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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Pranay K Bajjuri, et al.,

10 Plaintiffs,

11 v.

12 Raytheon Technologies Corporation, et al.,

13 Defendants.
14

No. CV-20-00468-TUC-JCH

ORDER

15 In this case, Plaintiff Bajjuri (representing a class of Raytheon shareholders,
16 together "Plaintiffs") alleges Defendants ("Raytheon" and certain of its individual
17 "Officers") violated federal securities laws by making misleading statements in Raytheon's
18 public filings. According to Plaintiffs, the truth was revealed in October 2020 when
19 Raytheon disclosed a DOJ subpoena and its stock fell, injuring Raytheon's shareholders.

20 Plaintiffs' amendments have brought this case's theories into sharper focus. One,
21 previously rejected, is that Raytheon's filings were misleading due to widespread fraud.
22 This theory still has no basis in well-plead facts. Another theory, newly reinforced, is that
23 Raytheon's filings were misleading due to a failure to disclose misconduct discovered in
24 2018. This theory fails for lack of connection to the 2020 DOJ subpoena or to any well-
25 plead impact on Raytheon's finances or internal controls. In fact, Plaintiffs' theory tends to
26 suggest Raytheon's controls worked effectively and as intended. Plaintiffs' case also suffers
27 because Raytheon's stock did not fall far and recovered quickly. For those reasons,
28 discussed more fully below, the Court will dismiss this case with prejudice.

1 **I. Background**

2 On October 30, 2020, Bajjuri brought a federal securities class action suit against
3 Defendants. Doc. 1. In July 2021, the Court consolidated Bajjuri's case with a related case,
4 retained Bajjuri as the lead case, Doc. 30, and the newly consolidated Plaintiffs filed their
5 first amended complaint. Doc. 34 ("FAC"). In March 2022, Raytheon moved to dismiss.
6 Doc. 41. The Court granted Raytheon's motion with leave to amend. Doc. 55. In December
7 2022, Plaintiffs filed their second amended complaint. Doc. 56 ("SAC").

8 Before the Court are Defendants' two motions for judicial notice, Docs. 60, 64, and
9 Motion to Dismiss the SAC. Doc. 59 ("MTD"). The motions are fully briefed. Doc. 61
10 ("Response"); Doc. 63 ("Reply"). On May 8, 2023, the Court heard oral argument. Doc. 73
11 ("Hr'g Tr.").

12 **II. Legal Standards**

13 Several legal standards apply to Plaintiffs' claims. The claims arise under the
14 Securities Exchange Act ("SEA") Section 10(b) (Count 1, against Raytheon) and Section
15 20(a) (Count 2, against the Officers). To state a claim under §§ 10(b) and 20(a), a plaintiff
16 must allege (as relevant to Defendants' challenges): "(1) a material misrepresentation or
17 omission by the defendant [("falsity")]; (2) scienter; ... [and (3)] loss causation." *In re*
18 *NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1052 (9th Cir. 2014) (citation omitted).

19 **Federal Rules of Civil Procedure 12(b)(6) and 9(b).** When deciding any motion
20 to dismiss for failure to state a claim, the Court must "consider the complaint in its entirety"
21 and, in doing so, "accept all factual allegations in the complaint as true." *Tellabs, Inc. v.*
22 *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); Fed. R. Civ. P. 12(b)(6). When a
23 claim alleges fraud, "a party must state with particularity the circumstances constituting
24 fraud[.]" Fed. R. Civ. P. 9(b). Rule 9(b)'s particularity requirement "applies to all elements
25 of a securities fraud action[.]" *Or. Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598,
26 605 (9th Cir. 2014).

27 **SEA §§ 10(b) and 20(a), and SEC Rule 10b-5.** SEA § 10(b) makes it unlawful to
28 employ any "manipulative or deceptive device" in connection with the purchase or sale of

1 a security, or to contravene "such rules and regulations as the [SEC] may prescribe as
2 necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C.
3 § 78j(b). SEC Rule 10b-5 prohibits "any act, practice, or course of business" that operates
4 as a "fraud or deceit" in connection with the purchase or sale of a security. 17 C.F.R.
5 § 240.10b-5(c). SEA § 20(a) extends § 10(b) liability to "controlling" individuals. 15
6 U.S.C. § 78t(a).

7 **Private Securities Litigation Reform Act ("PSLRA").** The PSLRA imposes
8 additional "exacting" pleading obligations for § 10(b) claims. *Zucco Partners, LLC v.*
9 *Digimarc Corp.*, 552 F.3d 981, 990 (9th Cir. 2009). These obligations differ between the
10 falsity and scienter elements. Falsity requires particularity together with a *reasonable*
11 inference of plausibility, and scienter requires particularity together with a *strong* inference
12 of plausibility. *Glazer Cap. Mgmt., L.P. v. Forescout Techs., Inc.*, 63 F.4th 747, 766 (9th
13 Cir. 2023).

14 **III. Judicial Notice**

15 Defendants present two unopposed motions to take judicial notice. Docs. 60, 64.
16 The Court may judicially notice facts "not subject to reasonable dispute," Fed. R. Evid.
17 201, and documents incorporated by reference in the complaint. *Tellabs*, 551 U.S. at 322.
18 Facts are "not subject to reasonable dispute" if they are "generally known," Fed. R. Evid.
19 201(b)(1)–(2), such as "matters of public record." *Khoja v. Orexigen Therapeutics, Inc.*,
20 899 F.3d 988, 999 (9th Cir. 2018) (citation omitted). Documents are incorporated by
21 reference if the complaint refers to them "extensively." *Id.* at 1002. The Court will grant in
22 part consistent with this Order's reasoning and citations.

23 **IV. Falsity**

24 Defendants first challenge the falsity element of Plaintiffs' § 10(b) claim. To plead
25 falsity, the complaint must allege a "material" misrepresentation with "particularity." *In re*
26 *NVIDIA*, 768 F.3d at 1052; Fed. R. Civ. P. 9(b). Specifically, the complaint must (A) state
27 with particularity all facts on which a pleading is based, (B) specify which statements were
28 materially misleading, and why. 15 U.S.C. § 78u-4(b)(1).

1 Plaintiffs fail to state the falsity element sufficiently for two independent reasons.
2 First, the SAC does not allege falsity with particularity. Plaintiffs allege that all Raytheon's
3 key financial metrics were misleading, as well as specifically the Tomahawk program
4 financials and the Integrated Defense Systems segment bookings, and that Raytheon failed
5 to disclose a 2018 DOJ investigation. But Plaintiffs rely primarily on confidential witness
6 accounts that do not reliably allege widespread fraud, issues with the Tomahawk program,
7 a 2018 investigation, or any risk the alleged misconduct brought to fruition. Second, the
8 SAC does not allege "material" falsity. Plaintiffs fail even to estimate the extent to which
9 Raytheon's various statements were misleading, or to contend with the fact that Raytheon
10 never restated earnings and an independent auditor continued to certify Raytheon's internal
11 controls as effective.

12 **A. Facts on Which the SAC is Based**

13 Plaintiffs base their allegations primarily on 14 confidential witness accounts, SAC
14 ¶¶ 41–96, as well as Raytheon's disclosure of the DOJ investigation, SAC ¶¶ 123–125, and
15 certain earnings-call statements by Raytheon's CEO. SAC ¶¶ 319–322; *see also* SAC at 1
16 (pleading almost entirely on information and belief).

17 **i. Confidential Witnesses**

18 Plaintiffs' obligation to state their basis in fact includes an obligation to "reveal with
19 particularity the sources of [Plaintiffs'] information," such as confidential witnesses. *In re*
20 *Daou Sys., Inc.*, 411 F.3d 1006, 1015 (9th Cir. 2005). Confidential witnesses must be
21 described "with sufficient particularity to establish their reliability and personal
22 knowledge." *Zucco Partners*, 552 F.3d at 995 (internal quotation and citation omitted).

23 As discussed in the Appendix below (p. 38–63), only some of the individual and
24 corroborated confidential witness allegations are sufficiently reliable. Focusing only on
25 those allegations, the following picture emerges:

- 26 • At some point before 2018, a relatively low-level Raytheon employee witnessed
27 many instances of wrong-doing on a large support-services contract in an unknown
28 Raytheon segment. App'x § II.A.
- In 2018, a "Deputy Vice President" Callahan, "Program Manager" McDonnell, and

1 "Contract Director" Fay were fired for hiding cost overruns on a contract or
2 contracts in the Naval Systems subsection of Raytheon's Missile Systems segment.
App'x § II.O.i.

- 3 • At some point after April 2020, a relatively low-level Raytheon employee
4 determined that a Raytheon EAC in an unknown segment had accumulated
5 "hundreds of millions" in cost overruns not related to misconduct. App'x § II.J.
- 6 • At some point after October 2020, high-level Missiles & Defense division
7 employees Murphy, Asbell, and Sabin were fired in connection with the DOJ
8 investigation into three Integrated Defense System segment contracts from 2011–
9 2013 and one from 2017. App'x § II.O.ii.
- The DOJ investigation "involves" the Patriot Guided Enhanced Missile Program,
which was part of the Integrated Defense System segment. App'x § II.N.

10 ii. DOJ Investigation Disclosures and CEO Statements

11 According to Plaintiffs, "the truth [of the foregoing misconduct] emerg[ed]" when
12 Raytheon disclosed the DOJ investigation, and Raytheon's CEO "acknowledge[d]
13 wrongdoing." *See* SAC at i. On October 27, 2020, Raytheon disclosed it had received a
14 DOJ subpoena earlier that month. SAC ¶ 9. The subpoena sought "information and
15 documents in connection with an investigation relating to financial accounting, internal
16 controls over financing, and cost reporting regarding [Raytheon's] Missiles & Defense
17 business since 2009." *Id.*¹ On April 27, 2021, Raytheon disclosed it had received another
18 DOJ subpoena in connection with the same investigation. *See* SAC ¶ 11.² That same day,

19
20 ¹ Plaintiffs omit part of Raytheon's October 2020 disclosure, which states, "Based on the
21 information available to date ... we do not believe the results of this inquiry will have a
22 material adverse effect on our financial condition, results of operations or liquidity." Doc
59-3 at 50.

23 ² Plaintiffs omit the text of Raytheon's April 2021 disclosure, which states:

24 The [DOJ] investigation includes potential civil defective pricing claims for
25 three [Missiles & Defense] contracts entered into between 2011 and 2013.
26 As part of the same investigation, ... [Raytheon] received a second criminal
subpoena from the DOJ seeking documents relating to a different [Missiles
& Defense] contract entered into in 2017.

27 Doc. 59-9 at 31. The disclosure also states "there is a meaningful risk of civil liability for
28 damages, interest and potential penalties," and concludes "[b]ased on the information to
date, however, we do not believe the results of the investigation ... will have a material
adverse effect on our financial condition, results or liquidity." *Id.*

1 Raytheon's CFO and CEO provided more information to analysts on an earnings call. *See*
2 SAC ¶¶ 11, 76. Raytheon's CFO explained that the subpoena related to Raytheon's former
3 Integrated Defense System segment, which became part of Raytheon's "Missiles &
4 Defense" division in April 2020. SAC ¶ 76. Raytheon's CEO "affirmed that 'It was alleged
5 that we defectively priced some contracts. We've looked into it[. W]e think there is
6 potential liability for defective pricing clearly.'" SAC ¶ 11.³

7 **B. Statements the SAC Alleges Were Misleading, and Why**

8 Plaintiffs allege Raytheon's misconduct rendered many statements in its public
9 filings misleading. Two of these statements described Raytheon's financial controls as
10 "effective." Others reported Raytheon's financial performance. Several more singled out
11 specific bookings and government risks in 2018 and 2019. Plaintiffs allege these statements
12 were misleading because Raytheon's financial controls were ineffective, its financial
13 performance was based on fraudulent behavior, and Raytheon had discovered significant
14 misconduct related to government contracts in 2018 that it failed to disclose.

15 **i. Regarding Financial Controls and Statements**

16 Plaintiffs allege Raytheon misled investors with two statements that describe

17 ³ Plaintiffs omit the context and some substance from the CEO's remarks, and liberally
18 reformat them. During the earnings call, a member of Citigroup's research division asked
19 the CEO to clarify Raytheon's quarterly report statement that the "DOJ items" were
20 immaterial. Doc. 59-10 at 12. The Citigroup representative also asked the CEO to say
21 whether any "connective tissue" or "narrative" existed between the DOJ items. *Id.* The
22 CEO replied:

23 I would tell you, again, the dollar amounts are not going to be material in our
24 view today. These -- again, these are older contracts, where it was alleged
25 that we defectively priced some contracts. Again, I can't get into much more
26 detail than that. But again, we've looked into it. We think there is potential
27 liability for defective pricing. Clearly, we've provided for that this quarter.
28 And we're going to continue to work with DOJ to bring these things to a
resolution.

I would tell you, these investigations take time. We're still going through
doing some work. But we don't believe there's going to be any ongoing
impact to any of the businesses as a result of these investigations. We think
these were one-off events that occurred -- should not have occurred, but they
did. And we're going to clean it up and move on. *Id.*

1 Raytheon's internal financial controls as "effective." *See, e.g.*, SAC ¶¶ 126, 127; *see also* ¶
2 301 (reporting Raytheon's controls largely unchanged post-merger). These statements
3 appear in each of Raytheon's annual and quarterly reports. *Id.* Plaintiffs allege these
4 statements were misleading because Raytheon's internal controls were not effective. *See,*
5 *e.g.*, SAC ¶ 128. Plaintiffs further allege these statements were particularly misleading in
6 2018 and 2019 because Raytheon failed to disclose it had identified "significant
7 misconduct" involving the "top echelon" of its Missiles and Defense segment, and the DOJ
8 was investigating several important government contracts. *See, e.g.*, SAC ¶ 234.

9 Plaintiffs also allege Raytheon misled investors with virtually all Raytheon's
10 financial statements for the Class Period.⁴ Specifically, the SAC refers to all "net sales
11 (revenues)[,] operating expenses[,], and operating income" metrics. *See, e.g.*, SAC ¶ 130.
12 Plaintiffs allege these statements were misleading because Raytheon misused,
13 misappropriated, and violated its contracts with the government. *See, e.g., id.* Plaintiffs also
14 specifically refer to all financial "statements regarding the Tomahawk [and Javelin missile]
15 projects." *See, e.g.*, SAC ¶ 135. Plaintiffs allege these statements were misleading because
16 Raytheon significantly overstated them by intentionally slowing down projects. *See, e.g.*,
17 SAC ¶¶ 130, 135.

18 **ii. Regarding 2018 and 2019 Bookings and Risks**

19 Plaintiffs also allege that 2018 and 2019 10-K statements singling out Raytheon's
20 Integrated Defense Systems segment bookings were misleading. *See, e.g.*, SAC ¶ 253.
21 Plaintiffs allege these statements failed to disclose that at least one of Raytheon's major
22 contracts with the U.S. government was the subject of a DOJ investigation beginning no
23 later than mid-2018. *See, e.g.*, SAC ¶ 254.

24 Plaintiffs also allege that 2018 and 2019 10-K statements about risks related to U.S.
25 government contracts were misleading. *See, e.g.*, SAC ¶ 255. Plaintiffs allege these
26 statements failed to disclose that Raytheon had identified significant misconduct at that
27 time, and the DOJ was investigating several important government contracts involving the

28 ⁴ The Class Period is February 10, 2016, through October 27, 2020. SAC ¶ 1 n. 1.

1 "top echelon" of Raytheon's Missiles & Defense division. SAC ¶ 256.

2 **C. The SAC fails to allege the § 10(b) falsity element with particularity.**

3 Plaintiffs provide insufficiently particular reasons for alleging Raytheon's
4 statements were misleading. Particularity is not established by contending that "virtually
5 every statement made ... during the Class Period related to the company's financial ...
6 performance was, by definition, false." *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540
7 F.3d 1049, 1070 (9th Cir. 2008). Particularity also requires more than general allegations
8 that certain practices resulted in a false or misleading report. *Daou*, 411 F.3d at 1007
9 (citation omitted). Instead, particularity is established where plaintiffs identify 'the who,
10 what, when, where, and how of the misconduct charged,' as well as 'what is false or
11 misleading about [the purportedly fraudulent] statement, and why it is false.'" *Cafasso*,
12 *United States ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011)
13 (alteration in original) (quotation omitted) (explaining the Rule 9(b) standard in a False
14 Claims Act context).

15 **i. Regarding Financial Controls and Statements**

16 Plaintiffs fail to support their allegations that Raytheon's financial controls and
17 statements were misleading. The SAC implicitly refers to the DOJ investigation and
18 Raytheon's key financial measures, but these attempts fail. Plaintiffs' Response identifies
19 no other support. The few sufficiently reliable confidential witness allegations fail to
20 support, or directly undermine, Plaintiffs' claim.

21 **DOJ Investigation.** In the same paragraphs alleging Raytheon's controls were not
22 effective, the SAC states without explanation that Raytheon's controls are the subject of
23 the DOJ investigation. *See, e.g.*, SAC ¶ 234. Plaintiffs' Response clarifies that the
24 investigation is a reason why Raytheon's controls were ineffective. Response at 27 n. 18.
25 But the fact of an investigation into financial controls is not a particular basis for
26 concluding controls were ineffective. *See In re Hansen Nat. Sec. Litig.*, 527 F. Supp. 2d
27 1142, 1162 (C.D. Cal. Oct. 16, 2007). The Court cannot infer an investigation's result from
28 its subject. And the SAC alleges no additional facts about the DOJ investigation or its

1 findings that could establish with particularity that Raytheon's controls were not effective.

2 **Key Financial Measures.** In the same paragraphs alleging Raytheon's controls
3 were ineffective, the SAC also states that Raytheon's key financial measures were all
4 inaccurate. *See, e.g.*, SAC ¶ 234. Plaintiffs' Response identifies this as a second reason why
5 Raytheon's controls were ineffective. *See* Response at 27 n. 18 (citing ¶ 234). That
6 allegation rests heavily on Plaintiffs' theory of widespread or generalized fraud, which is
7 not supported by the confidential witness accounts. App'x § II.O.iii. As the Court
8 previously identified, "[w]hat is lacking in both the [SAC] and the Response is the
9 connection between the specific allegation and the extent to which it impacted a specific
10 line item or financial statement." Doc. 55 at 24. Plaintiffs have not addressed that feedback
11 through amendment. *See, e.g.*, SAC ¶¶ 57, 59 (unchanged, uncorroborated, and unreliable
12 confidential witness allegation inexplicably paired with Tomahawk and Javelin project
13 revenues). Plaintiffs still fail to plead *how* Raytheon's controls were ineffective, insisting
14 instead that they just must have been. That inference is unwarranted given the limited
15 misconduct the SAC sufficiently alleges.

16 Finally, Raytheon's disclosure of the DOJ investigation and its CEO's remarks did
17 not reveal that all key financial measures were inaccurate, only that the DOJ was
18 investigating at least four contracts. *See, e.g.*, SAC ¶ 320; *supra* n. 3. The SAC implies
19 Raytheon's key financial measures were inaccurate because Raytheon failed to properly
20 measure and manipulated "the EAC" on its long-term production contracts. *See, e.g.*, SAC
21 ¶ 234. This allegation also has no basis in the confidential witness accounts, which refer to
22 EACs but fail to reliably allege issues with more than a few contracts. *See* App'x § II.O.

23 **Sufficient Confidential Witness Allegations.** The only sufficient confidential
24 witness allegations either do not support Plaintiffs' claim or undermine it. The confidential
25 witnesses sufficiently allege several issues with a support-services contract, and the
26 termination of several employees for hiding cost overruns on several other contracts. But
27 failing to detect all misconduct does not mean that financial controls are ineffective. The
28 SAC's quotation from Raytheon's disclosures makes that clear. *See* SAC ¶¶ 102–103

1 (Raytheon's internal controls are "designed to provide *reasonable assurance* regarding the
2 achievement of objectives" and "*reduce*, to an acceptable level, the risk of not achieving
3 an objective [in operations, reporting, or compliance]") (emphasis added). The relatively
4 limited allegations that boil out of the confidential witness accounts do not plausibly
5 suggest that Raytheon's controls did not provide a "reasonable assurance" or "reduce the
6 risk" of misconduct. The most robust allegations—that several employees were fired for
7 misconduct—supports the opposite conclusion that Raytheon's controls worked effectively
8 and as intended. The Court declines to draw that inference here, though, because competing
9 inferences are considered only under the scienter element.

10 For these reasons, Plaintiffs fail to allege with particularity why Raytheon's
11 statements regarding its controls and financial statements were misleading.

12 **ii. Regarding 2018 and 2019 Bookings and Risks**

13 Plaintiffs also fail to explain with particularity why Raytheon's statements regarding
14 its 2018 and 2019 bookings and risks were misleading. Part of Plaintiffs' theory rests on
15 the allegation that Raytheon failed to disclose a DOJ investigation in 2018. *See* SAC ¶¶ 6,
16 120, 254. But this allegation is based on an uncorroborated and unreliable confidential
17 witness statement. *See* SAC ¶ 60 (hearsay from low-level employee); App'x § II.O.i.
18 Plaintiffs alternately contend that an internal investigation in 2018 showed at least \$250
19 million in false labor charges on several government contracts in Raytheon's Naval
20 Weapons System. *See* SAC ¶ 6, 120, 330. But large portions of this allegation come from
21 an uncorroborated and unreliable source. SAC ¶ 61 (reporting hearsay allegations from a
22 "Director of Capture Management Excellence"); App'x § II.O.i (identifying CW5's account
23 as the only one alleging an internal investigation or \$250 million in false labor charges).
24 Taken together, the confidential witness statements reliably allege only that in 2018,
25 Callahan, McDonnell, and Fay were fired for hiding cost overruns on a contract or contracts
26 in the Naval Systems subsection of Raytheon's Missile Systems segment. App'x § II.O.i.
27 Without an investigation adequately plead, the Court cannot conclude, as Plaintiffs insist,
28 that Raytheon had a duty to disclose it.

1 Even if Plaintiffs had adequately plead an internal investigation, the SAC fails to
2 explain how it rendered Raytheon's statements misleading. Section 10(b) and Rule 10b-5
3 "do not create an affirmative duty to disclose" even "material information," but instead
4 require disclosure "only when necessary to make ... statements made, in light of the
5 circumstances under which they were made, not misleading." *In re Alphabet, Inc. Sec.*
6 *Litig.*, 1 F.4th 687, 699 (9th Cir. 2021) (citation omitted). For example, a statement or
7 omission could be misleading if it "suggested [a company] was *not* under any regulatory
8 scrutiny." *Metzler*, 540 F.3d at 1071 (emphasis in original). A statement or omission could
9 also be misleading if it acknowledged a hypothetical risk but neglected to state that the risk
10 had already come to fruition. *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985–87
11 (9th Cir. 2008); *see also Siracusano v. Matrixx Initiatives, Inc.*, 585 F.3d 1167, 1181 (9th
12 Cir. 2009), *aff'd*, 563 U.S. 27. In *Berson*, for example, a statement of anticipated revenues
13 was misleading because it failed to disclose that a significant portion of the backlogged
14 work was "substantially delayed and at serious risk of being cancelled altogether." 527
15 F.3d at 986. Plaintiffs fail to allege anything like that in this case.

16 Plaintiffs focus on two statement categories without identifying what in them is
17 misleading. The first category is statements related to Raytheon's Integrated Defense
18 Systems segment bookings. *See, e.g.*, SAC ¶ 253. Plaintiffs allege these statements were
19 misleading because "they failed to disclose that one of Raytheon's major contracts was the
20 subject of a DOJ investigation that began no later than 2018." SAC ¶ 254. Setting aside the
21 deficiently-alleged-investigation issue, Plaintiffs' place the 2018 misconduct in Raytheon's
22 Missile Systems segment, not the Integrated Defense Systems segment. Plaintiffs do not
23 explain why an investigation in one segment should have been disclosed alongside
24 bookings for another segment. Instead, Plaintiffs allege Raytheon should have disclosed
25 "the whole truth." But the whole truth of the IDS segment notable bookings apparently was
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1 disclosed, and Plaintiffs identify no aspect of it that was misleading.⁵

2 Plaintiffs next focus on a category of statements about Raytheon's government
3 contract risks. Raytheon's 2019 risk warning stated:

4 U.S. government contracts generally are subject to the Federal Acquisition
5 Regulation (FAR), which sets forth policies, procedures and requirements for
6 the acquisition of goods and services by the U.S. government; department-
7 specific regulations that implement or supplement the FAR, such as the
8 DoD's Defense Federal Acquisition Regulation Supplement (DFARS); and
9 other applicable laws and regulations. These regulations impose a broad
10 range of requirements, many of which are unique to government contracting,
11 including various procurement, import and export, security, contract pricing
12 and cost, contract termination and adjustment, audit and product integrity
13 requirements. A contractor's failure to comply with these regulations and
requirements could result in reductions to the value of contracts, contract
modifications or termination, cash withholds on contract payments,
forfeiture of profits, and the assessment of penalties and fines, and could lead
to suspension or debarment, for cause, from U.S. government contracting or
subcontracting for a period of time.

14 SAC ¶ 255. Plaintiffs imply this warning was misleading because "Raytheon [had] already
15 identified significant misconduct by that time[.]" SAC ¶ 256. Aside from that general
16 allegation, Plaintiffs do not contend with the language they quote. Plaintiffs do not allege,
17 for example, that a Raytheon "contractor failed to comply" with FAR and DFAR guidelines
18 in 2018. Instead, they allege that employees Callahan, McDonnell, and Fay were fired for
19 hiding cost overruns. Plaintiffs also do not allege that a Raytheon contractor's failure to
20 comply with FAR or DFAR guidelines "resulted in reductions to the value of contracts,
21 their modification or termination," or any other such outcome. Finally, Plaintiffs neglect to
22 discuss the full extent of Raytheon's risk disclosures. Plaintiffs draw from Raytheon's
23 summary of government risks, *see, e.g.*, Doc. 59-2 at 10–11, while omitting the detailed

24
25 ⁵ Elsewhere Plaintiffs imply that statements about IDS bookings were misleading because
26 four contracts from that section are the focus of the DOJ investigation announced in 2020.
27 *See, e.g.*, SAC ¶ 76. But to be actionable, statements must have been misleading *at the time*
28 *they were made*. *See Ronconi v. Larkin*, 253 F.3d 423, 434 (9th Cir. 2001). Plaintiffs do
not specifically allege that Raytheon was aware of the 2020 DOJ investigation before
receiving a subpoena in October 2020. And Plaintiffs do not connect the allegations related
to Callahan, McDonnell, and Fay to the 2020 investigation. *See App'x § II.O.iv.*

1 discussion frequently referred to by the summary. Doc. 59-2 at 12–29 ("Item 1A: Risk
2 Factors"). These "Risk Factors" explain, for example, that Raytheon is routinely subject to
3 investigations and audits, the results of which could have "a negative impact on our
4 reputation, lead to contract terminations and reduce our ability to procure other U.S.
5 government contracts in the future." Doc. 59-2 at 19. Critically, the risks identified are *not*
6 investigations and audits. Those are given. The identified risks are the *result* of
7 investigations and audits. *See, e.g.*, Doc. 59-2 at 23. Plaintiffs fail to show with particularity
8 how the 2018 discovery of misconduct on one or more Missile Systems contracts brought
9 any hypothetical risk like contract termination to fruition.

10 **D. The SAC fails to allege materiality under the § 10(b) falsity element.**

11 The SAC also fails to allege "material" misstatements. Although "[d]etermining
12 materiality in securities fraud cases 'should ordinarily be left to the trier of fact[,]'" *SEC v.*
13 *Phan*, 500 F.3d 895, 908 (9th Cir. 2007) (quotation omitted), the Court is not instructed to
14 end all § 78u-4(b)(1) investigation where a plaintiff pleads any level of misconduct, no
15 matter how vague or apparently minor. That would set the bar for pleading a materially
16 misleading statement far too low—Plaintiffs could then plead a single instance of
17 misconduct to defeat a motion to dismiss on that basis. Rather, Plaintiffs "must show with
18 particularity how the [misconduct] affected the company's financial statements and
19 whether they were material in light of the company's overall financial position." *Or. Pub.*
20 *Emps. Ret. Fund*, 774 F.3d at 609 (citation omitted). Mere "conclusory statements ... and
21 unwarranted inferences are insufficient [to state a claim]." *In re Cutera Secs. Litig.*, 610
22 F.3d 1103, 1108 (9th Cir. 2010). The relevant inquiry is whether Plaintiffs plausibly allege
23 a "*substantial* likelihood that the disclosure of the omitted fact would have been viewed by
24 the reasonable investor as having *significantly* altered the 'total mix' of information made
25 available." *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (emphasis added)
26 (giving the summary judgment standard); *Basic Inc. v. Levinson*, 485 U.S. 224, 232 (1988)
27 (adopting the *TSC Industries* standard in a § 10(b) and Rule 10b-5 context). Plaintiffs
28 cannot simply allege that an omission was material—they must show the omission renders

1 other statements misleading. *In re Rigel Pharms., Inc. Sec. Litig.*, 697 F.3d 869, 880 n.8.

2 **i. Regarding Financial Controls and Statements**

3 The SAC does not sufficiently allege that Raytheon's statements about its financial
4 performance and controls were misleading at all, much less materially so. As discussed
5 above, the confidential witnesses sufficiently allege far less than widespread fraud. CW1,
6 for example, alleged many instances of wrongdoing on a large contract, but never
7 quantified the effect or alleged facts suggesting the wrongdoing was material to that
8 contract or Raytheon's overall business. As above, the fact of a DOJ investigation does not
9 imply its result. And as above, Plaintiffs' reference to all key financial measures fails to
10 indicate any in particular that were misstated, or even to estimate by how much. Plaintiffs'
11 Response focuses on CW3's uncorroborated and unreliable allegations about the
12 Tomahawk program and Raytheon's disclosure that Tomahawk booked \$424 million in
13 2017, concluding that the "fact that such important contracts were tainted with wrongdoing
14 further contributes to a finding of materiality at the pleading stage." Response at 23–24.
15 But Plaintiffs have not sufficiently alleged any wrongdoing in the Tomahawk program, or
16 even attempted to articulate how that wrongdoing impacted, for example, the \$424 million
17 booked in 2017. Plaintiffs alternately try focusing on the contracts associated with
18 Callahan, McDonnell, and Fay. Response at 23. But Plaintiffs were unable to sufficiently
19 allege the size of the misconduct there. CW5 heard from an unreliably situated colleague
20 that the misconduct involved \$250 million in false labor charges, inconsistently alleged as
21 both on one contract and between several. CW13 alleged misconduct on a contract worth
22 more than \$200 million, but CW13's account was also not based in personal knowledge
23 and marred by indicia of unreliability. *See* App'x § II.M. Together, the SAC only alleged
24 that Callahan, McDonnell, and Fay were terminated for misconduct, not the value of their
25 misconduct. The Court cannot infer materiality without substantially more.

26 Plaintiffs also fail to defuse the fact that Raytheon did not restate earnings, and an
27 independent auditor continued to certify Raytheon's controls as effective. *See, e.g.*, Doc.
28 59-2 at 87–89. In 2019, for example, Raytheon's 10-K independent-auditor report

1 highlighted revenue recognition as a "Critical Audit Matter" and stated that:

2 Due to the nature of the work required to be performed on many of the
3 Company's performance obligations, the estimation of total revenue and cost
4 at completion is complex, subject to many variables and requires significant
5 judgment by management on a contract by contract basis.

6 [Continuing to detail these procedures and ultimately concluding:] In our
7 opinion, the consolidated financial statements referred to above present
8 fairly, in all material respects, the financial position of the Company as of
9 December 31, 2019 and 2018, and the results of its operations and its cash
10 flows for each of the three years in the period ended December 31, 2019 in
11 conformity with accounting principles generally accepted in the United
12 States of America.

13 Doc. 59-2 at 88. The Court previously identified this as undermining a theory of
14 widespread fraud. *See* Doc. 55 at 21, 44. Plaintiffs cite several cases for the proposition
15 that earnings restatements and independent auditor assessments do not decide the issue.
16 Response at 24 n. 17 (citing among others *Feiner v. SS&C Techs., Inc.*, 11 F. Supp. 2d 204,
17 209 (D. Conn. 1998); *Aldridge v. A.T. Cross Corp.*, 284 F.3d 72, 84 (1st Cir. 2002)).
18 Plaintiffs are correct in general, but the facts of this case are distinguishable. *See, e.g., In*
19 *re Levi Strauss & Co. Sec. Litig.*, 527 F. Supp. 2d 965, 985–86 (N.D. Cal. 2007)
20 (distinguishing *Feiner* and *Aldridge* with similar facts to this case). A lack of earnings
21 restatement or changed auditor assessments would not be dispositive given substantially
22 stronger facts. But here it directly undermines Plaintiffs' vague claims of materiality.

23 **ii. Regarding 2018 and 2019 Bookings and Risk**

24 As partly discussed above already, the SAC also fails to allege a material
25 misrepresentation in Raytheon's 2018 and 2019 bookings and risk statements. Plaintiffs'
26 theory is that Raytheon's 2018 and 2019 bookings singled out Raytheon's "largest and most
27 important contracts" with the U.S. government, its "most important customer." Response
28 at 15. Having disclosed these contracts, Plaintiffs argue, it was materially misleading not
to disclose that "some of Raytheon's [other] major contracts with the U.S. government were
tainted with wrongdoing." *Id.* That could be true if Plaintiffs' theory were supported by
sufficiently particular allegations of specifically material misconduct. The bar is high for
securities fraud, but not impossibly so. And resolving materiality as a matter of law is

1 inappropriate unless "the adequacy of the disclosure or the materiality of the statement is
2 so obvious that reasonable minds could not differ." *In re Alphabet*, 1 F.4th at 700 (citations
3 omitted). Resolving materiality would be inappropriate given, for example, widespread
4 misconduct at Raytheon. But that is not sufficiently alleged here.

5 A closer question is whether \$250 million in false labor charges is "obviously"
6 "substantially likely" to "significantly alter the total mix of information available to a
7 reasonable investor." Again, the details are not sufficiently alleged. Plaintiffs manage to
8 allege only that Callahan et al. were fired for hiding cost overruns of some amount. But
9 accepting the alleged value for the sake of argument, is the significance obvious? The
10 answer would be no if the question were simpler. If the question were, for example, whether
11 \$250 million is significant to Raytheon's overall business, reasonable minds likely could
12 differ. That is sort of like asking if \$250 million is a lot of money. Reckon it is. But the
13 question is more complicated. First, the allegation is that Callahan et al. hid cost overruns
14 by swapping \$250 million between contracts. That implies the underlying charges were
15 legitimate—the misconduct was the swapping, not the charges. The contracts were also all
16 for the same client, the Navy. A reasonable investor could conclude that Raytheon's bottom
17 line was never impacted. Shifting charges between contracts is improper, but it may not
18 have meant the Navy was overcharged in aggregate. Second, Raytheon never restated its
19 earnings, never reported any financial consequences from the alleged misconduct, and
20 Raytheon's independent auditor did not change its assessment. A reasonable investor could
21 conclude that material misconduct would result in at least some specific financial
22 consequence. Third, Raytheon appears to have fired the people responsible. An investor
23 could reasonably view that as evidence Raytheon's controls were working as intended
24 rather than as evidence of a larger conspiracy. Fourth, Raytheon's disclosures and CEO
25 remarks consistently asserted the DOJ investigation matter was not material to Raytheon's
26 finances. A reasonable investor could believe that Raytheon's disclosures and its CEO are
27 generally truthful. Finally, Raytheon's sales for the Class Period exceeded \$150,000
28 million. *See* Doc. 59-2 at 38. A reasonable investor could also think \$250 million is

1 overshadowed by that figure. All those various aspects individually do not remove the 2018
2 misconduct beyond what reasonable minds could debate, but together they do a decent job.

3 In any event, Plaintiffs have not sufficiently alleged any amount associated with
4 Callahan et al.'s misconduct. The SAC thus fails to state a claim of a "material"
5 misrepresentation in Raytheon's 2018 and 2019 filings, as it did with respect to Raytheon's
6 other statements.

7 **V. Scierter**

8 Defendants also challenge the scierter element of Plaintiffs' § 10(b) claim. To plead
9 scierter, the complaint must "state with particularity facts giving rise to a strong inference
10 that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2)(A). A
11 "strong" inference is more plausible than any benign opposing inference one could draw
12 from the same facts. *Tellabs*, 551 U.S. at 324. To reach the required state of mind, the
13 strong inference must be of the Officers' "highly unreasonable omission, involving not
14 merely simple, or even inexcusable negligence, but an extreme departure from the
15 standards of ordinary care, and which presents a danger of misleading buyers or sellers that
16 is either known to the defendant or is so obvious that the actor must have been aware of
17 it." *Zucco Partners*, 552 F.3d at 991 (citing *Daou*, 411 F.3d at 1014–15). Courts in this
18 circuit first determine whether the complaint's bases individually create a strong inference
19 of scierter, and, if not, then conduct a "holistic" review of all together. *Id.* at 992.

20 Plaintiffs assert seven bases for alleging the Officers either knew or must have
21 known Raytheon's public filings presented a danger of misleading investors. Only three
22 are substantially changed from the previous complaint: (1) the confidential witness
23 statements, (2) the Officers' personal stock sales during the Class Period, and (3) the alleged
24 fact that certain "prime" U.S. government contracts form the core of Raytheon's operation.
25 The remaining four bases are virtually unchanged: (4) alleged violations of Generally
26 Accepted Accounting Practices ("GAAP"); (5) the DOJ investigation; (6) Raytheon's
27 Sarbanes-Oxley certifications; and (7) the alleged termination of Raytheon's Missile
28 Systems CFO in 2018 and VP 2019.

1 Plaintiffs fail to state the scienter element because (1) the confidential witnesses do
2 not say anything about the Officers and were poorly positioned to know anything about
3 them; (2) the Officers' stock sales were ordinary; (3) the "prime" contracts theory is not
4 well plead; (4) the other bases continue to add nothing; and (5) viewed as a whole, the SAC
5 both pleads implausibly widespread fraud and inconsequentially narrow fraud. As a result,
6 the benign inference is far stronger: Raytheon's internal controls worked as intended to
7 discover misconduct on a few contracts, which was swiftly and firmly handled.

8 **i. Confidential Witness Statements**

9 The 14 confidential witness statements fail to create a strong inference of scienter.
10 To create an inference of scienter, confidential witnesses must both indicate scienter and
11 be described with sufficient particularity to establish their reliability and personal
12 knowledge. *Zucco Partners*, 552 F.3d at 995 (citing *Daou*). In *Zucco Partners*, for
13 example, the witnesses were insufficiently described even though they worked directly on
14 the accounting software system alleged to have been manipulated, one reported to the
15 president of the company's biggest divisions, another was the vice president of that section,
16 and another reported directly to the CEO. *Id.* Despite "a large degree of specificity" about
17 the witnesses' titles and responsibilities, the court concluded the witnesses were "not
18 positioned to know the information alleged, many report[ed] only unreliable hearsay, and
19 others allege[d] conclusory assertions of scienter." *Id.* (noting also that two were not
20 employed at the company during the period in question and had only secondhand
21 information, and other allegations were vague).

22 As discussed in the Appendix, the 14 confidential witness statements are
23 individually weak. To an even greater extent than in *Zucco Partners*, they mostly are not
24 positioned to know what they allege. One sufficiently alleges misconduct on a single
25 contract (CW1). CW1, a relatively low-level employee, identified many instances of
26 wrongdoing on a large support-services contract. The contract is not alleged to have been
27 in the Missile Systems or Integrated Defense Systems segments. CW1 also does not allege
28 that the Officers knew of the misconduct on the support-services contract, or even that the

1 misconduct involved employees higher than CW1's supervisors. CW1 alleges reporting
2 misconduct to a "Senior Director of Internal Audit" and a "Director of Ethics and Business
3 Conduct," SAC ¶ 49, both apparently removed from the Officers. *See* App'x § II. Nothing
4 else in CW1's account suggests otherwise. The benign inference that the Officers were
5 unaware of any issues on CW1's contract is therefore much stronger than the inference that
6 the Officers knew about the issues and recklessly disregarded them. The rest of the
7 confidential witnesses add no substance. Two allege no misconduct at all (CW13 (cost
8 overrun), CW14 (focus of DOJ investigation)). Many report unreliable hearsay or make
9 vague and suspiciously rote allegations. And none allege any interaction with the Officers
10 or that any of the Officers knew about any misconduct. Their individual accounts thus do
11 not indicate scienter.

12 Taken together, the confidential witness accounts create only one other relevant and
13 sufficiently corroborated allegation, which also does not indicate scienter. Several
14 witnesses corroborate that a "Deputy Vice President" Callahan, "Program Manager"
15 McDonnell, and "Contract Director" Fay were fired for hiding cost overruns on a contract
16 or contracts in the Naval Systems subsection of Raytheon's Missile Systems segment.
17 App'x § II.O. Only CW5 heard from an unreliably situated Director-level colleague that
18 Callahan reported to the Vice President of Missile Systems, who reported to Defendant
19 Kennedy. SAC ¶ 62. Even setting aside the limitations of CW5's account and granting that
20 Defendant Kennedy was aware of the terminations in 2018, the SAC does not explain how
21 that supports a strong inference of reckless indifference. The strong inference here cuts the
22 other way—firing Callahan et al. marks conformity with a standard of care, not an extreme
23 departure from it. The SAC also does not show how failing to disclose the alleged
24 misconduct was a departure from the standard of care. As discussed above, Raytheon's
25 disclosures were not rendered false by the misconduct, and no material value is ever placed
26 on it. The Officers could not have been recklessly indifferent to Raytheon's statements
27 under those circumstances. But that is all hypothetical anyway. The Court has no basis to
28 set aside CW5's limitations or grant that Kennedy was aware of the terminations in any

1 detail. Unreliable hearsay from a director that a deputy vice president and two of his reports
2 were fired for misconduct does not allege something that would obviously warrant the
3 Officers' direct involvement or implicate them in a scheme to cover up fraud.

4 Plaintiffs' argument to the contrary is not persuasive. Plaintiffs argue that scienter
5 may be plausibly alleged from the accounts of low-level employees. Response at 20 n. 13
6 (citing *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1139, 1145 (9th Cir. 2017)). But
7 *In re Quality Systems* is distinguishable. There, five lower-level employee accounts
8 weighed in favor of scienter when combined with three members of the board of directors.
9 *In re Quality Sys.*, 865 F.3d at 1138–39. Plaintiffs here do not have anyone close to a board
10 director among their confidential witnesses. Plaintiffs' highest ranked witness is a former
11 Vice President of Business Development for Air Warfare Systems who heard something
12 from a Director of Capture Management Excellence. Plaintiffs' witnesses also allege far
13 more than they would be expected to know. In *Quality Systems*, the five lower-level
14 employees were sales representatives reporting a general downturn in sales. *See id.* at 1139.
15 That is different from this case, where the confidential witnesses report misconduct of
16 widely varying scope and character, far beyond what their titles and job descriptions
17 suggest they would know. Plaintiffs' other cases are also distinguishable. *See* Response at
18 21 n. 14 (citing *Karinski v. Stamps.com, Inc.*, 2020 WL 281716, at *16 (C.D. Cal. Jan. 17,
19 2020); *Emps' Ret. Sys. of Gov't of the Virgin Islands v. Blanford*, 794 F.3d 297, 307 (2d
20 Cir. 2015)). Both involved more reliable low-level employee accounts that were more
21 focused on information they would be expected to know. *See, e.g., Karinski*, 2020 WL
22 281716 at *16 (employer discount policies); *Emps' Ret. Sys.*, 794 F.3d at 307 (employer
23 inventory practices).

24 The only other sufficiently alleged accounts are not relevant to scienter. Several
25 witnesses report that three employees were fired in connection with the DOJ investigation
26 announced in October 2020. One alleges discovering cost overruns on a contract, but no
27 misconduct. And another reports that the DOJ investigation involves the Patriot Missile
28 program. None of these accounts could imply that the Officers recklessly disregarded the

1 truth of Raytheon's statements during the Class Period. The SAC does not allege that
2 Raytheon knew about the DOJ investigation before receiving a subpoena in October 2020
3 or connect it to any other sufficiently alleged misconduct. And cost overruns without
4 misconduct do not render Raytheon's various statements misleading.

5 For those reasons, the 14 confidential witness accounts do not create a strong
6 inference of scienter on their own.

7 **ii. Officers' personal stock sales**

8 The Officers' personal stock sales also do not create a strong inference of scienter
9 on their own. Stock sales may suggest scienter when "dramatically out of line with prior
10 trading practices at times calculated to maximize the personal benefit from undisclosed
11 inside information." *Ronconi v. Larkin*, 253 F.3d 423, 437 (9th Cir. 2001). To determine
12 whether sales were "dramatically out of line," courts assess three factors: "(1) the amount
13 and percentage of the shares sold; (2) the timing of the sales; and (3) whether the sales were
14 consistent with the insider's trading history." *Metzler*, 540 F.3d at 1067. To help this
15 analysis, plaintiffs must "provide a meaningful trading history for purposes of comparison
16 to the stock sales within the class period." *Zucco Partners*, 552 F.3d at 1005 (internal
17 quotation marks and citation omitted).

18 What trading history Plaintiffs now provide undermines an inference of scienter.
19 Plaintiffs argue the Officers' stock sales were "suspiciously timed" because they sold stock
20 in March 2019, the same month Raytheon's Vice President of Missile Systems was
21 terminated. *See, e.g.*, SAC ¶¶ 325, 328. But the provided trading history shows that the
22 Officers consistently sold stock in March every year. *See, e.g.*, SAC ¶¶ 325, 327. The SAC
23 also does not reliably allege the date, circumstances, or even the fact of the Vice President's
24 termination. *See App'x § II.O.i.* Only one unreliably situated witness heard from an
25 unknown colleague that the VP was "eventually" terminated in March 2019. SAC ¶ 90.
26 Even if that allegation were credited, it would not create a strong inference of suspicious
27 timing with the Officers' regular March stock sales.

28 Plaintiffs' other arguments are not supported by the facts or the law. Plaintiffs argue

1 the Officers' Class Period stock sales generated "net proceeds ... grossly disproportionate
2 to the net proceeds ... in the equivalent time period pre-dating the Class Period. *See, e.g.*,
3 SAC ¶ 323. As the Court previously reasoned, the Ninth Circuit factors likely do not
4 include net proceeds because net proceeds are a function of a stock's value, which changes
5 over time. Doc. 55 at 32. A stock sale at any time likely would yield net proceeds different
6 from any other time. *Id.* Different net proceeds therefore cannot be evidence of an
7 inconsistent trading history. *Id.* The SAC mostly ignores the Court's feedback. New
8 references to the number of shares each Officer sold before and during the Class Period do
9 not provide meaningful support. *See, e.g.*, SAC ¶ 325. For example, Defendant Kennedy
10 sold 59,841 shares before the Class Period, and 146,346 shares during the Class Period. *Id.*
11 Considering Kennedy became CEO in 2014, SAC ¶ 21, and his total holdings potentially
12 increased 34% during the Class Period, MTD at 25–26, higher sales are not "dramatically
13 out of line." Plaintiffs also allege Defendant Wood sold 621 shares on June 4, 2018, the
14 same year of an internal audit a colleague told CW5 about. SAC ¶ 330. But Plaintiffs
15 provide no comparison for Wood's stock sales, and CW5's allegations are insufficiently
16 reliable hearsay that does not specify the month even if they were credited. Nothing in
17 Wood's stock sales raises an inference of scienter.

18 The SAC also does not address other, previously identified deficiencies. Unless the
19 fraud began at the start of the Class Period, sales preceding the Class Period would provide
20 no meaningful comparison because they would also be suspect. Doc. 55 at 32 n. 5. And a
21 one-time jump in one Officer's total compensation is not relevant or even alleged to relate
22 to the Officer's trading history. *Id.* at 32; SAC ¶ 332. Thus, the SAC fails to create a strong
23 inference of scienter from the Officers' stock sales.

24 **iii. Raytheon's "core operations" involving government contracts**

25 The fact that U.S. government contracts are Raytheon's "core operation" also does
26 not raise a strong inference of scienter.⁶ Generally, "core operations" allegations create a

27 ⁶ Plaintiffs' Response again raises a "core operations" theory not found in the SAC but
28 drawing on several of its allegations. Response at 34. The Court again construes Plaintiffs' argument as clarifying an aspect of "the complaint in its entirety."

1 strong inference of scienter only "when made in conjunction with detailed and specific
2 allegations about management's exposure to factual information within the company." *City*
3 *of Dearborn Heights Act 345 Police & Fire Retirement System v. Align Technology, Inc.*,
4 856 F.3d 605, 620 (9th Cir. 2014) (citation omitted). Alternately, the Court may infer
5 scienter based solely on a core operations theory in "exceedingly rare" cases where
6 misconduct is "patently obvious," and it would be "absurd" to suggest that management
7 was without knowledge of it. *S. Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 785 n.3, 786
8 (9th Cir. 2008); *see also Berson*, 527 F.3d at 987. In *Berson*, for example, it would have
9 been absurd to suggest defendants did not know about "stop-work" orders from their largest
10 customers that had "a devastating effect on the corporation's revenue," and which
11 defendants admitted knowing about two weeks after making misleading statements. *Id.*

12 Plaintiffs argue that because Raytheon had very few large contracts with the U.S.
13 government, and because four are the subject of the DOJ's investigation, and because the
14 Officers knew about "the misconduct" as early as mid-2018, the Officers were "highly
15 reckless in issuing misleading statements after mid-2018[.]" Response at 31–32 (citing the
16 SAC's references to Raytheon's IDS contracts). None of the confidential witnesses
17 specifically allege that the Officers were involved with any of these contracts. Plaintiffs
18 thus implicitly assert that this is an exceedingly rare case involving patently obvious
19 misconduct. The Court disagrees for two reasons.

20 First, Plaintiffs have not sufficiently plead the foundation of their argument.
21 Plaintiffs have not plausibly alleged that the DOJ investigation and the terminations of
22 Callahan, McDonnell, and Fay stem from the same misconduct. *See* App'x § II.O.iv.
23 Plaintiffs have not even plausibly alleged Raytheon had very few large contracts with the
24 U.S. government. *See* SAC ¶ 36 (showing large total sales to U.S. government, but not
25 contracts); SAC ¶¶ 75–89 (showing that a "handful of large contracts" composed the
26 majority of Raytheon's IDS segment, which accounted for 23% of Raytheon's total sales);
27 App'x § II.J (only one witness unreliably alleging Raytheon had only few "prime"
28 government contracts); *see also* Doc. 59-2 at 13 (referring to "thousands of U.S.

1 government contracts"), 37 ("no single contract account[s] for more than 5% of ... total net
2 sales"). Finally, Plaintiffs continue to refer vaguely to "the misconduct," as if there were a
3 single, clearly articulated instance in the SAC's sprawling 153 pages of competing
4 inferences and innuendo. But none of those 153 pages explicitly link the Officers to the
5 issues surrounding Callahan, McDonnell, and Fay. The closest they get is unreliably
6 alleging that Callahan reported to Lawrence who reported to an Officer. Even if credited,
7 that reporting hierarchy does not reasonably or strongly imply that the Officers knew of
8 Callahan's misconduct. If anything, the fact of the reporting structure raises the benign
9 inference that the Officers learned about Callahan's misconduct after the terminations. But
10 Plaintiffs do not allege any materialized risks due to Callahan et al.'s misconduct. App'x
11 § II.O.i. Instead, the SAC unsuccessfully seeks to connect those allegations with the DOJ
12 investigation. *Id.* Failing that, this case is unlike *Berson*, where stop-work orders had an
13 immediate, profound impact, and defendants admitted awareness of them two weeks after
14 claiming otherwise.

15 Second, even if Plaintiffs' foundation were adequately plead, "absurdity" is a very
16 high bar not reached in cases with more extreme facts than this one. *See, e.g., In re NVIDIA*,
17 768 F.3d at 1063–64 (affirming no scienter where allegations concerned company's
18 "flagship product" and "two largest customers"). The fact that the U.S. government is
19 Raytheon's biggest customer does not imply the Officers monitor every U.S. government
20 contract. Plaintiffs' allegations also do not sufficiently plead that the Officers actually knew
21 of the disputed information. Of course, it would be absurd to suggest the Officers did not
22 actually know of the top-line metrics involved in their financial statements. But Plaintiffs'
23 claim rests on actual knowledge of individual contracts that contributed to top-line
24 reporting errors, not knowledge of top-line metrics. In that respect Plaintiffs' claim is even
25 weaker than *Zucco Partners*, where a core operations theory was unsuccessful even though
26 the complaint alleged that senior management "closely reviewed the accounting numbers"
27 and discussed a related component. 552 F.3d at 1000.

28 ///

1 **iv. GAAP Violations, Sarbanes-Oxley certifications, DOJ investigation,**
2 **and Missile Systems terminations in 2018 and 2019**

3 Plaintiffs' remaining bases for alleging scienter are unchanged, as is the Court's
4 analysis that they add nothing individually. *See* Doc. 55 at 28–31.

5 **GAAP Violations.** Publishing inaccurate accounting figures or failing to follow
6 GAAP, without more, is not sufficient to establish scienter. *Lloyd v. CVB Fin. Corp.*, 811
7 F.3d 1200, 1207 (9th Cir. 2016). Instead, plaintiffs must allege facts demonstrating that
8 defendants "knowingly and recklessly engaged in an improper accounting practice"—for
9 example, that a company's external auditors counseled against a practice or that a
10 company's CFO was aware that the practice was improper. *Id.* (citing *Metzler*, 540 F.3d at
11 1068–69). As discussed in the Appendix, the confidential witnesses do not allege the
12 Officers were aware of or directly involved in any improper accounting practices. What
13 little the confidential witnesses reliably allege tends to show the opposite: a range of low-
14 level bad behavior on a single non-Missiles contract, and the termination of Callahan et al.
15 for misconduct on one or a few Navy contracts. Even crediting all the various unreliable
16 allegations, the SAC never describes the extent to which the practices impacted Raytheon's
17 financial statements. Alleging vaguely that revenue figures "were materially overstated"
18 (*e.g.* SAC ¶ 131) or "inflated" (Response at 11, 17) is insufficiently particular because it
19 does not permit evaluation of whether the alleged GAAP violations were minor or isolated,
20 or instead widespread and significant.

21 **DOJ Investigation.** An investigation, standing alone, is not enough to raise any
22 inference of scienter, much less a strong inference. *Zamir v. Bridgepoint Educ., Inc.*, 2018
23 WL 1258108 (S.D. Cal. Mar. 12, 2018) (citing *In re Maxim Integrated Prods., Inc. Sec*
24 *Litig.*, 639 F. Supp. 2d 1038, 1047 (N.D. Cal 2009); *In re Hansen*, 527 F. Supp. 2d at 1162).
25 Plaintiffs' citations all stand for the same principle. *Cf.* Response at 33–34.

26 **Sarbanes-Oxley certifications.** Plaintiffs' Response states without explanation that
27 the Officers' "Sarbanes Oxley certifications also support scienter." Response at 34. Absent
28 any argument or newly alleged facts, the certifications continue to add nothing individually

1 to an inference of scienter. *See Zucco Partners*, 552 F.3d at 1003–04 ("Sarbanes–Oxley
2 [certifications] ... add nothing substantial to the scienter calculus ... [and] are not sufficient,
3 without more, to raise a strong inference of scienter.").

4 **Missile Systems Terminations.** The SAC implies and the Response clarifies that
5 the termination of Raytheon's Missile Systems CFO and VP support a strong inference of
6 scienter. SAC ¶¶ 63, 90; Response at 32–33. Particularized allegations that a termination
7 was "uncharacteristic when compared to ... typical hiring and termination patterns" or
8 "accompanied by suspicious circumstances" may support an inference of scienter. *Zucco*
9 *Partners*, 552 F.3d at 1002. In *Zucco Partners*, the complaint alleged scienter based on the
10 CFO's retirement just before disclosure of improper accounting and lack of financial
11 controls, and two controllers' resignations during the class period. *Id.* The *Zucco Partners*
12 court declined to infer scienter because the complaint did not allege details about the
13 termination, and the accounts were "based on vague hearsay allegations." *Id.*

14 As discussed in the Appendix, Plaintiffs have not sufficiently alleged the date,
15 circumstances, or even the fact of the CFO's and VP's termination. *See App'x § II.O.i.* Only
16 one witness heard from an unreliably situated colleague that the CFO was fired "around
17 the same time" as Callahan et al. SAC ¶ 63. Another unreliably situated witness heard from
18 an unknown colleague that the VP was "eventually" terminated in March 2019. SAC ¶ 90.
19 That's it. The SAC therefore does not "plead[] corroborating allegations that the
20 terminations occurred because [the CFO and VP] were engaged in wrongdoing." Response
21 at 32. Even if the Court credited the SAC's allegations, they directly undermine Plaintiffs'
22 theory that the Officers themselves were participating in or recklessly disregarding
23 misconduct. Terminating wrongdoers for committing fraud is the opposite of recklessly
24 disregarding it. Plaintiffs similarly do not explain why terminations for fraud suggest the
25 Officers were complicit. And Plaintiffs do not allege any specific negative consequences
26 of Callahan et al.'s misconduct, resorting instead to general allegations that the Officers
27 must have known all Raytheon's public filings were misleading. That is less plausible than
28 the inferences that the CFO and VP either were not terminated "around that time," were

1 not terminated in connection with Callahan et al., or were terminated for misconduct that
2 had no specifically alleged consequences for Raytheon's finances or contracts.

3 **v. *Tellabs* holistic analysis**

4 The final question in the Court's scienter analysis is whether the whole of the SAC
5 is greater than the sum of its parts. The Court considers whether all Plaintiffs' allegations
6 together give rise to the inference that the Officers made false or misleading statements
7 intentionally or with deliberate recklessness. If so, the Court then compares that inference
8 to the competing benign inference that the misconduct was limited to a few employees and
9 a few contracts, and the Officers took steps to address the misconduct when it was
10 discovered. Once again, the SAC's broad and narrow theories fall short.

11 The SAC's broad theory does not sufficiently connect or support its many
12 allegations to create an inference of widespread fraud at Raytheon. The SAC retains all the
13 shortcomings of its predecessor in this respect despite substantial feedback. *See* Doc. 55 at
14 36–38. The Court reiterates its finding that Plaintiffs fail to adequately allege widespread
15 fraud. The few sufficiently reliable confidential witness allegations do not refer to
16 widespread fraud; the Officers' stock sales, the "core operations" theory, the DOJ
17 investigation, and the Missile Systems terminations are not relevant to widespread fraud;
18 and the insufficiently alleged GAAP violations and inarticulate gesture toward the
19 Sarbanes-Oxley certifications add nothing. In that light, the benign inference that the
20 Officers were unaware of widespread fraud, much less perpetrated it, is far stronger.
21 Plaintiffs appear to recognize that reality by focusing virtually all amendments on
22 bolstering a far narrower theory: that misconduct uncovered in 2018 rendered Raytheon's
23 statements misleading.

24 The SAC's narrow theory does not state a cause of action. The confidential witnesses
25 sufficiently allege a variety of misconduct on a support-services contract neither in the
26 Missile Systems nor IDS segments. They also sufficiently allege Callahan et al. were
27 terminated for misconduct in the Missile Systems segment. Finally, they sufficiently allege
28 that the DOJ investigation is focused on the Integrated Defense System segment and

1 resulted in several other terminations. These limited allegations undermine an inference
2 the Officers were complicit in or tolerated fraud. They also fail to allege any materialized
3 risks that might render Raytheon's various disclosures misleading. The rest of the SAC's
4 bases do not add anything.

5 The DOJ investigation and the Missile Systems terminations reinforce the benign
6 inference that Raytheon did not tolerate fraud. The DOJ investigation is inconclusively
7 focused on four contracts in Raytheon's former IDS segment.⁷ The SAC does not connect
8 these contracts to any other misconduct. None of the confidential witnesses allege the
9 Officers knew about the contracts. The Officers would not obviously have been involved
10 with the details of every government contract. And none of the Officers resigned or were
11 terminated as a result. The Missile Systems VP and CFO terminations were insufficiently
12 alleged but would tend to show Raytheon took any misconduct seriously. That impression
13 is reinforced by the high-level terminations associated with the DOJ investigation.
14 Plaintiffs' objection that high-level terminations support an inference of scienter is inaptly
15 based. In one of Plaintiffs' cases, the court saw no scienter where a CFO, two controllers,
16 and defendant's independent auditor resigned shortly before and after an earnings
17 restatement. *See* Response at 33 (citing *Zucco Partners*, 552 F.3d at 1002). The court
18 emphasized that plaintiffs must refute the reasonable and benign inference that the
19 terminations were for failing to adequately supervise. *See Zucco Partners*, 552 F.3d at
20 1002. Plaintiffs have not done that here. In Plaintiffs' other cases, named defendants were
21 fired. *See* Response at 33. That is different from this case, where if anything named

22
23 ⁷ Plaintiffs' investigation cases are distinguishable. Response at 33–34. In one, an SEC
24 investigation was a “piece of the scienter puzzle” along with evidence of a 500% revenue
25 inflation, an independent auditor conclusion that management was responsible, and much
26 more. *Thomas v. Magnachip Semiconductor Corp.*, 167 F. Supp. 3d 1029, 1042–1043
27 (N.D. Cal. 2016). Plaintiffs have nothing like that here. Plaintiffs' out-of-circuit citations
28 are similar and support the uncontroversial principle that the Court must consider the SAC
in its entirety. *Compare Tellabs*, 551 U.S. at 322, *with Frank v. Dana Corp.*, 646 F.3d 954,
960–62 (6th Cir. 2011); *Collier v. ModusLink Glob. Sols., Inc.*, 9 F. Supp. 3d 61, 76 (D.
Mass. 2014).

1 defendants did the firing.

2 The Sarbanes-Oxley certifications, alleged GAAP violations, and "core operation"
3 theory do not find new life through the *Tellabs* holistic analysis. A "core operation" theory
4 may be successful when combined with "detailed and specific allegations about
5 management's exposure to factual information within the company." *S. Ferry LP*, 542 F.3d
6 at 785 (scienter established where individual defendants discussed the relevant technology
7 and integrations in detail on several occasions); *Dearborn Heights*, 856 F.3d at 620 (no
8 scienter where individual defendants' awareness of parent company's financial information
9 did not establish exposure to a subsidiary acquisition's financial information). Here,
10 Plaintiffs do not say the Officers were involved in any of the specific contracts alleged to
11 have contributed to Raytheon's misstatements. Rather, Plaintiffs ask the Court to infer that
12 the Officers must have been aware of these contracts in enough detail either to know of the
13 misconduct or to have recklessly disregarded it because the lifetime value of one was \$11.5
14 billion (*see* SAC ¶ 42), and several others involved a Missile Systems "Deputy Vice
15 President," "Program Manager," and "Contract Director." *See, e.g.*, SAC ¶ 61. That is
16 insufficient. Without significantly more, Plaintiffs' inference is less compelling than the
17 benign inference that, in a company as large as Raytheon, the Officers were not familiar
18 with the details of each contract to know of the specific fraud alleged and disregard it.

19 **VI. Loss Causation**

20 Defendants also challenge the loss-causation element of Plaintiffs' § 10(b) claim.
21 Loss causation is "a variant of proximate cause," and turns on "whether the defendant's
22 misstatement, as opposed to some other fact, foreseeably caused the plaintiff's loss." *Lloyd*,
23 811 F.3d at 1210. The main question is whether a plaintiff's loss was caused by "the very
24 facts about which the defendant lied." *Mineworkers' Pension Scheme v. First Solar, Inc.*,
25 881 F.3d 750, 753 (9th Cir. 2018) (per curiam) (citation omitted). This inquiry is naturally
26 "fact-specific," *id.*, but may find loss causation allegations insufficient where a "modest"
27 drop in the stock prices coincides with the disclosure of certain news but then "recover[s]
28 very shortly after." *Wochos v. Tesla*, 985 F.3d 1180, 1197 (9th Cir. 2021) (citing *Metzler*,

1 540 F.3d at 1064–65).

2 Plaintiffs fail to state loss causation because Raytheon's stock did not fall far,
3 recovered quickly, and the DOJ subpoena did not reveal any misstatement by Raytheon.

4 **A. Plaintiffs' amendments do not overcome *Metzler* and *Wochos*.**

5 *Metzler* and *Wochos* support the proposition that a quick, sustained recovery can
6 refute an inference of loss causation, and the SAC tries to distinguish them with limited
7 success. Previously, the Court found *Metzler* and *Wochos* instructive. Doc. 55 at 41–42. In
8 *Metzler*, the plaintiff alleged that Defendant Corinthian's colleges were pervaded by
9 fraudulent practices designed to maximize their federal funding. 540 F.3d at 1055. The
10 plaintiff further alleged that because Corinthian's fraud was pervasive, virtually every
11 class-period financial statement was false. *Id.* Finally, the plaintiff alleged its losses were
12 caused by two disclosures that purportedly revealed Corinthian's fraudulent practices. *Id.*
13 at 1059. The first was a newspaper article reporting a Department of Education
14 investigation into one of Corinthian's campuses. *Id.* The second was a press release about
15 a month later disclosing Corinthian had failed to hit prior earnings estimates and containing
16 a passing reference to one of Metzler's alleged fraudulent practices. *Id.* After the first
17 disclosure, Corinthian's stock fell 10 percent but rebounded within three trading days. *Id.*
18 After the second disclosure, Corinthian's stock fell 45 percent. *Id.* Affirming under the
19 more permissive Rule 8(a) pleading requirement, the court held that Metzler failed to plead
20 loss causation. *Id.* at 1065. The court reasoned it was unwarranted to infer that Corinthian's
21 disclosures revealed systematic fraud because Corinthian's stock recovered quickly after
22 the first disclosure, and the second disclosure "contained a far more plausible reason" for
23 the accompanying drop—missed earnings. *Id.*

24 *Wochos* followed *Metzler* in a similar context. In *Wochos*, Defendant Tesla's stock
25 fell 3.9% from \$356.88 after a newspaper article revealed that Tesla was making its new
26 Model 3 cars by hand and not on an automated assembly line. 985 F.3d at 1198. But the
27 stock recovered immediately, rising the next day to \$355.59 and trading over the next week
28 between \$350 and \$360. *Id.* Citing *Metzler*, the *Wochos* court held that plaintiffs could not

1 plead loss causation because "[t]he quick and sustained price recovery after the modest ...
2 drop refutes the inference that the alleged concealment ... caused any material drop in the
3 stock price." *Id.* (also citing *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 392 (9th Cir.
4 2010) ("To adequately plead loss causation ... a plaintiff must allege that the 'share price
5 *fell significantly* after the truth became known.")) (emphasis in original)).

6 Seeking to distinguish *Metzler* and *Wochos*, the SAC attacks alternative
7 explanations for Raytheon's stock price drop, adds a theory that Raytheon's stock recovered
8 due to stock purchases by two Officers, and adds allegations that Raytheon's stock price
9 lagged an industry index. These efforts are unavailing.

10 **i. Stock Price Drop Alternative Explanations**

11 The SAC first seeks to distinguish *Metzler* and *Wochos* by weakening alternative
12 explanations for Raytheon's stock-price drop. The Court previously found an alternative
13 explanation highly relevant. Doc. 55 at 42–42. In the same report Raytheon disclosed the
14 DOJ subpoena, it also stated it would fire 15,000 employees due to the COVID-19
15 pandemic and mentioned the pandemic more than 70 times. *See* Doc. 55 at 42. Plaintiffs
16 now allege Raytheon disclosed its pandemic layoffs a month before disclosing the DOJ
17 subpoena. SAC ¶¶ 315–16. Although Defendants fairly reply the layoffs were 30% larger
18 than previously anticipated, MTD at 7, Plaintiffs' new allegation is still sufficient to take
19 this case off all fours with *Metzler*. But three "fours" remain because *Metzler* also involved
20 a theory of pervasive fraud, allegedly revealed by the disclosure of a government
21 investigation, and followed by a modest stock price drop that recovered in three trading
22 days. 540 F.3d at 1055–65.

23 Plaintiffs' new alternative-explanation attack also seeks to reinforce an analogy to
24 *Lloyd*. The Court previously distinguished *Lloyd*, where analysts explicitly linked a price
25 drop to disclosure of an investigation. Doc. 55 at 44. The Court reasoned the "two ...
26 newspaper articles Plaintiffs cite ... merely paraphrase Raytheon's disclosure without
27 analyzing it, implying a connection but never articulating it." *Id.* The SAC adds two more
28 newspaper articles to support the claim that "[o]ther analysts also specifically attributed the

1 fall in Raytheon's stock price ... to the disclosure of the DOJ subpoena, as opposed to other
2 factors." SAC ¶¶ 312–313. The first article is titled "Raytheon Falls After Disclosure of
3 Criminal Subpoena From DOJ" and states that "Raytheon ... fell as much as 4.5% after [it]
4 disclosed ... that it received a criminal subpoena from the DOJ." SAC ¶ 312. The second
5 article is titled "Raytheon Discloses Defense-Unit Criminal Subpoena; Shares Fall" and
6 states that "Raytheon ... shares fell after the company disclosed a criminal subpoena from
7 the [DOJ.]" SAC ¶ 313. These new articles do not support Plaintiffs' claim. First, news
8 articles are typically written by journalists, not analysts. *See also* Response at 41 (referring
9 to the authors as "news commentators"). Second, if two articles implying a connection
10 without articulating it will not do, four articles should not either. In both new articles, the
11 word "after" and the semicolon in the headlines imply a connection between the drop and
12 the disclosure. In both, the quoted body repeats the headline without analyzing it. That is
13 like the other articles previously found lacking.

14 Even setting aside the issues above, Plaintiffs' circumstances are still much less clear
15 than in *Lloyd*. Here, Plaintiffs allege a 7% drop that recovered in four trading days, whereas
16 *Lloyd* involved a 22% drop that never recovered. 811 F.3d at 1204. Here, Raytheon's stock
17 price drop is at least muddied by the circumstances, such as the fact that the stock price
18 had already been falling for two days. *See* MTD at 40; Doc. 59-8 at 3–4. In *Lloyd*, the drop
19 was easily traced to the defendant's disclosure of a subpoena. *Id.* at 1204–05. Here,
20 Plaintiffs have at best four "analysts" observing that Raytheon's stock price fell "after"
21 disclosing the DOJ subpoena. In *Lloyd*, analysts immediately connected the drop to
22 concerns circulating about the defendant's biggest borrower. *Id.* at 1205. Here, Raytheon
23 acknowledged defective pricing in four contracts but did not change its financial statements
24 or projections. Raytheon's independent auditor did not change its assessment of Raytheon's
25 internal controls. And Raytheon continued to emphasize that the amounts at issue were not
26 material. In *Lloyd*, the defendant later disclosed it was writing off tens of millions in loans
27 from its biggest borrower, and the stock price did not react. Given those differences from
28 *Lloyd*, Plaintiffs continue to make too much of Raytheon's stock price reacting "hardly at

1 all" to Raytheon's April 2021 disclosure.

2 Plaintiff's arguments respond to the previous Order but do not change the outcome.
3 *Metzler* and *Lloyd* remain unhelpful to Plaintiffs, and the quick and sustained recovery here
4 continues to negate an inference of loss causation under *Wochos*. 985 F.3d at 1197.

5 **ii. Stock Price Recovery Theory**

6 In what may be an effort to confront *Wochos* indirectly, the SAC adds a theory that
7 the Raytheon's stock price recovered due to stock purchases by two Officers. The SAC
8 alleges that Defendants Kennedy and Hayes propped up the stock price and helped it
9 recover by purchasing approximately \$3 million in shares the day Raytheon disclosed the
10 DOJ subpoena, and another \$1 million the next day. SAC ¶ 314. While not "bizarre," MTD
11 at 30, Plaintiffs' theory does ask the Court to "check [its] disbelief at the door." *Nguyen*,
12 962 F.3d at 415. Of course, it is at least possible that \$4 million in stock purchases could
13 lead a sustained recovery for years in a company worth billions—possible, but not
14 plausible. Plaintiffs find in academic studies the "unremarkable point that when insiders
15 purchase stock in their own company in large amounts, investors tend to follow course."
16 Response at 37. Defendants are quick to point out another unremarkable point from the
17 same studies: "It is hard to imagine that any manipulator would be able to move a large-
18 capitalization and highly liquid stock ... through trade-based manipulation." Reply at 15.
19 This is not an insider-trading case, and the Court would need substantially more than
20 insider-trading studies to conclude that two Officers' stock purchases are relevant to
21 Raytheon's quick and sustained recovery.

22 Far from distinguishing *Wochos*, Plaintiffs' new theory tacitly acknowledges that,
23 left unchallenged, Raytheon's quick and sustained recovery is problematic. Plaintiffs assert
24 that *Wochos* "did not address the scenario presented here" because the SAC's new
25 allegations weaken alternative explanations for the drop. Response at 38. But the fact that
26 *Wochos* did not discuss alternative explanations strengthens rather than weakens its
27 relevance. *See* 985 F.3d at 1197. *Wochos* held that a quick and sustained recovery refutes
28 the inference that a particular disclosure "caused any material drop in the stock price." *Id.*

1 at 1198 (citing *Metzler*, 540 F.3d at 1064–65; *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376,
2 392 (9th Cir. 2010) ("To adequately plead loss causation ... a plaintiff must allege that the
3 'share price *fell significantly* after the truth became known." (emphasis added in *Wochos*)
4 (citation omitted)). At oral argument, Plaintiffs illustrated their position by way of an
5 example; if an oil company's stock fell 10% on some disclosure, then leapt up 25% the next
6 day because Russia invaded Ukraine, loss causation should not be defeated as a matter of
7 law. Hr'g Tr. 29:6–16. Plaintiffs' reasoning seems sound, but the facts here are quite
8 different. Nothing like a war coincided with Raytheon's stock rebound. Loss-causation
9 analysis is contextual, so the magnitude of a drop and the stock's behavior after the drop
10 are highly relevant. In this case, as in *Wochos* and with *Metzler*'s first disclosure, the drop
11 was modest, and the stock price recovered quickly.

12 **iii. Stock Performance Indicator**

13 The SAC also adds allegations that Raytheon's stock price lagged the "applicable
14 industry index." SAC ¶ 317. The SAC alleges that Raytheon's stock price "significantly
15 underperformed its peers" for five days after disclosure of the DOJ subpoena and
16 cumulatively over the following "90-day lookback period described by the PSLRA[.]" *Id.*
17 Plaintiffs conclude that "measuring losses without reference to the relevant industry is not
18 scientific." Response at 39.

19 However reasonable, Plaintiffs' arguments are not based in law. The law creates a
20 cause of action given an absolute decline in a stock's price, not a relative decline. *See, e.g.,*
21 *Wochos*, 985 F.3d at 1198 (discussing absolute decline); *Lloyd*, 811 F.3d at 890 (same);
22 *Metzler*, 540 F.3d at 1059 (same). Plaintiffs' two cases do not stand for the proposition that
23 relative decline is actionable. One is an unpublished district court order discussing Rule 23
24 class certification. *See* Response at 39 (citing *Nursing Home Pension Fund v. Oracle Corp.*,
25 2006 WL 8071391, at *11 n. 4 (N.D. Cal. Dec. 20, 2006) (distinguishing *Dura*, 544 U.S.
26 at 342–43)). The other is *Dura*, 544 U.S. at 342–43, where the Court discussed factors that
27 may contribute to a stock price's *absolute* decline. *See id.*; *see also Dura*, 544 U.S. at 347
28 ("the complaint must allege that the defendant's share price *fell significantly* after the truth

1 became known") (emphasis added).

2 The law's focus on absolute performance is sensible, though inconvenient to
3 Plaintiffs. The law promotes investment by protecting against *material* losses and
4 misrepresentations, not by insuring investors against all loss. *See, e.g., Dura*, 544 U.S. at
5 345. Focusing on absolute performance thus appropriately reserves legal action for
6 exceptional circumstances.⁸ As Defendants point out, if relative performance were
7 actionable, a plaintiff could adequately allege loss causation where the stock price rose but
8 not as much as an industry index. MTD at 31. Though hypothetically scientific, that
9 scenario is practically out of line with the law's policy. The law's focus on absolute
10 performance also promotes judicial economy by avoiding issues with determining the
11 relevant timeframe. *Compare* SAC ¶ 317 (5-day and 90-day relative returns negative), *with*
12 MTD at 30–31 (10-day and 30-day relative returns positive). For these reasons, Plaintiffs
13 new allegations regarding Raytheon's relative performance do not change the Court's loss-
14 causation analysis. Raytheon's quick and sustained recovery continues to negate the
15 inference that the DOJ subpoena disclosure caused Plaintiffs' losses.

16 **B. Plaintiffs still do not show loss causation under *First Solar*.**

17 Setting aside *Metzler* and *Wochos*, the SAC fails to connect Plaintiffs' loss to
18 specific misstatements by Raytheon. Pleading loss causation "is not meant to impose a
19 great burden upon a plaintiff," Response at 34 (citing *Dura*, 544 U.S. at 347), but it does
20 require connecting loss from "the very facts about which the defendant lied." *First Solar*,
21 *Inc.*, 881 F.3d at 753 (citation omitted).

22 The SAC, like its predecessor, mumbles the specifics. It ambiguously alleges two

23 ⁸ This is also why Plaintiffs' argument about lost market capitalization is unpersuasive. *See*
24 Response at 40–41. Plaintiffs urge the Court to ignore the percent drop and focus on the
25 corresponding \$6 billion loss in market capitalization. *See id.* (citing two unpublished
26 district court orders that took this approach and found percentage drops ranging from 2.8%
27 to 5.1% significant, and one published district court order that did *not* take this approach
28 and found three drops totaling ~14% significant). With all respect to the other district
courts, focusing on percent decline in absolute terms seems best. A 0.1% decline in a
company's stock could correspond to a market cap loss that sounds big. But that is not the
kind of loss our securities laws are meant to treat.

1 theories: (1) pervasive fraud affecting virtually every financial statement, and (2) non-
2 pervasive fraud affecting unknown "prime" contracts. When one theory fails to deliver,
3 Plaintiffs switch to the other. *Compare, e.g.*, Response at 40 ("[T]he SAC does not stand
4 or fall on a theory of widespread fraud."), *with, e.g.*, SAC ¶¶ 7, 52–58 (CW2 & CW3), 91
5 (CW12), 108, 114–116 (substantially unchanged paragraphs the Court previously
6 identified as alleging implausibly widespread fraud). Plaintiffs fail to connect their
7 widespread fraud theory to the DOJ subpoena disclosure because the DOJ investigation
8 concerns only four contracts. Plaintiffs also fail to connect their narrow fraud theory of
9 2018 misconduct to the DOJ subpoena disclosure because the DOJ investigation concerns
10 a different Raytheon segment.⁹ And Plaintiffs fail to connect the contracts associated with
11 the DOJ investigation to any material Class Period statements or omissions. Instead,
12 Plaintiffs repeatedly assert their loss was caused by the subpoena itself. But "[t]he
13 announcement of an investigation reveals just that—an investigation—and nothing more."
14 *Loos v. Immersion Corp.*, 762 F.3d 880, 890 (9th Cir. 2014) (citation omitted). Without a
15 "subsequent revelation of the inaccuracy of [Raytheon's public filings]," the DOJ subpoena
16 could not be a corrective disclosure. *See Lloyd*, 811 F.3d at 1203. The DOJ subpoena also
17 does not combine with Raytheon's CEO's remarks in April to create a revelation of
18 inaccuracy—only wrongdoing on a few contracts.¹⁰

19 ///

20 _____
21 ⁹ Plaintiffs maintain a connection is plausible because both "involv[e] what is now the
22 Missiles and Defense division." Response at 20 (citing SAC ¶¶ 94, 308). But the "Missiles
23 and Defense division" did not exist before April 2020. SAC ¶ 76 n. 21. The DOJ subpoena
could therefore reveal at best a possible connection, not a plausible one. *See also infra*
App'x § II.O.iv.

24 ¹⁰ Plaintiffs cite several cases for the proposition that a corrective disclosure need not be a
25 mirror image of the misconduct. Response at 20–21 (citing, e.g., *In re BofI Holding, Inc.*
26 *Sec. Litig.*, 977 F.3d 781, 790 (9th Cir. 2020)). Plaintiffs' cases are not on point because
27 they involved adequately alleged falsity, reliable confidential witness allegations, and 21–
28 63% stock drops. *See, e.g., In re BofI Holding*, 977 F.3d at 790. This case is closer to those
In re BofI Holding distinguished. *See id.* at 792–93 (citing *Loos*, 762 F.3d at 890
(investigation revealed no facts); *Curry v. Yelp Inc.*, 875 F.3d 1219, 1223 (9th Cir. 2017)
(customer allegations lacked firsthand knowledge)).

1 **VII. Section 20(a)**

2 SEA § 20(a) makes "controlling" individuals liable for § 10(b) violations. 15 U.S.C.
3 § 78t(a). Plaintiffs fail to state a § 10(b) claim, so they also fail to state a § 20(a) claim.

4 **VIII. Dismissal With Prejudice**

5 Plaintiffs request leave to amend under Fed. Civ. P. Rule 15. *See* Response at 41.
6 Defendants oppose this request. *See* Reply at 21.

7 The Court has already granted Plaintiffs leave to amend. Doc 55 at 45. The same
8 Order provided substantial feedback on Plaintiffs' claims, some of which was not
9 addressed. *See, e.g.*, App'x § II. Most of Plaintiffs' amendments brought further into focus
10 a narrow theory that does not state a cause of action. *See, e.g., supra* § IV.v. And
11 amendment cannot avoid certain fatal issues. *See, e.g., supra* § VI. Plaintiffs point to no
12 additional facts they might allege to cure the addressed deficiencies, which persisted in a
13 similar light between the FAC and SAC. Hr'g Tr. 27:12–28:5. Thus, the Court exercises its
14 discretion and denies Plaintiffs' request to amend the SAC. *See In re Read-Rite Corp.*, 335
15 F.3d 843, 845 (9th Cir. 2003) (discretion to deny leave to amend is particularly broad given
16 prior amendment); *Zucco Partners*, 552 F.3d at 1007 (no error to dismiss second amended
17 complaint where plaintiffs clearly "made their best case and [were] found wanting").

18 **IX. Order**

19 For these reasons,

20 **IT IS ORDERED GRANTING IN PART** Defendants' motions for judicial notice
21 (Docs. 60, 64), consistent with this Order's reasoning and citations.

22 **IT IS FURTHER ORDERED GRANTING WITH PREJUDICE** Defendants'
23 Motion to Dismiss (Doc. 59). The Clerk of the Court shall enter judgment accordingly.

24 Dated this 25th day of May, 2023.

25
26
27
28

Honorable John C. Hinderaker
United States District Judge

1 **Appendix**

2 *Confidential Witness Analysis*

3 The SAC relies primarily on 14 confidential witness ("CW") accounts. These form
4 much of the basis of the SAC's allegations that Raytheon's public filings were misleading.
5 These accounts also form the basis of the SAC's allegations that the Officers knew or
6 recklessly disregarded that Raytheon's public filings were misleading. For clarity's sake,
7 the Court discusses the confidential witness accounts together in this Appendix rather than
8 above. This Appendix nonetheless forms an integral part of the Order.

9 **I. Legal Standard**

10 Confidential witnesses may be credited if described "with sufficient particularity to
11 establish their reliability and personal knowledge." *Zucco Partners*, 552 F.3d at 995
12 (internal quotations marks and citation omitted). Personal knowledge does not require first-
13 hand observation, but the facts attributed to the witness must reasonably imply personal
14 knowledge. *Berson*, 527 F.3d at 985. The Court's analysis may consider the number of
15 sources, the level of detail provided, corroborating facts, the coherence and plausibility of
16 the allegations, and "similar indicia of reliability." *Zucco Partners*, 552 F.3d at 995
17 (internal quotations marks and citation omitted).

18 The Court considers each confidential witness account separately, then together. *See*
19 *Tellabs*, 551 U.S. at 322. With a few exceptions, the accounts are individually unreliable.
20 Taken together, they sufficiently corroborate a few more allegations.

21 **II. Analysis**

22 To begin, the Court infers a few helpful orienting details for future reference. As
23 noted below, many of the confidential witness accounts fail to explicitly provide this
24 information. Drawing on the totality of the SAC, though, some patterns emerge.

25 First, Raytheon's structure and segment names changed during the Class Period.
26 Raytheon merged with United Technologies in April 2020. SAC ¶ 1. Before the merger,
27 Raytheon consisted of five "segments": (1) "Missile Systems," (2) "Integrated Defense
28 Systems," (3) "Intelligence, Information, and Services," (4) "Space & Airborne Systems,"

1 and (5) "Forcepoint." Doc. 63-2 at 1. Of these, the pre-merger "Missile Systems" segment
2 was based in Tucson and had five sub-sections: (1) "Air Warfare Systems," (2) "Air &
3 Missile Defense Systems," (3) "Naval & Area Mission Defense," (4) "Land Warfare
4 Systems," and (5) "Advanced Missile Systems." *Id.* By contrast, after the April 2020
5 merger, the emergent "Raytheon Technologies" consisted of four segments: (1) "Raytheon
6 Missiles & Defense," (2) "Raytheon Intelligence & Space," (3) "Collins Aerospace," and
7 (4) "Pratt & Whitney." Doc. 59-4 at 4–6. Plaintiffs explain that Raytheon's "Integrated
8 Defense System" segment merged with its "Missiles System" segment to become the
9 "Missiles and Defense System" in April 2020. SAC ¶ 74 n. 21.

10 Second, Raytheon's corporate reporting hierarchy appears implicitly, if
11 incompletely, through the collection of confidential witness accounts. It loosely
12 corresponds to: analysts, then managers, then senior managers, then directors, then senior
13 directors, then deputy vice presidents, then vice presidents, then presidents (for each of an
14 unspecified number of "programs," "sections," or "divisions"), then an unknown number
15 of Raytheon vice presidents, then the Raytheon CEO.¹¹

16 With that orientation in mind, the Court turns to the accounts and their allegations.
17

18 ¹¹ See SAC ¶¶ 51 (senior analyst reporting to "Senior Finance Manager"), 56 (senior analyst
19 reporting to "Finance Manager"), 67 (analyst reporting to "Section Manager" who reported
20 to "Department Manager"), 60 (senior analyst reporting to "Finance Manager of
21 Hypersonic Weapons & Strategy"), 95 (contract manager reporting to a "Senior Manager,"
22 who reported to a Director, who reported to a "Senior Director"), 92 (program manager
23 reporting to a Director, who reported to an Executive Director, who reported to a Vice
24 President, who reported to the Missiles & Defense President), 65 (manager reporting to a
25 "Program Director," who reported to a "Senior Director," who reported to a "Vice
26 President Global Supply System Management"), 62 (contract director and program
27 manager reporting to a "Deputy Vice President of Naval Weapons Systems," who reported
28 to the "Vice President overseeing Raytheon's Missile Systems"), 61 (vice president of
business development in air warfare systems reporting to a vice president of business
development for Missile Systems, who reported to the vice president "overseeing Missile
Systems," who reported to the CEO), 63 (CFO "overseeing Raytheon's Missile Systems,"
who reported to a vice president "overseeing Raytheon's Missile Systems," who reported
to the CEO), 71 (Intelligence & Space President reporting to CEO). *But see infra*, n. 15
(aspects of CW5 account departing from the general pattern).

1 **A. CW1**

2 CW1 worked as a "Purchasing Agent and Subcontracts Manager" from July 2009
3 until August 2018, when CW1 was terminated for reporting misconduct. SAC ¶¶ 41, 48.
4 After termination, CW1 filed several whistleblower complaints with the DOD. SAC ¶ 49.
5 CW1's duties included "auditing procurement group pre-award and post-award purchase
6 order files[.]" SAC ¶ 41. Because the SAC provides CW1's title and job description, CW1
7 is described with sufficient particularity. *See, e.g., Daou*, 411 F.3d at 1015. But a
8 fundamental weakness the Court previously identified remains for CW1 and other
9 confidential witnesses. *See* Doc. 55 at 10. Throughout the Class Period, Raytheon
10 employed 60,000–70,000 people. Doc. 59-2 at 38. In that context, titles and job
11 descriptions do not orient the Court as well as they might with a smaller company or with
12 executive officer titles like "CFO" or "COO." The SAC does not incorporate this feedback
13 into CW1's account.

14 CW1 alleges "many instances of wrongdoing ... related to a government contract
15 worth approximately \$11.5 billion" and other misconduct throughout the Class Period.
16 SAC ¶¶ 42–45, 46–50. The \$11.5-billion contract "continued into close to mid-2018" and
17 "provided for training, engineering, and logistics support ... and mission-focused, global
18 training support."¹² SAC ¶ 42. CW1 alleges misconduct under this contract including (1)
19 failure to submit 155 sub-contracts to a competitive bidding process, (2) miscoding labor
20 as a direct charge, (3) failure to provide Individual Work Authorizations to a procurement
21 group, (4) failure to receive long-lead material purchase authority for materials delivered

22
23 ¹² This description is similar to the Warfighter FOCUS contract described in a product line
24 within Raytheon's Virginia-based pre-merger "Intelligence, Information, and Services"
25 ("IIS") segment. Doc. 63-2 at 2. Like CW1's contract, the IIS "Global Training Solutions"
26 product line "provide[d] training solutions, logistics and engineering support worldwide,
27 principally under the Warfighter FOCUS contract with the U.S. Army, which [continued]
28 through October 2018[.]" *Id.*; *see also id.* at 56 (describing annual bookings under this
contract ranging from \$963 million to \$1.1 billion). At this stage, the Court declines to
draw the inference that CW1's allegations relate to the Warfighter contract. But without
particularized allegations one way or another, the Court also cannot infer that CW1's
allegations relate to the Missile Systems or Integrated Defense System segments.

1 after certain task orders' performance end date, (5) improper procurement from Chinese
2 companies doing business with North Korea, in violation of presidential executive orders,
3 and (6) doctoring dates and information on "certain contracts in advance of government
4 reviews and audits," in conspiracy with the sub-contractors. SAC ¶¶ 42–47. CW1
5 specifically notes government audits occurred in 2010, 2015, and 2018. SAC ¶ 47 n. 14.

6 Beyond the support-services contract, CW1 alleges (1) "Operations & Maintenance
7 Funding" was misappropriated toward "Military Construction" in order to avoid requisite
8 approvals and oversight, (2) suppliers were improperly advanced payments, allowing
9 Raytheon to bill the government and book revenues earlier than permitted, (3) Raytheon
10 violated the Truth In Negotiations Act ("TINA") by obtaining competitor cost data "under
11 the table" and using it to secure awards, and (4) CW1 was fired for reporting this
12 misconduct to Raytheon's "Senior Director of Internal Audit" and its "Director of Ethics
13 and Business Conduct." SAC ¶ 49.

14 Some of CW1's allegations about the support-services contract have sufficient
15 indicia of reliability to credit them, such as the level of detail alleged and the relationship
16 between the allegations and CW1's job title and responsibilities. For example, CW1's
17 alleges a lack of competitive bidding or miscoded labor on subcontracts, which is
18 something a "Subcontracts Manager" and auditor could be expected to know. Similarly,
19 CW1 alleges that CW1 was personally ordered to falsify dates to pass government review.
20 Other aspects of CW1's support-services contract allegations are not clearly related to
21 CW1's title and job description. For example, CW1 alleges violation of presidential orders
22 without providing any indication of legal training or any other relevant perspective. That
23 shortcoming also makes CW1's allegations beyond the support-services contract
24 unreliable. TINA violations, improperly advanced payments, and misappropriation of
25 "Operations and Maintenance Funding" do not clearly relate to CW1's responsibilities.

26 **B. CW2**

27 CW2 was a "Senior Princip[al] Financial Analyst" from October 2016 to December
28 2018. SAC ¶ 51. CW2 reported to "the" Senior Finance Manager, and the SAC details the

1 names of both persons in the role of Senior Finance Manager during CW2's tenure. *Id.*
2 Finally, CW2's employment scope is described as within "Global Business Services,
3 working across all of Raytheon's divisions," and CW2's job responsibilities include
4 "Internal Auditor who 'vetted [Raytheon's] proposals from vendors and contractors and
5 other companies.'" *Id.* The SAC states that CW2's job responsibilities also included
6 "review[ing] proposals to ensure that they were financially sound [and] compliant with
7 FAR and DFAR, and [reviewing] audit proposals that met and/or exceeded the [TINA]
8 threshold of \$750,000 submitted through supply chain management. [CW2] also audited
9 proposals and other cost-saving initiatives." SAC ¶ 52. Because the SAC provides CW2's
10 title, reporting lines, and job description, CW2 is described with sufficient particularity.
11 The Court previously identified questions about whether "the" Senior Finance Manager is
12 a single position, the function of Raytheon's Global Business Services unit, and the
13 meaning of "all Raytheon's divisions." Doc. 55 at 12. The SAC does not incorporate this
14 feedback into CW2's account (although CW4 suggests that a "Senior Manager" is "one
15 level below" a "Director"). *See* SAC ¶ 60.

16 CW2 principally alleges that Raytheon failed to use a competitive bidding process
17 in awarding certain "aerospace and defense and missile" supplier contracts but nevertheless
18 maintained the appearance of doing so. SAC ¶ 54. CW2 alleges that competitive bidding
19 for subcontracts has the "benefit" of showing the government that a company is "using due
20 diligence to follow the regulations, the guidelines they set in place." SAC ¶ 52. CW2
21 implies—but never states explicitly—that competitive bidding for subcontracts is required
22 under FAR or DFAR guidelines to minimize government costs. SAC ¶¶ 51, 54. CW2
23 further alleges Raytheon uses a color-coding system for its suppliers; those marked green
24 "are good, yellow means 'Go,' and Red means 'No.'" SAC ¶ 54. CW2 alleges "[m]ost of the
25 suppliers Raytheon used were either green or red, and only a handful were yellow," but
26 could not explain "how a supplier could get out of the red category and go to the green one,
27 or why Raytheon didn't just cut off the suppliers in the red category." SAC ¶ 55. CW2
28 alleges that rather than solicit competitive bids from different suppliers, Raytheon instead

1 "favored" certain aerospace, defense, and missile suppliers they used repeatedly and placed
2 them "in the green category, irrespective of whether they qualified for the green rating."
3 SAC ¶ 54.) CW2 estimated that "maybe about 30 percent" of the green suppliers shouldn't
4 have been green. SAC ¶ 55. Finally, CW2 also alleges unspecified "obstacles" when
5 working, being told "to keep my mouth shut," and that CW2's superior said, "Just do your
6 job. Don't ask questions." SAC ¶ 55.

7 Although CW2's allegations are sufficiently detailed, CW2's confusion about the
8 color-coding system renders CW2's allegations insufficiently reliable to credit on their
9 own. CW2 provided no basis for stating that certain suppliers should not have been green.
10 CW2 also did not explain the tension between that statement and CW2's inability to explain
11 Raytheon's continued use of red suppliers or the criteria for a red supplier to become green.
12 CW2's allegations are also not clearly related to CW2's title and responsibilities. Reviewing
13 or "vetting" proposals for financial soundness would not appear to include reviewing
14 details of a competitive bidding process. The SAC provides no information about TINA
15 compliance nor suggests that CW2's observations about the competitive bidding process
16 related to CW2's TINA, FAR, or DFAR responsibilities. Finally, even if CW2's allegations
17 were reliable enough to credit, they are insufficiently particular. CW2 identifies no specific
18 contracts or consequences of failing to avoid competitive bidding. Instead CW2 implies
19 that a lack of competitive bidding results in higher costs and other vaguely alluded risks.
20 Securities fraud claims require more particularity than that.

21 C. CW3

22 CW3 worked as a "Senior Financial Analyst" in Raytheon's "Missiles and Defense
23 System" from July 2012 to October 2015, before the beginning of the Class Period.¹³ SAC
24 ¶ 56. CW3 reported to "the" Finance Manager, Clayton Leshner. *Id.* CW3 "work[ed] with
25 project managers on budgets and forecasts and calculating Estimates at Completion
26 [EACs]" on all ten programs in Raytheon's Missiles and Defense System, including "the

27 ¹³ The Missiles & Defense segment was created in April 2020, SAC ¶ 74 n. 21, so the Court
28 infers that CW3 was in either the Missile Systems segment or the Integrated Defense
System segment before April 2020.

1 Javelin and Tomahawk programs." *Id.* Because the SAC provides CW3's title and job
2 description, CW3 is described with sufficient particularity. The SAC does not clarify the
3 relative rank of a "Senior Financial Analyst," although CW4's account suggests that a
4 Senior Financial Analyst's "Manager" supervisor is below a "Director." *See* SAC ¶ 60.

5 CW3 alleges Raytheon "flowed down" its EACs, which means Raytheon slowed
6 down the project "to get more money" when the government "reimburse[d] Raytheon" for
7 the slowdown. SAC ¶¶ 56, 58. CW3 alleges that Raytheon "had all of the essential tools
8 and funding" to complete a project but nonetheless "would say, 'It's going to take longer.
9 We need additional funds.'" SAC ¶ 56. Specifically, CW3 alleges that Raytheon's
10 Tomahawk and Javelin missile projects "could have been done sooner." SAC ¶ 57. CW3
11 alleges "the misconduct was significant because it would cause Raytheon to lose contracts
12 because of the wrongdoing." SAC ¶ 58. Finally, CW3 alleges that it was "common practice
13 for Raytheon to get extensions for its projects and miss its Estimates at Completion," and
14 that "almost every" project was slowed down as it "was kind of becoming the norm around
15 the place." SAC ¶ 56.

16 Although CW3's allegations are sufficiently detailed, they are insufficiently reliable
17 to credit on their own and allege issues before the beginning of the Class Period. CW3's
18 title and responsibilities do not clearly relate to CW3's assessment that various projects
19 could have been done sooner, that project slowdowns were intentional, or that Raytheon
20 lost contracts because of "the wrongdoing." CW3 does not allege, for example, that the
21 program managers CW3 "worked with" said they were slowing down projects
22 intentionally, or allege any specific lost contracts. CW3 also does not specifically allege
23 that getting project extensions or missing EACs was improper. Critically, CW3 does not
24 quantify or even estimate the issues except in the most general and vague terms.

25 **D. CW4**

26 CW4 was a "Principal Finance Analyst" from mid-2019 to fall 2020 in Raytheon's
27 "Financial Controls Department" of the Hypersonic Weapons and Strategy program, which
28 was in the "Missile Systems division." SAC ¶ 60. CW4 reported to the Hypersonic

1 Weapons program Finance Manager, who was "a level below a Director." *See id.* The SAC
2 alleges CW4 would send the EACS to "the program managers, the finance managers, and
3 the directors, who in turn provided the EACs to the executives within that business area,
4 *i.e.*, the hypersonic missiles division." *Id.* Because the SAC provides CW4's title and job
5 description, CW4 is described with sufficient particularity.

6 CW4 alleges that shortly after joining Raytheon in mid-2019, CW4 heard from a
7 "Senior Manager in Material Program Management" that Raytheon was being investigated
8 by the DOJ and "there were issues with EACs." SAC ¶ 60.

9 CW4's allegations are based in unreliable hearsay. Hearsay is not "automatically
10 disqualify[ing]," but it may be credited only where "sufficiently reliable, plausible, or
11 coherent." *Lloyd*, 811 F.3d at 1208 (crediting COO statements that were specific in time,
12 context, and details, and involved a meeting between a CEO and the Board). CW4's
13 colleague is not clearly situated to know anything about EACs or a DOJ investigation. The
14 SAC is also unclear how "Material Program Management" relates to the Missile Systems
15 division or "Hypersonic Weapons and Strategy."

16 E. CW5

17 CW5 worked as a "Vice President of Business Development, Air Warfare Systems"
18 from December 2015 to mid-2017. SAC ¶ 61. CW5 reported to "Vice President of Business
19 Development for all of Raytheon's Missile Systems" Fitzpatrick.¹⁴ *Id.* Because the SAC
20 provides CW5's title, and because that title involves an executive position, CW5 is
21 described with sufficient particularity.

22
23 ¹⁴ CW5's descriptions of various positions can be bewildering. CW5 first says Fitzpatrick
24 was "Vice President of Business Development of all of Raytheon's Missile Systems." SAC
25 ¶ 61. CW5's colleague later says that Fitzpatrick reports to Taylor Lawrence, who was "the
26 Vice President overseeing Raytheon's Missile Systems." *Id.* CW5's colleague also says
27 that "the CFO overseeing Raytheon's Missile Systems ... reported to Taylor Lawrence."
28 SAC ¶ 63. And CW7 refers to Lawrence as "Vice President of Missile Systems." SAC ¶
67. The Court infers that a *Business Development* Vice President of Missile Systems is
different from "the" Vice President "overseeing" Missile Systems, that a CFO
"overseeing" Missile Systems is the same as a CFO "of" Missile Systems, and that that
position is subordinate to "the" Vice President of Missile Systems.

1 CW5 alleges that, after leaving Raytheon in mid-2017, "a former colleague and
2 friend still employed at Raytheon at that time" told CW5 about misconduct within
3 Raytheon's Naval Weapons System section of its Missile Systems division. SAC ¶ 61.
4 CW5's former colleague was Paul Hanson, a "Director of Capture Management
5 Excellence" who reported to the same Vice President of Business Development that CW5
6 had previously. *Id.* Hanson alleges that the Vice President of Business Development
7 reported to the Vice President of Raytheon's Missile Systems division, Fitzpatrick, who in
8 turn reported to Raytheon's CEO, Defendant Kennedy.¹⁵ *Id.*

9 CW5's former colleague Hanson allegedly told CW5 that an internal audit showed
10 \$250 million in "false labor charges made on several contracts" in the Navy Weapons
11 System section of the Missile Systems division. SAC ¶¶ 62–64. Hanson attributed the labor
12 charges to employees including Todd Callahan, the "Deputy Vice President of Naval
13 Weapon Systems," Richard McDonnell, the "Program Manager for Close-in Weapon
14 Systems," and Tina Fay, the "Contract Director" for "the entire product line." SAC ¶ 62.
15 CW5 alleges that McDonnell and Fay reported to Callahan, who reported to the Vice
16 President of Raytheon's Missile Systems, who in turn reported to Raytheon's CEO,
17 Defendant Kennedy. *Id.* Hanson told CW5 he personally saw Callahan, McDonnell, and
18 Fay "get marched out by security." *Id.* Hanson also told CW5 that one of Hanson's

19 ¹⁵ CW5's account of the corporate hierarchy is different from other accounts and, to some
20 extent, defies common sense. CW5 alleges that an Air Warfare Vice President of Business
21 Development and a Director of Capture Management Excellence reported to the same
22 person, the Missile Systems Vice President of Business Development. That is unusual
23 because directors are typically one level below vice presidents and would not be expected
24 to report to the same person as someone one level above them. CW5 also alleges a deputy
25 vice president, vice president, and CFO all reported to another vice president. Specifically,
26 CW5 alleges the Missile Systems Vice President of Business Development, SAC ¶ 61, a
27 Naval Systems Deputy Vice President, SAC ¶ 62, and a CFO "overseeing" Missile Systems
28 all reported to "the Vice President overseeing Raytheon's Missile Systems," who reported
to the CEO. SAC ¶ 63. By contrast, CW10 and CW13 both allege that vice presidents
reported to presidents. CW10 alleges the Intelligence & Space President reported directly
to the CEO, SAC ¶ 71, and CW13 alleges a Missiles & Defense Vice President reported to
the Missiles & Defense President. SAC ¶ 92. CW5's account is less typical than CW10's
and CW13's because Vice Presidents and Presidents form an intuitive reporting hierarchy.

1 employees, McDonnell's wife, told him that Callahan, McDonnell, and Fay were fired for
2 "the misconduct." Hanson also told CW5 that the Missile Systems CFO "was terminated
3 around that time[.]" and that the CFO reported to the Missile Systems Vice President. *Id.*

4 Hanson told CW5 that Callahan, McDonnell, and Fay "were swapping labor charges
5 amongst contracts." SAC ¶ 63. Specifically, they shifted labor charges from one contract
6 to another to preserve their performance bonuses. *Id.* CW5 explained that Raytheon paid
7 employees a bonus for contracts that finished with the right number of labor hours, so
8 charging excess labor hours for one contract to another fraudulently secured that bonus.
9 *See id.* CW5 also alleged that "if Callahan, McDonnell and Fay were over-budget and
10 behind schedule, then Raytheon would take financial hits for that and the government
11 would not pay [Raytheon], so the manipulations described above were also designed to
12 avoid that result." *Id.* CW5 further "explained that the \$250 million of false labor charges
13 related to a large and important contract for Raytheon's Naval Systems[.]" and that "Naval
14 Systems did about one billion a year of business[.]" SAC ¶ 64.

15 CW5's allegations are based on hearsay and double hearsay. Aspects of the hearsay
16 are internally inconsistent. For example, CW5 alleges that "\$250 million in false labor
17 charges" were both "made on several contracts" and "related to a large and important
18 contract." At this stage, the Court must accept every allegation as true, but not as plausible.
19 *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (distinguishing truth and plausibility).
20 Thus, plausibility yields given true-yet-inconsistent allegations. Here, the plausibility of
21 CW5's allegations are reduced by the facial inconsistency of \$250 million both "made on
22 several contracts" and "related to a large and important contract." That deficiency is
23 particularly damaging because the allegation is already based on hearsay. *See Zucco*
24 *Partners*, 552 F.3d at 995 n. 4 (hearsay inconsistency diminishes reliability). The Court
25 reaches the same result even by drawing an unwarranted inference in Plaintiffs' favor. The
26 Court could infer that the \$250 million was "swapped between" several contracts, one of
27 which was "a large and important" contract. That inference is unwarranted because "\$250
28 million ... made on several" and "\$250 million ... related to a" are mutually exclusive.

1 Plaintiffs indirectly acknowledge the conflict by rephrasing to avoid the issue. *See*
2 Response at 18 n. 6 ("CW5 described false labor charges *impacting* several contracts ...
3 *including* one large and important naval contract.") (emphasis added). But even if Plaintiffs'
4 pleading deficiency were a matter of drawing an inference in Plaintiffs' favor, the SAC
5 does not explain how Hanson would be familiar with the contract or contracts at issue. The
6 SAC does not connect the role of a "Director of Capture Management Excellence" within
7 Raytheon's "Business Development" segment to Raytheon's Naval Weapons Systems
8 section except that both are within the Missile Systems division. Without information about
9 the size of that division, and given Raytheon's 60,000–70,000 employees, the Court cannot
10 infer that Missile Systems was so small that directors in business development were privy
11 to internal audits in naval weapons systems. CW5's reliance on Hanson's reliance on
12 McDonnell's wife does not bridge that gap. In the end, the only factor weighing in favor of
13 CW5's reliability is the level of detail alleged. But that factor is outweighed by the others.

14 **F. CW6**

15 CW6 worked as "the Supplier and Control Program Manager" for Raytheon's
16 "Missiles and Defense division" from August 2006 to October 2021.¹⁶ SAC ¶ 65. CW6
17 "put[] together EACs for the various projects he worked on, including managing twelve
18 program hardware portfolios worth \$160 million." *Id.* CW6 reported to "Program Director
19 Shoup," who reported to "Senior Director Davis," who reported to "Global Supply System
20 Management Vice President Jaramillo." *Id.* Because the SAC provides CW6's job title,
21 description, and reporting line, CW6 is described with sufficient particularity.

22 CW6 alleges that Callahan, McDonnell, and Fay were fired in October 2018 for
23 "trying to hide their cost overruns on their EACs." SAC ¶ 66. CW6 alleges that Callahan,
24 McDonnell, and Fay were "fudging the EACs" to hide "how bad their numbers were." *Id.*
25 CW6 alleges that Callahan, McDonnell, and Fay were "improperly moving money around
26 ... to hide cost overruns." *Id.* CW6 alleges they were "taking money from different projects

27 ¹⁶ The Missiles & Defense segment was created in April 2020, SAC ¶ 74 n. 21, so the Court
28 infers that CW6 was in either the Missile Systems segment or the Integrated Defense
System segment before April 2020.

1 to beef up their management reserves because they were overspending." *Id.*

2 CW6's allegations are not sufficiently based in personal knowledge. CW6 does not
3 explain and it is not clear how CW6's role or responsibilities provide insight into details of
4 a termination of a Deputy Vice President of Naval Weapon Systems, Senior Director of
5 Close-In Weapon Systems, and Contract Director "of the entire line." For example, CW6
6 does not allege that any of CW6's projects were the projects Callahan, McDonnell, and Fay
7 allegedly manipulated.

8 **G. CW7**

9 CW7 worked as a "Principal Integrated Program Management Analyst" in
10 Raytheon's Missiles and Defense division from late 2014 to late 2018.¹⁷ SAC ¶ 67. CW7
11 "supported Finance, Engineering, and other types of employees through research and
12 analysis related to predicted costs and project schedules," and "worked on EACs." *Id.* CW7
13 reported to "Program Management Excellence Senior Section Manager Bowles," who
14 reported to "Department Manager Bailes." *Id.* Because the SAC provides at least a vague
15 description of responsibilities and reporting line, CW7 is described with sufficient
16 particularity.

17 CW7 alleges that "Raytheon fired a 'couple-dozen' Tucson-based employees,
18 including senior leaders, when [CW7] was still at the company in 2018 for issues related
19 to EACs, like 'playing with the numbers' and 'cooking the books.'" SAC ¶ 67. CW7 alleges
20 "it was a huge deal," and "a lot of high-level people were fired because of it." *Id.* CW7
21 alleges that the "Vice President of Missile Systems" Lawrence "was implicated in the EAC
22 issue," and "Tina Fay appeared to be implicated." *Id.* CW7 also alleges the "Naval Air
23 Division (which fell under Missiles and Defense) was linked to the EAC issues." *Id.*

24 CW7's vague allegations are not sufficiently based in personal knowledge. CW7
25 does not explain how CW7's role or responsibilities provide insight into details of a
26 termination of a Vice President of Missile Systems. For example, CW7 does not allege that

27 ¹⁷ The Missiles & Defense segment was created in April 2020, SAC ¶ 74 n. 21, so the Court
28 infers that CW7 was in either the Missile Systems segment or the Integrated Defense
System segment before April 2020.

1 any of CW7's projects were "linked to EAC issues." CW7's allegations also sound
2 strangely canned, referring to "issues ... *like* 'playing with the numbers' and 'cooking the
3 books'" as if those were distinct issues and not colloquial expressions that mean the same
4 thing. Overall, CW7's allegations come across as regurgitated gossip and innuendo.

5 H. CW8

6 CW8 worked as "the Subcontracts Manager" and "the Contracts Manager" of
7 "Missiles and Defense" from mid-2015 to mid-2022.¹⁸ SAC ¶ 68. Aside from asserting
8 CW8's role as "the" Manager, CW8's responsibilities and place in the corporate hierarchy
9 are not provided. Given Raytheon's size, the Court cannot draw the unwarranted inference
10 that Raytheon's Missiles and Defense division had one ("the") Subcontracts and Contracts
11 Manager. Without even basic reporting information or responsibilities, CW8 is not
12 described with sufficient particularity. *See Zucco Partners*, 552 F.3d at 995.

13 Even if CW8 were described with more particularity, CW8's allegations are not
14 clearly based in personal knowledge. CW8 alleges that "the DOJ investigation"¹⁹ of "the
15 2017 Raytheon contract"²⁰ led to the "ouster" of the "CFO for the Missiles & Defense
16 division" Asbell,²¹ "Raytheon's Vice President and the Missiles and Defense division
17
18
19

20 ¹⁸ The Missiles & Defense segment was created in April 2020, SAC ¶ 74 n. 21, so the Court
21 infers that CW8 was in either the Missile Systems segment or the Integrated Defense
22 System segment before April 2020.

22 ¹⁹ CW8 does not define "the DOJ investigation," but the SAC refers elsewhere both to "the
23 DOJ investigation," SAC ¶¶ 72, 76, 320, and "a DOJ investigation." SAC ¶¶ 6, 120, 254,
24 297. "The" DOJ investigation consistently refers to the 2020 investigation, and "a" DOJ
25 investigation consistently refers to an alleged 2018 investigation. Given the consistent
26 distinction, the Court infers that CW8 allegations relate to the 2020 investigation.

26 ²⁰ CW8 does not define "the 2017 Raytheon contract," but the SAC alleges elsewhere that
27 the DOJ subpoenaed Raytheon in March 2021 as part of its 2020 investigation, seeking
28 information about "a contract awarded to Missiles & Defense in 2017." SAC ¶ 124; *see*
also SAC ¶¶ 76, 125, 320. At this stage, Plaintiffs are entitled to the inference that these
statements refer to the same contract.

²¹ CW9 refers to Asbell as the "CFO of Contracts," not the Missiles and Defense CFO.

1 General Counsel" Sabin,²² and "Vice President of Contracts, Offset & Localization"
2 Murphy. SAC ¶ 68. CW8 provides no basis for concluding that a "Contracts Manager"
3 would have insight into the termination of a division CFO, General Counsel, and Vice
4 President. CW8's allegations are also vague and inconsistent with other confidential
5 witness accounts.

6 I. CW9

7 CW9 worked as a "Manager, Contracts" and "Senior Contracts Negotiator" in the
8 "Missiles & Defense division" from late 2001 to late 2021.²³ SAC ¶ 69; Response at 19 n.
9 9 (repeating the odd "Manager, Contracts" phrasing). CW9 was responsible for "the
10 contracts Raytheon was working on." *Id.* As with CW8, CW9's description is insufficiently
11 particular. It does not orient the Court to CW9's place in the corporate hierarchy or
12 illuminate the basis for CW9's allegations. The Court also notes the facially implausible
13 implication that a single position within the Missiles & Defense division was responsible
14 for all of Raytheon's contracts.

15 Even if CW9 were described with more particularity, CW9's allegations are not
16 clearly based in personal knowledge. CW9 alleges "VP and General Counsel" Sabin,²⁴

18
19 ²² This phrasing could mean Sabin was "Raytheon's Vice President," but the Court infers
20 Sabin was a Missiles & Defense Vice President primarily because CW9 refers to Sabin as
21 "VP and General Counsel ... who[] worked in Missiles & Defense." SAC ¶ 69. The SAC
22 elsewhere refers to "Presidents" and "Vice Presidents" of segments, divisions, and of
23 Raytheon itself. *See* SAC ¶¶ 23 (defining Defendants O'Brien and Wood as former Vice
24 Presidents of "Raytheon Technologies" and "Raytheon Company"), 61 (distinguishing the
25 "Vice President of Business Development, Air Warfare Systems," from the "Vice President
26 of Business Development for all of Raytheon's Missile Systems," from the "Vice President
27 overseeing Missile Systems"), 70 (referring to "Raytheon's Missiles and Defense
28 President"), 71 (referring to "Raytheon's Intelligence & Space President"), 90 (referring to
the "president of the Company"). From these distinctions, the Court understands Raytheon
has many vice presidents, and most are within subdivisions.

²³ The Missiles & Defense segment was created in April 2020, SAC ¶ 74 n. 21, so the Court
infers that CW9 was in either the Missile Systems segment or the Integrated Defense
System segment before April 2020.

²⁴ *See supra*, n. 22 (discussing confusing and conflicting accounts of Sabin's title).

1 "CFO of Contracts Asbell,"²⁵ and "VP of Contracts Murphy" all "left Raytheon due to
2 'EAC-type accounting issues.'" CW9 does not explain whether a "CFO of Contracts" is
3 different from a "CFO of the Missiles and Defense division" (per CW8's account), whether
4 "left Raytheon" means they were fired or quit, or what "EAC-type accounting issues" are.
5 The SAC does not make clear whether SAC ¶ 70 is also part of CW9's account. Paragraph
6 70 follows CW9's account, and is followed by CW10's account, but does not refer to CW9.
7 It simply states that "Raytheon failed to disclose to the investing public what led to the
8 departure of the three senior executives." SAC ¶ 70. It further alleges that the Missiles and
9 Defense President announced the departures without explanation in an internal email dated
10 January 2022. *Id.* Without any articulated connection to CW9, and given the fact that CW9
11 allegedly left Raytheon before January 2022, the Court cannot infer that, for example, CW9
12 received this email or was otherwise situated to discuss its contents.

13 **J. CW10**

14 CW10 worked as "the Senior Manager, Contracts/Hypersonics Portfolio Lead" in
15 Missiles & Defense, and "Senior Manager, Program Contracts for Intelligence & Space"
16 from "2020"²⁶ to "December 2022." SAC ¶ 71. CW10's responsibilities included "leading
17 the contracts team and all contract management activities for multiple Hypersonic
18 programs/contracts portfolio, which included reviewing and analyzing EACs." *Id.* CW10
19 describes CW10's position as "the contract police," which meant that CW10 "did the
20 forensics on the EACs." *Id.* CW10 alleges a "high security clearance level" and attendance
21 of "monthly EAC meetings" led by "Raytheon Intelligence & Space President Azevedo,"
22 and also attended by "Vice President & Chief Operating Systems for Intelligence & Space,

23
24 ²⁵ CW8 refers to Asbell as "CFO for the Missiles & Defense division," not CFO of
25 Contracts.

26 ²⁶ By omitting the month, the SAC obscures whether CW10 started after October 27, 2020,
27 the end of the Class Period. Plaintiffs' Response conspicuously repeats the omission,
28 Response at 19 n. 10, after Defendants point it out. MTD at 18 n. 6. At this stage, the Court
must infer that CW10 started before the end of the Class Period. Because both the Missiles
& Defense and Intelligence & Space segments were created in April 2020, *see* SAC ¶ 74
n. 21, Doc. 59-4 at 5–7, the Court also infers that CW8 started after April 2020.

1 Dave Broadbent." *Id.* CW10 alleged that "President Azevedo" reported directly to
2 Raytheon's CEO. *Id.* Because the SAC provides CW10's job description and reporting line,
3 CW10 is described with sufficient particularity.

4 CW10 alleges that one of the EACs CW10 "did the forensics on" "involved a
5 technology that didn't yet exist but had 'hundreds of millions of overruns.'" SAC ¶ 71.
6 CW10 also alleges that "the ouster of Raytheon's executives Murphy, Asbell and Sabin
7 were linked to the DOJ investigation."²⁷ SAC ¶ 72. CW10 also alleges that Raytheon has
8 "very few ... prime contracts," which are "contracts that Raytheon obtains directly from
9 the government." SAC ¶ 73. CW10 also alleges that these "prime contracts" "always make
10 more money for Raytheon." *Id.* CW10 contrasts these "prime contracts" with the "many
11 'subcontracts' [Raytheon receives] from other companies that have main contracts with the
12 government." *Id.*

13 Only one of CW10's allegations is sufficiently reliable to credit on its own. That is
14 the allegation that an EAC CW10 personally worked on had "hundreds of millions of
15 overruns." As a member of the "contract police" "doing forensics on EACs," CW10's job
16 title and description adequately alleges that CW10 would know if an EAC CW10 was
17 working on had cost overruns. But CW10 does not allege that these overruns were improper
18 or were the result of misconduct or allege misconduct in any other respect. And CW10's
19 other allegations are insufficiently based in CW10's personal knowledge. CW10's vague
20 title and the fact that CW10 attended Intelligence & Space meetings do not suggest that
21 CW10 had insight into the "ouster" of Raytheon executives in another segment. CW10's
22 role also does not suggest insight into the importance and value of "prime contracts" as
23 opposed to "subcontracts issued from other companies that have main contracts."

24 **K. CW11**

25 CW11 worked in Raytheon's "Executive Communications and Employee
26 Engagement division" from December 2016 to April 2020. SAC ¶ 90. CW11's

27
28 ²⁷ As with CW8, the Court infers CW10 means "the [2020] DOJ investigation." *See supra*,
n. 19.

1 responsibilities included "among other things" writing speeches for the "president of
2 [Raytheon]" and editing Raytheon's newsletter. *Id.* Because the SAC provides CW11's job
3 description and reporting line, CW11 is described with sufficient particularity. The Court
4 previously noted a lack of clarity regarding CW11's job title and the relative rank or role
5 of "the president of Raytheon," but the SAC does not incorporate this feedback into CW11's
6 account.

7 CW11 alleges that in late 2018 or early 2019, a colleague told CW11 that "several
8 Raytheon employees" were "fudging numbers" on the contracts, and that "the Pentagon
9 was also looking into it, and they wanted answers." SAC ¶ 90. CW11 also alleges that
10 "Lawrence was eventually terminated in March 2019." *Id.*

11 CW11's allegations are based on vague hearsay. CW11 does not say which
12 colleague made the declaration, how that person was positioned to know the information,
13 where the person got the information, or what relationship the employees who "fudged
14 numbers" had to the Officers. CW11's colleague's account also lacks critical details; for
15 example, "eventually terminated" implies a connection without actually alleging it.

16 L. CW12

17 CW12 worked as a "Director of Digital Transformation" from October 2019 to
18 October 2020. SAC ¶ 91. CW12's responsibilities included "reengineering" Raytheon's
19 servers and "separating UTC from its parent company" after UTC merged with Raytheon.
20 *Id.* Because the SAC provides CW12's job title and description, CW12 is described with
21 sufficient particularity. The Court previously noted a lack of clarity regarding CW12's
22 place in Raytheon's organization, but the SAC does not incorporate this feedback into
23 CW12's account.

24 CW12 alleges that (1) "everything about Raytheon is shady," (2) "it's a** covering
25 all the way around," (3) Raytheon keeps no records of what "hundreds of millions dollars"
26 spent on outside contractors is for, (4) Raytheon paid "hundreds of millions of dollars" in
27 "funny money" to outside vendors, (5) Raytheon has no control over its contractors and no
28 accountability, and (6) "months and months" passed without contractors doing their work.

1 SAC ¶ 91.

2 CW12's allegations are somewhat detailed but largely uninformed impressions. *See*
3 *Police Ret. Sys.*, 759 F.3d at 1063 (sales representative allegation based on three months'
4 experience was the "impression of a low-level employee[,] unsubstantiated [and] without
5 substance or context."). The SAC does not establish how CW12's role upgrading servers
6 provided a basis for sweeping pronouncements on Raytheon's management of contractors
7 or financial practices. This is significant because CW12's assertion that Raytheon had "no"
8 system of contractor accountability and control is facially implausible given Raytheon's
9 compliance obligations to the government and the apparently large number of employees
10 dedicated to ensuring government compliance.

11 **M. CW13**

12 CW13 worked as a "Program Manager" and "Lead Material Program Manager" for
13 the "Stormbreaker Program" in the "Missiles and Defense division" from mid-2014 to mid-
14 2020.²⁸ SAC ¶ 92. CW13's responsibilities included ensuring program performance
15 requirements and audit compliance. *Id.* CW13 reported to "Director Howlett," who
16 reported to "Executive Director Dunlap," who reported to "Vice President Ferraro," who
17 reported both to "President of Missiles & Defense Kramer" and to "CEO [Defendant]
18 Kennedy." *See id.* ("Ferraro reported to ... Kramer Ferraro reported to ... Kennedy[.]")
19 Because the SAC provides CW13's job title, description, and reporting lines, CW13 is
20 described with sufficient particularity. The Court notes the implausibility of a Vice
21 President reporting both to a division President and directly to the CEO.

22 CW13 alleges Callahan, McDonnell, and Fay, the "Contract Director for the entire
23 line," were fired in October 2018 for manipulating EACs for a U.S. Navy contract worth
24 over \$200 million. SAC ¶ 94.

25 ²⁸ The Missiles & Defense segment was created in April 2020, SAC ¶ 74 n. 21, so the Court
26 infers that CW13 was in either the Missile Systems segment or the Integrated Defense
27 System segment before April 2020. *Compare also, e.g.,* Doc. 59-2 at 4 (2019 10-K locating
28 the "StormBreaker program" within the "Air Warfare Systems" subsection of the "Missile
Systems" segment), *with* Doc. 59-4 at 6 (2020 10-K locating the "StormBreaker smart
weapon" within the "Raytheon Missiles & Defense" segment).

1 CW13's allegations are not clearly based in personal knowledge. The SAC does not
2 explain how a relatively low-level manager in the Stormbreaker Program would be familiar
3 with the details of a termination of a Deputy Vice President of Naval Weapon Systems,
4 Senior Director of Close-In Weapon Systems, and Contract Director "for the entire line."
5 See SAC ¶ 94. The phrase "for the entire line" also appears in CW5's account, SAC ¶ 62,
6 and the Court previously identified it as vague. Doc. 55 at 15. The phrase remains vague
7 in CW13's account.

8 N. CW14

9 CW14 worked as a "Contracts Manager" and a "Senior Contracts Manager" in
10 Raytheon's Missiles and Defense division from early 2007 to late 2022.²⁹ SAC ¶ 95. As a
11 contracts manager, CW14 negotiated contracts with the U.S. Government for the Missiles
12 and Defense division. *Id.* CW14 reported to "Senior Manager of Contracts" Hill, who
13 reported to "Director of Contracts" Natali, who reported to "Senior Director of Contracts"
14 Taves. *Id.* Because the SAC provides CW14's job title, description, and reporting lines,
15 CW14 is described with sufficient particularity.

16 CW14 alleges that "the DOJ investigation involves the Patriot Guided Enhanced
17 Missile Program."³⁰ SAC ¶ 95.

18 CW14's allegation is somewhat vague but sufficiently detailed and based in personal
19 knowledge to credit on its own. A senior contracts manager who negotiates government
20 contracts for the Missiles and Defense division could plausibly know that a government
21 missile contract is under government investigation. The SAC also elsewhere identifies the
22 "Patriot Air and Missile Defense System" as within Raytheon's former Integrated Defense
23 System segment. *See, e.g.*, SAC ¶ 77. That consistency increases the reliability of CW14's
24

25 ²⁹ The Missiles & Defense segment was created in April 2020, SAC ¶ 74 n. 21, so the Court
26 infers that CW14 was in either the Missile Systems segment or the Integrated Defense
27 System segment before April 2020.

28 ³⁰ As with CW8 and CW10, the Court infers CW14 means "the [2020] DOJ investigation."
See supra, n. 19. Additionally, CW14's allegation is in present tense, which implies that
CW14 is referring to an ongoing DOJ investigation, not a concluded one.

1 allegation.

2 **O. Corroborated Allegations**

3 Although the confidential witness statements are individually unreliable with a few
4 exceptions, the Court also considers them as a whole. *See Tellabs*, 551 U.S. at 322.
5 Corroborated allegations may bolster reliability. *See Zucco Partners*, 552 F.3d at 995. At
6 various points, the SAC describes the confidential witnesses as "corroborating" each other
7 and Plaintiffs' theory of fraud. *See, e.g.*, SAC at 2, ¶ 60. The SAC also implies that the
8 witness statements are connected. *See, e.g.*, SAC ¶¶ 51 ("CW2 witnessed similar
9 misconduct"), 56 ("CW3 also witnessed misconduct"), 61 ("CW5 also recounted
10 wrongdoing"). The Court disagrees. Only certain aspects of the confidential witness
11 statements corroborate each other.

12 **i. Callahan et al. Misconduct**

13 Three confidential witnesses explicitly refer to misconduct linked to Callahan,
14 McDonnell, and Fay, and three confidential witness implicitly refer to the same:

- 15 • CW4 heard from a colleague in "mid-2019" about a DOJ investigation related to
16 "issues with EACs." SAC ¶ 60.
- 17 • CW5 heard from a colleague in "mid-2018" that an internal audit resulted in
18 Callahan, McDonnell, and Fay being terminated for "swapping labor charges
19 amongst contracts" and/or "\$250 million of false labor charges related to a large and
20 important contract for Raytheon's Naval Systems." SAC ¶¶ 63, 64. CW5's colleague
21 told CW5 that Callahan, McDonnell, and Fay were swapping labor charges to
22 preserve their performance bonuses, and to protect Raytheon from the consequences
23 of being over budget or behind schedule. SAC ¶ 63. CW5's colleague also told CW5
24 that Callahan reported to Lawrence, the "Vice President overseeing Raytheon's
25 Missile Systems," and that the Missile Systems CFO "was terminated around that
26 time." SAC ¶ 61, 63.
- 27 • CW6 alleged that Callahan, McDonnell, and Fay were fired "in October 2018" for
28 "hid[ing] their cost overruns on their EACs." SAC ¶ 66.
- CW7 alleged "a couple-dozen Tucson-based employees" were fired before CW7
left in November 2018 for "Naval Air Division ... EAC issues" "implicating"
Missile Systems VP Lawrence and "potentially" Tina Fay. SAC ¶ 67.
- CW11 heard "in 2018 or 2019" that "the Pentagon was looking into [several
Raytheon employees "fudging numbers" on contracts]," and that Missile Systems
VP Lawrence "eventually" was terminated in early 2019. SAC ¶ 90.

- 1 • CW13 alleges Callahan, McDonnell, and Fay were fired "in October 2018" for
2 "manipulating EACs" on "a Navy contract worth over \$200 million." SAC ¶ 94.

3 Similarities notwithstanding, these six accounts do not "corroborate" each other in
4 a strong sense of the word. The accounts are individually quite unreliable. CW4's account
5 is hearsay from a "Senior Manager in Material Program Management," CW5's account is
6 internally inconsistent hearsay and double hearsay from a "Director of Capture
7 Management Excellence," CW11's account is also hearsay, CW6 is three levels below a
8 "Global Supply System Management Vice President," CW7 is three levels below a
9 "Department Manager," and CW13 is three levels below one of an unknown number of
10 Missiles & Defense Vice Presidents. The accounts are also in some tension with each other.
11 CW7 alleges Lawrence was "implicated" before CW7 left Raytheon in November 2018,
12 but CW11 heard "in 2018 or 2019" that Lawrence was "eventually" terminated in March
13 2019. CW5 refers to "\$250 million in false labor *charges* [related both to one contract and
14 "amongst" contracts]," but CW13 refers to misconduct in a "*contract* worth over \$200
15 million." Finally, the accounts do not corroborate each other in all respects. For example,
16 only CW11 specifically heard that Lawrence was terminated "eventually"; CW5 only heard
17 that Callahan reported to Lawrence, and CW7 alleged Lawrence was "implicated."
18 Similarly, only CW4 heard about a DOJ investigation; CW5 heard about an internal audit,
19 and CW11 heard about a Pentagon investigation.

20 Despite the relatively weak corroboration of these accounts, they do combine to
21 form a recognizable whole. Considering the various issues identified above, the six
22 accounts do not exactly provide a clear "indicia of reliability." *Zucco Partners*, 552 F.3d at
23 995. In *Zucco Partners*, for example, corroboration indicated reliability where an "ID
24 Systems Vice President" added compatible and illuminating details to the account of an
25 "ID Systems Controller" who reported directly to the ID Systems CFO defendant. *Id.* at
26 993. Similarly, in *Glazer*, four confidential witnesses described in different ways how they
27 and other sales representatives were pressured by senior executives including the
28

1 company's Chief Revenue Officer.³¹ 63 F.4th at 772–73. By contrast, here all six accounts
2 appear be based on rumors. That is not the kind of corroboration that substantially increases
3 reliability. But at least some indicia of reliability are present. All refer to something that
4 happened around 2018. Several refer to a Navy contract, contracts, or section (CW5, CW7,
5 CW13). Several refer to Callahan, McDonnell, or Fay (CW5, CW6, CW7, CW13). And
6 two provide a high level of nearly compatible detail: the misconduct involved hiding cost
7 overruns, either by shifting labor charges from one contract to another to avoid overages
8 (CW5), or "moving money around at the end of a project" (CW6).

9 These family resemblances are sufficiently reliable to support the following,
10 somewhat vague allegation: Callahan, McDonnell, and Fay were fired around 2018 for
11 hiding cost overruns on a contract or contracts in the Naval Systems subsection of
12 Raytheon's Missile Systems segment.

13 Notably, the witness accounts do not corroborate each other in several key respects.
14 First, they do not corroborate how the misconduct was uncovered. Only three accounts
15 allege an investigation or audit, and each alleges something different. Of course, Raytheon
16 presumably uncovered misconduct somehow because Callahan, McDonnell, and Fay were
17 fired. But *how* the misconduct was uncovered is relevant to Plaintiffs' argument that
18 Raytheon had a duty to disclose the issue. That critical detail is not alleged with sufficient
19 reliability. Second, the confidential witness accounts do not corroborate each other with
20 respect to Callahan's, McDonnell's, and Fay's motivation. Only CW5 heard anything about
21 their motivation, and said it was primarily for private benefit—securing performance
22
23
24
25

26
27 ³¹ Plaintiffs' counsel also represented the *Glazer* plaintiffs. The contrast between this case
28 and that one is therefore particularly illuminating. *See, e.g.*, Second Consolidated Amended
Complaint ¶¶ 52(F), 99(E), *Sayce v. Forescout Techs., Inc.*, No. 20-cv-00076-Sl., 2021 WL
9121232 (N.D. Cal. May 10, 2021) (much stronger confidential witness accounts).

1 bonuses.³² Third, the confidential witness accounts above do not corroborate each other
2 with respect to Missile Systems VP Lawrence or the Missile Systems CFO. Only one
3 witness vaguely alleges Lawrence was "implicated" and another heard he was terminated
4 "eventually." And only one account heard that the CFO was terminated "around that time."
5 That is not enough to reliably allege that either was fired in connection with Callahan,
6 McDonnell, and Fay. Fourth, and finally, the confidential witness accounts do not
7 corroborate the value or size of the misconduct. CW5 heard that the amount was \$250
8 million in false labor charges on one and several contracts, while CW13 alleges misconduct
9 on a contract worth over \$200 million.³³ The other accounts do not quantify the issue at all.
10 None report consequences beyond the terminations. Without any corroborating
11 information, the Court cannot infer the scale of the misconduct.

12 **ii. Murphy et al. Misconduct**

13 Three confidential witnesses explicitly refer to misconduct linked to Murphy,
14 Asbell, and Sabin:

- 15 • CW8 alleges "the DOJ investigation of the 2017 Raytheon contract led to the
16 eventual ouster" of Murphy ("Vice President of Contracts, Offset & Localization
17 for the Missiles & Defense division"), Asbell ("CFO for the Missiles & Defense
18 division"), and Sabin ("Raytheon's Vice President and General Counsel for the
19 Missiles & Defense division"). SAC ¶ 68.
- 20 • CW9 alleges Murphy ("VP of Contracts"), Asbell ("CFO of Contracts"), and Sabin
21 ("VP and General Counsel"), "all of whom worked in Missiles & Defense, left
22 Raytheon due to 'EAC-type accounting issues.'" SAC ¶ 69.
- 23 • CW10 alleges "the ouster of Murphy, Asbell, and Sabin [was] linked to the DOJ
24 investigation." SAC ¶ 72.

23 ³² CW5 also heard that the motivation was to benefit Raytheon, but that seems ancillary or
24 tacked on. CW5 provides much more detail about the incentive bonus structure and
25 discusses the private benefit before mentioning a benefit to Raytheon. The private benefit
26 is specific and cogent. The benefit to Raytheon is generic. And CW5 heard that Callahan
27 et al. were *fired* for hiding cost overruns, not that they were *directed* to do so for Raytheon's
28 benefit.

³³ At oral argument, Plaintiffs acknowledged that "only relying on CW5 ... might be ...
defeating." Hr'g Trns. 22:3–4. Plaintiff was talking about CW5's internal-audit allegation,
but the reasoning applies with equal force to the monetary value allegation.

1 As discussed above, the Court infers "the" DOJ investigation refers to the
2 investigation disclosed after Raytheon was subpoenaed in October 2020. *See supra* n. 19;
3 SAC ¶ 70 (departures announced in January 2022). Despite some issues, these accounts
4 loosely corroborate each other. CW8 and CW9 were not described with sufficient
5 particularity from which the Court could infer their personal knowledge, and they
6 inconsistently allege Asbell's and Sabin's position within Raytheon. CW10 was described
7 with sufficient particularity, but not with respect to allegations about "the DOJ
8 investigation." As with the allegations about Callahan et al., the "corroboration" of
9 allegations about Murphy et al. only slightly increases their reliability. None of these
10 allegations specifically allege misconduct, only that the DOJ investigation "led" or "was
11 linked" to the departures. Even so, and if only to ensure every inference is drawn in
12 Plaintiffs' favor, the three accounts are consistent enough to reliably allege that the DOJ
13 investigation resulted in Murphy, Asbell, and Sabin's termination.

14 **iii. General or Widespread Misconduct**

15 Twelve confidential witnesses allege misconduct of some kind or another, to some
16 degree or another, in some segment or another, but the allegations are not coherent enough
17 to corroborate each other meaningfully. Several accounts refer to misconduct linked with
18 Callahan, McDonnell, and Fay (CW4–CW7, CW11, CW13). Two refer to misconduct
19 linked with the DOJ investigation and, by extension Murphy, Asbell, and Sabin (CW8,
20 CW9). One confirms Murphy, Asbell, and Sabin were fired, but does not allege misconduct
21 (CW10). One refers to misconduct—including a failure to solicit competitive bidding—
22 within a large support-services contract in an unspecified part of Raytheon's business
23 (CW1). One refers to misconduct—limited to failure to solicit competitive bidding—
24 involving "maybe about 30%" of Raytheon's "aerospace and missile and defense" suppliers
25 (CW2). One refers to misconduct involving slowing down "almost every project" and on
26 contracts "valued in the high millions" within the Missiles and Defense segment,
27 particularly the Javelin and Tomahawk programs (CW3). And one refers to a total lack of
28 accountability and "a** covering all around" (CW12). At oral argument, Plaintiffs

1 characterized their broadest theory of misconduct as relating to a "culture of overspending."
2 Hr'g Tr. 26:12, 38:13–14. Plaintiffs urged the Court to connect the alleged "issues with ...
3 miscoding, with respect to EAC cost overruns, ... with ... competitive bidding, and ...
4 hundreds of millions of dollars in overspending, not necessarily related to Missiles and
5 Defense." Hr'g Tr. 38:4–12. Plaintiffs' point is that with all this wrongdoing affecting every
6 corner of Raytheon, the Officers simply must have known about it.

7 These accounts fail to form a reliable allegation of widespread fraud because they
8 do not all allege or plausibly suggest widespread fraud. First, a "culture of overspending"
9 is so broad it ceases to describe misconduct and more accurately alleges mismanagement.
10 Second, only CW12 alleges fraud extending to all of Raytheon. The limitations of that
11 account are discussed above and are relatively obvious. CW3's allegation of misconduct
12 on "almost every project" is similarly uncorroborated, unreliable, and implausible given
13 Raytheon's compliance workforce. The same is true for CW2's allegation of misconduct
14 involving "maybe about 30%" of Raytheon's aerospace and missiles and defense suppliers.
15 The other accounts allege a much narrower issue. CW1 only reliably alleges misconduct
16 on one contract. Callahan et al. were allegedly terminated for misconduct on one or a few
17 contracts, and Murphy et al. were allegedly terminated for misconduct on four contracts in
18 a different segment. Misconduct involving fewer than ten contracts and resulting in at least
19 six terminations hardly warrants the inference that misconduct was rampant at Raytheon.

20 **iv. Conclusion and Summary**

21 Putting together the sufficiently reliable individual and corroborated confidential
22 witness accounts, the following allegations emerge. At some point before 2018, a relatively
23 low-level employee identified many instances of wrong-doing on a large support-services
24 contract (CW1). In 2018, Callahan, McDonnell, and Fay were fired for hiding cost overruns
25 on a contract or contracts in the Naval Systems subsection of Raytheon's Missile Systems
26 segment (CW4, CW5, CW6, CW7, CW11, CW13). At some point after April 2020, one of
27 Raytheon's Intelligence & Space segment employees determined that one of Raytheon's
28 EACs had accumulated "hundreds of millions" in cost overruns but did not allege the

1 overruns were the result of misconduct (CW10). At some point after Raytheon disclosed
2 the 2020 DOJ investigation, Murphy, Asbell, and Sabin were fired in connection with its
3 focus on three Integrated Defense System contracts from 2011–2013 and one from 2017
4 (CW8, CW9, CW10). Finally, the 2020 DOJ investigation involves the Patriot Guided
5 Enhanced Missile Program, which was part of the Integrated Defense System segment
6 (CW14).

7 These allegations do not connect usefully for Plaintiff. Callahan et al. were fired for
8 misconduct in Raytheon's Missile Systems segment, while Murphy et al. were fired for
9 misconduct in Raytheon's Integrated Defense Systems segment. Plaintiffs emphasize that
10 both were within what became "Missiles & Defense." *See, e.g.*, Response at 28–29. That
11 connection is weak because "Missiles & Defense" was created in April 2020. SAC ¶ 74 n.
12 21. At oral argument, Plaintiffs claimed entitlement to the inference that the DOJ
13 investigation related to Missile Systems because Raytheon's October disclosure did not
14 specify Integrated Defense Systems. Hr'g Tr. at 14:9–15. Following Plaintiffs' logic, the
15 2018 and 2020 misconduct were connected as a matter of legal inference for a brief
16 window. The window opened when Raytheon disclosed an investigation into "Missiles &
17 Defense" and closed when Raytheon clarified that the investigation had to do with
18 "Integrated Defense Systems." So much should not depend upon an inferential flicker.
19 Besides, the inference is both unwarranted and a dead end. Drawing inferences in the non-
20 movant's favor is meant to allow discovery on potentially meritorious claims. And an
21 investigation, without more, indicates nothing. *Loos*, 762 F.3d at 890. In October 2020,
22 that's all there was. Moving on, the SAC does not allege which segment held CW1's
23 support-services contract, and no inference to connect it to any other named segments is
24 warranted. Even if it were, Plaintiffs cannot thus elude their obligation to state the basis of
25 the SAC's allegations with particularity. Similarly, CW10's allegation of cost overruns on
26 an unspecified EAC provides no particular basis for inferring misconduct or that it was not
27 part of a contract in the Intelligence & Space segment where CW10 worked. These
28 shortcomings are fatal to Plaintiffs' case in many ways, as discussed throughout this Order.