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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SUSAN HUFNAGLE, individually and on behalf of all others similarly situated,)	Case No. CV 10-08695 DDP (VBKx)
)	
Plaintiff,)	ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
v.)	
)	
RINO INTERNATIONAL CORPORATION, DEJON ZOU, JENNY LIUE, BEN WANG, LI YU, KENNITH C. JOHNSON, JIANPING QIU, ZIE QUAN, and ZEJIN LI,)	[Dkt. No. 212]
)	
Defendants.)	

Presently before the court is Defendant Frazer Frost, LLP ("Frazer Frost" or "the Auditor")'s Motion to Dismiss. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.

I. Background

This case is a purported class action alleging violations of the Securities Exchange Act of 1934, 15 U.S.C. § 78 *et seq.* (the "Exchange Act") brought on behalf of a class consisting of all persons and entities, other than Defendants, who purchased publicly

1 traded Rino International Corporation ("Rino") common stock and
2 call options, and who sold put options of Rino, between March 31,
3 2009 and November 17, 2010 (the "Class Period"). (Second Amended
4 Complaint ("SAC") ¶ 3.) The SAC alleges that Defendants, excluding
5 movant Frazer Frost, engaged in a wide-ranging fraud. (SAC ¶ 5.)
6 Pursuant to a settlement agreement, Plaintiff has dismissed all
7 claims against all Defendants, with the exception of Frazer Frost.
8 (Dkt. No. 235.)

9 Plaintiff alleges that auditor Frazer Frost recklessly ignored
10 obvious signs of financial irregularities and failed to follow
11 generally accepted auditing standards in its review of RINO. (SAC
12 ¶¶ 15-19, 120-126, 156-196.) The SAC alleges that Frazer Frost
13 then issued false and misleading opinions regarding RINO's
14 financial statements. (SAC ¶ 14, 190-196.) Specifically,
15 Plaintiff alleges that Frazer Frost's 2009 audit opinion falsely
16 represented that Frazer's audit conformed to the standards of the
17 Public Company Accounting Oversight Board ("PSAOB") and that RINO's
18 financial statements conformed with generally accepted accounting
19 principles ("GAAP"). (SAC ¶ 190.) Frazer Frost now moves to
20 dismiss the SAC.

21 **II. Legal Standard**

22 A complaint will survive a motion to dismiss when it contains
23 "sufficient factual matter, accepted as true, to state a claim to
24 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
25 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
26 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
27 "accept as true all allegations of material fact and must construe
28 those facts in the light most favorable to the plaintiff." Resnick

1 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
2 need not include "detailed factual allegations," it must offer
3 "more than an unadorned, the-defendant-unlawfully-harmed-me
4 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
5 allegations that are no more than a statement of a legal conclusion
6 "are not entitled to the assumption of truth." Id. at 679. In
7 other words, a pleading that merely offers "labels and
8 conclusions," a "formulaic recitation of the elements," or "naked
9 assertions" will not be sufficient to state a claim upon which
10 relief can be granted. Id. at 678 (citations and internal
11 quotation marks omitted).

12 "When there are well-pleaded factual allegations, a court should
13 assume their veracity and then determine whether they plausibly
14 give rise to an entitlement of relief." Id. at 679. Plaintiffs
15 must allege "plausible grounds to infer" that their claims rise
16 "above the speculative level." Twombly, 550 U.S. at 555.
17 "Determining whether a complaint states a plausible claim for
18 relief" is a "context-specific task that requires the reviewing
19 court to draw on its judicial experience and common sense." Iqbal,
20 556 U.S. at 679.

21 To state a claim for securities fraud under Section 10(b) of
22 the Securities Exchange Act and Rule 10b-5 promulgated thereunder,
23 plaintiffs must plead particularized facts demonstrating "(1) a
24 material misrepresentation or omission of fact, (2) scienter, (3) a
25 connection with the purchase or sale of a security, (4) transaction
26 and loss causation, and (5) economic loss." Zucco Partners, LLC v.
27 Digimarc Corp., 552 F.3d 981, 990 (9th Cir. 2009). A complaint
28 alleging securities fraud under the Private Securities Litigation

1 Reform Act of 1995 ("PSLRA") must meet a heightened pleading
2 standard. The PSLRA requires that any securities fraud claim
3 "[s]pecify each statement alleged to have been misleading, the
4 reason or reasons why the statement is misleading, and . . . state
5 with particularity facts giving rise to a strong inference that the
6 defendant acted with the required state of mind." 15 U.S.C.
7 Section 78u-4(b)(1), (b)(2). When analyzing intent, courts must
8 view complaints holistically, and should deny a motion to dismiss
9 if the inference of scienter advanced by plaintiffs is "at least as
10 compelling as any opposing inference one could draw from the facts
11 alleged." Matrixx Initiatives, Inc. v. Siracusano, 141 S. Ct.
12 1309, 1324 (2011) (citing Tellabs, Inc. v. Makor Issues & Rights,
13 Ltd., 551 U.S. 308, 324 (2007)).

14 **III. Discussion**

15 A. Subjective Falsity

16 Frazer Frost argues that the SAC must be dismissed because it
17 fails to allege that the Auditor's opinions are subjectively false.
18 "When a plaintiff challenges opinion statements under the
19 securities law, the plaintiff must allege with particularity that
20 the defendant believed his or her opinion was false." Buttonwood
21 Tree Value Partners, LP v. Sweeney, - F.Supp.2d -, 2012 WL 6644397
22 at *6 (C.D. Cal. Dec. 10, 2012) (quotation omitted) (citing Va.
23 Bankshares, Inc. v. Sandberg, 501 U.S. 1083, 1085 (1991) and Rubke
24 v. Capital Bancorp, Ltd., 551 F.3d 1156, 1162 (9th Cir. 2009)).

25 Plaintiff argues that at least one court in this circuit has
26 rejected the proposition that auditors can only be held liable if
27 they subjectively believe that their own stated opinions are false.
28 (Opp. at 19 (citing In re Wa. Mut. Inc. Sec. Deriv. & ERISA Litig.,

1 694 F. Supp. 2d 1192.) The Washington Mutual court, however, did
2 recognize the Ninth Circuit's holding that auditor opinions must be
3 plead to be both objectively and subjectively false. Id. at 1223
4 (citing Rubke, 551 F.3d at 1162.) The court proceeded to find the
5 subjective falsity requirement inapplicable only because the
6 defendant auditor had stated a verifiable fact, not an opinion.
7 Washington Mutual, 694 F. Supp. 2d at 1224.

8 The court acknowledges that the Washington Mutual court
9 addressed allegations similar to those here. So too, however, did
10 a court of this district in Buttonwood, 2012 WL 6644397 at * 6.¹
11 As the court recently recognized, reiterating its earlier holding,
12 "an auditor's [generally accepted accounting standards] and GAAP
13 assertions are statements of professional judgment and opinion, not
14 verifiable fact." Id. This court agrees. As the Buttonwood court
15 initially explained, GAAP "are a collection of broad standards that
16 are couched in rather general[,] and in some cases inherently
17 subjective[,] terms" Buttonwood Tree Value Partners, LP v.
18 Sweeney, No. SACV 10-537 CJC, 2012 WL 2086607 at *2 (C.D. Cal.
19 June 7, 2012) (quotation and citation omitted). Furthermore,
20 though Plaintiff now strives to characterize Frazer Frost's opinion
21 regarding PSAOB and GAAP compliance as a statement of fact rather
22 than of belief, the SAC itself alleges that Frazer Frost issued
23 "false and misleading audit opinions," that Frazer Frost "falsely
24 opined" that Rino's statements satisfied GAAP, and that Frazer
25 Frost "provided an audit opinion" and "opined." (SAC ¶¶ 14, 121,
26

27 ¹ While the parties both cite to and discuss the earlier June
28 order by the Buttonwood court, neither party references that
court's more recent December 2012 order.

1 190, 191.) Having based her claim against Frazer Frost upon an
2 allegation that the Auditor misrepresented its own opinion,
3 Plaintiff must allege that Frazer Frost's stated opinion was
4 subjectively false. Absent any such allegation, Plaintiff cannot
5 satisfy the misrepresentation element of a securities fraud claim,
6 and the complaint must be dismissed.²

7 **IV. Conclusion**

8 For the reasons stated above, Frazer Frost's Motion to Dismiss
9 is GRANTED, with leave to amend. Any amended complaint shall be
10 filed within fourteen days of the date of this order.


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12 IT IS SO ORDERED.

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15 Dated: January 14, 2013


DEAN D. PREGERSON
United States District Judge

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26 ² Having determined that the SAC does not adequately plead
27 subjective falsity, the court does not reach the question whether
28 the SAC adequately pleads scienter, and expresses no opinion on
that issue. To the extent Plaintiff wishes to amend the scienter
allegations in light of discussions at oral argument, it is free to
do so.