at 546. As Plaintiffs explain, "[t]his is particularly true of public documents filed with the [SEC] in a securities fraud action – since the truth of the contents of the SEC reports is typically central to the dispute." (Plaintiffs' Response to Request for Judicial Notice 1:9-11; *see Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1277-78 (11th Cir. 1999)).

Further, one court that took judicial notice of a defendant's stock purchases and found that they negated an inference of scienter did so only where the defendant provided context of the purchases. *See In re Green Tree Fin. Corp. Stock Litig.*, 61 F. Supp. 2d 860, 868 n.8 (D. Minn. 1999), *overruled on other grounds*, 270 F.3d 645 (8th Cir. 2001). *Green Tree* noted that *Digi* "indicated that it would not consider evidence of the . . . stock purchases" because "[t]he Court could not verify the circumstances surrounding the purchase of the stock – for example, whether the officers purchasing the stock were required to exercise options at that time, and therefore could not draw any conclusions based on those purchases." *Id*. (citing *Digi*, 6 F. Supp. 2d at 1097 n.5). Here, like in *Digi*, Defendants have not provided sufficient context of the stock purchases reflected in the Form 4s. Thus, even if the Court were to take judicial notice of Defendants' stock purchases, such purchases would not negate the strong inference of scienter.

Plaintiffs meet the scienter element at this pleading stage.

1.3 Loss Causation

Defendants argue that Plaintiffs fail to sufficiently allege loss causation. The Court disagrees.

"[L]oss causation is the 'causal connection between the [defendant's] material misrepresentation and the [plaintiff's] loss.'" *Metzler*, 540 F.3d at 1062 (quoting *Dura*, 544 U.S. at 342). To sufficiently allege loss causation, a complaint "must allege that the defendant's 'share price fell significantly after the truth became known.'" *Id.* (quoting *Dura*, 544 U.S. at 342). A complaint need not show that a misrepresentation was the sole cause for the decline in share price. *Id.* Nor must it *prove* loss causation at the pleading stage. *Id.* Rather, it must simply give the defendant "'notice of what the causal connection might be between th[e] loss and the representation.'" *Id.* (quoting *Dura*, 544 U.S. at 347).

Plaintiffs' allegations meet these standards. Plaintiffs allege that Defendants falsely stated their loan loss reserves were adequate, and these false statements resulted in Plaintiffs purchasing PFF stock at inflated levels. (*See, e.g.*, SAC ¶¶ 269-271.) They further allege that Defendants then disclosed PFF's true financial nature through PFF's financial statements, and that the price of PFF's stock dropped sharply as a result. (*See, e.g.*, SAC ¶¶ 272-278.)

Plaintiffs' argument is persuasive. A complaint pleads loss causation by alleging that the market "learned of and reacted to [a] fraud, as opposed to merely reacting to reports of the [company's] poor financial health generally." *Metzler*, 540 F.3d at 1063. In other words, loss causation is established through allegations that "the price of [the company's] stock fell precipitously after defendants began to reveal figures showing the company's true financial condition." *Daou*, 411 F.3d at 1206. Plaintiffs' loss causation allegations fall squarely within this standard.

The Court concludes that Plaintiffs' "allegations, if assumed true, are sufficient to provide [Defendants] with some indication that the drop in [PFF's] stock price was causally related to [Defendants'] misstatements" about the adequacy of loan loss reserves. *Daou*, 411 F.3d at 1026. Thus, Plaintiffs meet the loss causation element.

2. SECTION 20(a)

Defendants argue Plaintiffs' claim for violation of Section 20(a) should be dismissed. But this argument depends on the success of Defendants' arguments concerning Plaintiffs' first claim. Because the Court rejects Defendants' arguments concerning Plaintiffs' first claim, Defendants' argument concerning Plaintiffs' claim for violation of Section 20(a) likewise fails.

3. CONCLUSION

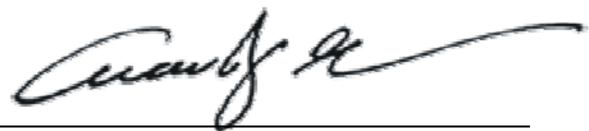
The SAC states claims for securities fraud and violation of Section 20(a). Aside from the arguments already discussed, the parties make additional arguments, but the "remaining contentions do not merit discussion." *See Murdoch v. Castro*, -- F.3d ----, 2010 WL 2473235, at *14 (9th Cir. June 21, 2010) (en banc) (Kozinski, J., dissenting).

<u>DISPOSITION</u>

The Motion is DENIED.

IT IS SO ORDERED.

DATED: August 9, 2010



Andrew J. Guilford
United States District Judge