

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

YUVAL LAPINER, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

CAMTEK, LTD., RAFI AMIT, RONIT  
DULBERG, YOTAM STERN, and MOSCHE  
AMIT,

Defendants

---

No. C 08-01327 MMC

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS SECOND  
AMENDED COMPLAINT**

Before the Court is defendant Camtek, Ltd.'s ("Camtek") and individual defendants Rafi Amit, Ronit Dulberg, Yotam Stern, and Moshe Amit's (collectively, "defendants") motion, filed August 17, 2009, to dismiss plaintiff Yuval Lapiner's ("plaintiff") Second Consolidated Amended Class Action Complaint ("SAC"), pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff has filed opposition, to which defendants have replied.<sup>1</sup> Having read and considered the papers filed in support

---

<sup>1</sup> On January 15, 2010, plaintiff filed a motion to submit a sur-reply. (See Admin. Mot. to File Pl.'s Sur-Reply.) Plaintiff's motion is hereby denied, as plaintiff's proposed filing is more properly characterized as a request to amend the complaint to add new factual allegations, and, as set forth below, plaintiff will be afforded the opportunity to file a third amended complaint.

1 of and in opposition to the motion, the Court rules as follows.<sup>2</sup>

## 2 **BACKGROUND**

3 In the SAC, plaintiff alleges Camtek is an Israeli corporation with its principal place of  
4 business in Israel (see SAC ¶ 12) and that the four individual defendants are officers of  
5 Camtek (see SAC ¶¶ 15-18).<sup>3</sup> According to plaintiff, between November 22, 2005 and  
6 March 20, 2007 (“class period”), defendants engaged in a “systematic scheme . . . to inflate  
7 the price of Camtek common stock” by “publishing false and materially inflated reports of  
8 Camtek’s revenues, earnings, cash flow from operations (‘CFFO’) and days sales  
9 outstanding (‘DSO’).” (See SAC ¶¶ 1, 2.) Specifically, plaintiff alleges that defendants (1)  
10 cashed in letters of credit issued on orders of Camtek products before those orders were  
11 accepted (SAC ¶¶ 39-40), (2) acted as a middleman in various transactions with Camtek’s  
12 affiliate companies (SAC ¶ 50), (3) engaged in “large-scaled factoring,” whereby Camtek  
13 would recognize immediate cash by selling its accounts receivable to financial institutions  
14 (SAC ¶¶ 2, 41), (4) “improper[ly] . . . recogniz[ed] sales revenue from [products] still under  
15 evaluation” (SAC ¶ 37), and (5) “mischaracterized or hid . . . growth in inventories” and  
16 failed to timely disclose inventory write-offs (SAC ¶ 36). Plaintiff further alleges that, as a  
17 result of defendants’ alleged false and misleading statements and omissions, plaintiff  
18 suffered “material losses when the truth about Camtek’s business prospects and financial  
19 status became known in the marketplace.” (See SAC ¶ 6.)

20 Based on said allegations, plaintiff asserts two causes of action: (1) violation of  
21 Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b),  
22 and Rule 10b-5 promulgated thereunder; and (2) violation of § 20(a) of the Exchange Act,  
23 15 U.S.C. § 78t(a). Plaintiff brings such claims as a putative class action, alleging that he,  
24 and others similarly situated, purchased Camtek stock on the NASDAQ stock exchange at

---

26 <sup>2</sup> On November 4, 2009, the Court took the matter under submission and vacated  
27 the hearing scheduled for November 13, 2009.

28 <sup>3</sup> Defendants Rafi Amit and Yotam Stern are also alleged to be directors of Camtek.  
(See SAC ¶¶ 15, 17.)

1 artificially inflated prices during the class period. (See SAC ¶¶ 1, 2, 11.)

## 2 LEGAL STANDARD

3 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure can be based  
4 on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a  
5 cognizable legal theory. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
6 1990). In analyzing a motion to dismiss, a district court must accept as true all material  
7 allegations in the complaint, and construe them in the light most favorable to the  
8 nonmoving party. See NL Industries, Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).  
9 “To survive a motion to dismiss, a complaint must contain sufficient factual material,  
10 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal,  
11 129 S. Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570). “Factual allegations  
12 must be enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at  
13 555. Courts “are not bound to accept as true a legal conclusion couched as a factual  
14 allegation.” See Iqbal, 129 S. Ct. at 1950 (internal quotation and citation omitted).

## 15 DISCUSSION<sup>4</sup>

### 16 I. Subject Matter Jurisdiction

17 By order filed June 2, 2009, the Court dismissed, with leave to amend, plaintiff’s  
18 Consolidated Amended Class Action Complaint for lack of subject matter jurisdiction. In  
19 particular, the Court found “plaintiff ha[d] failed to expressly allege or otherwise to show he  
20 purchased his shares on a United States exchange.” (Order Granting Defs.’ Mot. to  
21 Dismiss Pl.’s Consolidated Am. Class Action Compl. 3:8-9, filed June 2, 2009.) In the SAC,  
22 plaintiff alleges he purchased his Camtek stock on the NASDAQ stock exchange. (See  
23 SAC ¶¶ 2, 11, 13, 14.) Defendants argue the Court nonetheless lacks subject matter  
24 jurisdiction over the instant action because, inter alia, “the conduct challenged under

---

25  
26 <sup>4</sup> Defendants request this Court take judicial notice of certain documents attached to  
27 the Declaration of Richard H. Zelichov in Support of Motion to Dismiss Plaintiff’s Second  
28 Amended Class Action Complaint (“Zelichov Decl.”). Plaintiff opposes the request to the  
extent it pertains to documents not “directly referred to or quoted from the Complaint.”  
(See Opp. 24:5-18.) Where the Court has relied on any such evidence, the objection is  
overruled and otherwise is not addressed herein.

1 Section 10(b)—alleged misleading press releases and conference calls—emanated from  
2 outside the U.S.” and “most of Camtek’s stock was held in Israel by Israelis.” (See Mot. at  
3 24:1-25:3.) Defendants’ argument fails on two grounds.

4 First, in Morrison v. National Australia Bank, Ltd., 130 S. Ct. 2869 (2010), the  
5 Supreme Court recently held that a district court’s determination of the “extraterritorial  
6 reach” of § 10(b) of the Exchange Act is a “merits question” and not a question of federal  
7 subject matter jurisdiction. See id. at 2877 (“[T]o ask what conduct § 10(b) reaches is to  
8 ask what conduct § 10(b) prohibits, which is a merits question[;] [s]ubject-matter  
9 jurisdiction, by contrast, refers to a tribunal’s power to hear a case.” (internal quotations  
10 and citations omitted)).

11 Second, defendants’ argument is based on the Second Circuit’s “‘conduct’ or  
12 ‘effects’ test.” (See Mot. at 24:5-8.) In Morrison, the Supreme Court expressly disapproved  
13 the Second Circuit’s test and announced a new “transactional test” for determining the  
14 extraterritorial reach of § 10(b) and Rule 10b-5. See Morrison, 130 S. Ct. at 2879-81  
15 (Scalia, J.), 2888 (Stevens, J., concurring). Under the “transactional test,”  
16 § 10(b) applies to “transactions in securities listed on domestic exchanges, and domestic  
17 transactions in other securities.” Id. at 2884. “The focus of the Exchange Act is not upon  
18 the place where the deception originated, but upon purchases and sales of securities in the  
19 United States.” Id.

20 In light of the above, the Court will construe defendants’ Rule 12(b)(1) jurisdictional  
21 challenge as a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief  
22 can be granted. See id. at 2877 (construing Rule 12(b)(1) challenge to subject matter  
23 jurisdiction as Rule 12(b)(6) motion).

24 Turning to the application of § 10(b), the Court finds plaintiff’s factual allegations that  
25 Camtek stock was traded on the NASDAQ exchange and that he purchased his stock on  
26 the NASDAQ exchange (see SAC ¶¶ 2, 11, 13, 14) are sufficient at the pleading stage to  
27 establish the applicability of the Exchange Act. See Morrison, 130 S. Ct. at 2884 (holding  
28 securities laws apply to “transactions in securities listed on domestic exchanges”). In

1 particular, defendants' assertions that the conduct on which plaintiff's claims are based took  
2 place outside of the United States, specifically in Israel, and that the majority of Camtek  
3 stock is, purportedly, held in Israel, are unavailing after Morrison, see id., and to the extent  
4 defendants challenge the truth of plaintiff's allegations regarding the history of his Camtek  
5 stock purchases, such argument is unavailing at the pleading stage, as the Court is  
6 required to accept as true all well-pleaded factual allegations, see Gompfer v. VISX, Inc.,  
7 298 F.3d 893, 895 (9th Cir. 2002).

8 Accordingly, the Court finds the Exchange Act applies to defendants' conduct as  
9 alleged in the SAC, and to the extent defendants move to dismiss for lack of subject matter  
10 jurisdiction, the motion will be denied.

## 11 **II. Section 10(b)**

12 To allege a § 10(b) and Rule 10b-5 claim, a plaintiff must allege "(1) a material  
13 misrepresentation or omission of fact, (2) scienter, (3) a connection with the purchase or  
14 sale of a security, (4) transaction and loss causation, and (5) economic loss." Dura  
15 Pharm., Inc. v. Broudo, 544 U.S. 336, 341 (2005). Claims brought under § 10(b) and Rule  
16 10b-5 must meet the particularity requirements of Rule 9(b) of the Federal Rules of Civil  
17 Procedure. See Fed. R. Civ. P. 9(b) ("In alleging fraud . . . , a party must state with  
18 particularity the circumstances constituting the fraud . . ."); Semegen v. Weidner, 780 F.2d  
19 727, 731 (9th Cir. 1985). "In a securities fraud action, a pleading is sufficient under Rule  
20 9(b) if it identifies the circumstances of the alleged fraud so that the defendant can prepare  
21 an adequate answer." Fecht v. Price Co., 70 F.3d 1078, 1082 (9th Cir. 1995). To provide  
22 sufficient notice, the plaintiff, in addition to alleging the "time, place, and nature of the  
23 alleged fraudulent activities," must "plead evidentiary facts" to establish any allegedly false  
24 "statement was untrue or misleading when made." See id.

25 Further, the plaintiff must meet the heightened pleading requirements of the Private  
26 Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4, which requires the  
27 plaintiff to "specify each statement alleged to have been misleading [and] the reason or  
28 reasons why the statement is misleading." § 78u-4(b)(1). Additionally, the complaint must

1 “state with particularity facts giving rise to a strong inference that the defendant acted with  
2 the required state of mind.” § 78u-4(b)(2). To the extent an allegation is based on  
3 information and belief, the plaintiff must allege “with particularity all facts on which that  
4 belief is formed.” *Id.* In so doing, the plaintiff must “reveal the sources of [his] information.”  
5 In re Daou Sys., Inc., 411 F.3d 1006, 1015 (9th Cir. 2005) (internal quotation omitted).

6 Where a complaint alleges an omission, the “omission must be misleading” in order  
7 to be actionable under the securities laws. Brody v. Transitional Hospitals Corp., 280 F.3d  
8 997, 1006 (9th Cir. 2002). “[I]n other words it must affirmatively create an impression of a  
9 state of affairs that differs in a material way from the one that actually exists.” *Id.* “Silence,  
10 absent a duty to disclose, is not misleading.” Basic, Inc. v. Levinson, 485 U.S. 224, 239  
11 n.17 (1988).

#### 12 **A. Group Pleading**

13 In the SAC, plaintiff “presume[s] that the false, misleading and incomplete  
14 information conveyed in the Company’s public filings, press releases and other publications  
15 . . . are the collective actions” of all of the above-named defendants. (SAC  
16 ¶ 21.) The “group pleading doctrine” allows plaintiffs to “rely on a presumption that  
17 statements in ‘prospectuses, registration statements, annual reports, press releases, or  
18 other group-published information,’ are the collective work of those individuals with direct  
19 involvement in the everyday business of the company.” In re Stratosphere Corp. Sec.  
20 Litig., 1 F. Supp. 2d 1096, 1108 (D. Nev. 1998). Although, to date, the Ninth Circuit has not  
21 addressed the issue, the “majority of district courts within the Ninth Circuit, have concluded  
22 that group pleading is no longer viable under the PSLRA.” See In re Impac Mortgage  
23 Holdings, Inc. Sec. Litig., 554 F. Supp. 2d 1083, 1092 (C.D. Cal. 2008); see also Glazer  
24 Capital Mgmt., LP v. Magistri, 549 F.3d 736, 745 (9th Cir. 2008) (declining to address  
25 “whether, in some circumstances, it might be possible to plead scienter under a collective  
26 theory”). In any event, even if the group pleading doctrine remains viable, the SAC’s  
27 allegations “still have to satisfy the particularity requirements of the PSLRA.” In re Tibco  
28 Software Inc. Sec. Litig., No. 05-2146, 2006 WL 1469654, at \*28 (N.D. Cal. May 25, 2006).

1 As discussed below, plaintiff has failed to satisfy the PSLRA's particularity requirements  
2 with respect to its allegations against Camtek and the individual defendants

3 **B. Material Misrepresentation or Omission**

4 Plaintiff alleges that defendants, at various times during the class period, made  
5 material misstatements in various press releases, SEC filings, and earnings calls. (See  
6 SAC ¶¶ 34, 58-102.) In support thereof, the SAC contains lengthy block quotes from  
7 Camtek's press releases, including statements whose truthfulness plaintiff does not appear  
8 to contest. (See, e.g., SAC ¶ 58 (containing page-long block quote that includes statement  
9 "Camtek Ltd. . . . today announced results for the third quarter of 2005, which ended on  
10 September 30"); id. ¶ 64 (containing page-long block quote that includes statement "[t]he  
11 company is also announcing that as of March 19, 2006, Mrs. Ronit Dulberg will replace Mr.  
12 Moshe Amit as Chief financial Officer of the Company"); see also SAC ¶¶ 61, 68, 73, 81,  
13 87, 94.) Following each block quote, plaintiff alleges that "such statements . . . were  
14 materially false and misleading." (See, e.g., SAC ¶¶ 59, 65.)

15 As the party bringing the instant action, plaintiff is responsible for identifying with  
16 particularity the statements plaintiff claims are false and misleading, see 15 U.S.C. § 78u-  
17 4(b)(1); the Court is not required "to search through" the 57-page SAC in an effort to link  
18 the allegedly false statements to the reasons those statements purportedly are false. See  
19 In re Pixar Sec. Litig., 450 F. Supp. 2d 1096, 1100-01 (N.D. Cal. 2006) (dismissing  
20 allegations contained in "extensive block quotes" that "contain[ed] true facts or statements  
21 which [p]laintiff [did] not seem to contest"); see also Falkowski v. Imation Corp., 309 F.3d  
22 1123, 1133 (9th Cir. 2002) (dismissing, as "vague," complaint that failed to identify which  
23 statements were false and how they were false), amended by Falkowski v. Imation Corp.,  
24 320 F.3d 905 (9th Cir. 2003). Consequently, to the extent plaintiff relies on such  
25 allegations as discussed above, plaintiff's claims are subject to dismissal. Further, as  
26 discussed below, to the extent plaintiff has sufficiently identified the statements on which he  
27 relies, the pleadings remain insufficient.

28 Plaintiff identifies as misleading certain statements by defendants regarding

1 Camtek’s operating cash flow and revenue (see SAC ¶¶ 59, 67, 75, 76, 83, 84, 89, 97, 99,  
2 100) and the ratio between its receivables and revenues (also referred to as “DSO”) (see  
3 SAC ¶¶ 38, 83, 89).<sup>5</sup> In that regard, plaintiff does not allege the reported numbers  
4 themselves were false, but that the statements reporting them were misleading because  
5 defendants omitted to inform investors that the revenues, operating cash flow, and DSO  
6 were the result of “undisclosed and improper revenue recognition techniques.” (See SAC  
7 ¶ 59; see also SAC ¶¶ 62, 65, 67, 69, 74, 76, 82, 84, 88, 90, 98, 99.) Specifically, plaintiff  
8 alleges that defendants (1) cashed in letters of credit issued on orders of Camtek products  
9 before those orders were accepted (SAC ¶¶ 39-40), (2) acted as a middleman in various  
10 transactions with Camtek’s affiliate companies (SAC ¶ 50), (3) engaged in “large-scale  
11 factoring,” whereby Camtek would recognize immediate cash by selling its accounts  
12 receivable to financial institutions (SAC ¶¶ 2, 41), (4) “improper[ly] . . . recogniz[ed] sales  
13 revenue from [products] still under evaluation” (SAC ¶ 37), and (5) “mischaracterized or hid  
14 . . . growth of inventories” and failed to timely disclose inventory write-offs (SAC ¶ 36).

15       Where, as here, the allegations are based on “information and belief” (see SAC at  
16 2:3-10), the complaint must allege “with particularity all facts on which that belief is formed.”  
17 See 15 U.S.C. § 78u-4(b)(1); In re Silicon Graphics, Inc. Sec. Litig., 183 F.3d 970, 985 (9th  
18 Cir. 1999) (holding “plaintiff must provide, in great detail, all the relevant facts forming the  
19 basis of [plaintiff’s] belief,” including “the sources of [plaintiff’s] information”), overruled on  
20 other grounds, South Ferry LP, No. 2 v. Killinger, 542 F.3d 776 (9th Cir. 2008)).

21       Here, the SAC alleges no facts to support plaintiff’s allegations regarding letters of  
22 credit. The SAC states only that defendants “never disclosed that [Camtek] had in fact  
23 used these letters of credit arrangements,” (see SAC ¶ 40); nowhere in the SAC does  
24 plaintiff state the basis for his belief that the letters of credit were so used. In support of his  
25 allegation that Camtek improperly acted as a middle-man, plaintiff alleges that Camtek

---

27       <sup>5</sup> With the exception of a single statement regarding on-site evaluation times,  
28 discussed below, no other sufficiently-identified statement is alleged to be false or  
misleading.



1 “belatedly disclosed in its 2008 Form 20-F that the actual amount of sales to parents and  
2 affiliates in 2006 was \$407,000,” concluding therefrom that a previous disclosure in the  
3 amount of \$240,000 was false. (See SAC ¶ 50.) According to the SAC, however, the  
4 \$240,000 figure was with reference to the second quarter of 2006, whereas the \$407,000  
5 figure reflects such sales for the full year. (See *id.*) Further, while the complaint is replete  
6 with assertions that defendants engaged in factoring, plaintiff’s only factual allegation  
7 pertaining to factoring is that, on June 29, 2007, Camtek disclosed that as of December 31,  
8 2006, approximately \$2.5 million in receivables were factored. (See SAC ¶ 45.) Plaintiff  
9 only speculates that the “factoring balance might well have reached a level of \$6 million  
10 and possibly as high as \$10 million to \$15 million” during the class period. (See SAC ¶ 46.)  
11 Similarly, plaintiff’s assertion as to premature recognition of revenue is based solely on  
12 Camtek’s 2006 Form 20-F, where Camtek revealed that its inventory levels included \$11.53  
13 million during 2005 and grew to \$18.372 million during 2006 (see SAC ¶ 37); an increase in  
14 inventory, however, does not necessarily imply revenue was prematurely recognized.  
15 Although plaintiff does allege facts sufficient to support his allegation that defendants did  
16 not disclose inventory growth and write-offs (see SAC ¶ 36), such omission, in the absence  
17 of a duty to disclose, is, as discussed below, insufficient to support plaintiff’s claims.

18 “Silence, absent a duty to disclose, is not misleading under Rule 10b-5.” *Basic*, 485  
19 U.S. at 239 n. 17. The complaint “must specify the reason or reasons why the statements  
20 made by [defendants] were misleading or untrue, not simply why the statements were  
21 incomplete.” *Brody*, 280 F.3d at 1006; see e.g., *Heliotrope Gen., Inc. v. Ford Motor Co.*,  
22 189 F.3d 971, 980 (9th Cir. 1999) (finding no duty to provide detailed financials regarding  
23 tax strategy absent statute requiring disclosure). Here, plaintiff fails to allege any duty on  
24 behalf of defendants to disclose any of the allegedly omitted information. In particular,  
25 plaintiff fails to show the statements made by Camtek were misleading in light of the  
26 alleged omissions, and plaintiff alleges no other duty on behalf of defendants to specify the  
27 sources of their revenues or cash flow, to characterize or classify inventory as “fixed  
28 assets” versus “current assets,” or to itemize inventory write-offs. Indeed, plaintiff admits

1 the applicable accounting rules did not require Camtek to separately report each source of  
2 its cash flow. (See Opp. at 2:16-18.) Indeed,

3 Lastly, as a separate matter and unrelated to the above-discussed “omissions,” the  
4 SAC identifies one statement as an affirmative false representation: Camtek’s estimation  
5 that “on-site evaluations might take as little as up to four months for its own products.”  
6 (See SAC ¶ 34.) As with the great majority of plaintiff’s other allegations, however, the  
7 SAC includes no facts showing such statement was false or misleading, and, consequently,  
8 the allegation is insufficient to support plaintiff’s claims. (See id.); see also Silicon  
9 Graphics, 193 F.3d at 985.

10 Accordingly, the SAC is subject to dismissal for failure to adequately identify a  
11 material misstatement or omission by the defendants.

### 12 **C. Scier**

13 Plaintiff’s allegations of scier, which allegations are based on (1) stock sales and  
14 (2) positions held in the company,<sup>6</sup> likewise are deficient, and thus constitute an additional  
15 ground for dismissal.

16 Pursuant to the PSLRA, a plaintiff must “state with particularity facts giving rise to a  
17 strong inference that the defendant acted with the required state of mind.” 15 U.S.C.  
18 § 78u-4(b)(2). To create a “strong inference,” the allegations must raise an inference that  
19 is “more than merely plausible or reasonable—it must be cogent and at least as compelling  
20 as any opposing inference of nonfraudulent intent.” Tellabs, Inc. v. Makor Issues and  
21 Rights, Ltd., 551 U.S. 308, 314 (2007). The plaintiff need not allege facts giving rise to an

---

22  
23 <sup>6</sup> Although not expressly alleged in the SAC as support for an inference of scier,  
24 plaintiff in his opposition argues such inference is supported by the SAC’s Sarbanes-Oxley  
25 Act (“SOX”) allegations, specifically, the allegation that defendants Dulberg and Amits’s  
26 certifications in connection with Camtek’s financial reports were made without any  
27 reasonable or good faith basis. (See Opp. at 17:4-14; see also Compl. ¶¶ 100-101.)  
28 While SOX certification “may provide additional evidence of scier if the certifications  
were false and misleading,” see Stocke v. Shuffle Master, Inc., 615 F. Supp. 2d 1180,  
1190 (D. Nev. 2009), here, the SAC contains no allegation sufficient to plead such falsity,  
and, in any event, “required certifications under Sarbanes-Oxley . . . add nothing  
substantial to the scier calculus.” Zucco Partners, LLC v. Digimarc Corp., 552 F.3d 981,  
1004 (9th Cir. 2009).

1 “irrefutable” inference of scienter and the complaint must be “viewed in the required holistic  
2 context,” but the plaintiff “must plead facts rendering an inference of scienter at least as  
3 likely as any plausible opposing inference.” Id. at 324, 326, 328 (emphasis in original). In  
4 that regard, the complaint must state with particularity facts that “constitute strong  
5 circumstantial evidence of deliberately reckless or conscious misconduct.” DSAM Global  
6 Value Fund v. Altris Software, Inc., 288 F.3d 385, 388-89 (9th Cir. 2002) (citing Silicon  
7 Graphics, 183 F.3d at 974.) To raise a strong inference of deliberate recklessness, the  
8 plaintiff “must state facts that come closer to demonstrating intent, as opposed to mere  
9 motive and opportunity.” Silicon Graphics, 183 F.3d at 974.

### 10 **1. Stock Sales**

11 Plaintiff first alleges that defendants profited from the alleged false statements by  
12 sales of stock, at inflated prices, by Camtek and the individual defendants. (See SAC  
13 ¶¶ 51-52.) “[S]uspicious stock sales by corporate insiders may constitute circumstantial  
14 evidence of scienter.” Silicon Graphics, 183 F.3d at 986 (citation omitted). In evaluating  
15 stock sales by corporate insiders, courts consider (1) the amount and percentage of shares  
16 sold, (2) the timing of the sales, and (3) the consistency with prior trading history. See id.  
17 Here, plaintiff alleges that defendant Moshe Amit “sold the majority (if not all) of his Camtek  
18 shares” on May 30, 2006 (see SAC ¶ 51), that defendant Camtek completed the private  
19 placement of 2,525,252 shares on April 28, 2006 (see SAC ¶ 52), that Priortech, Camtek’s  
20 parent company (see SAC ¶ 5), sold \$15 million of Camtek’s stock on June 16, 2006 (see  
21 SAC ¶¶ 5, 56, 129), and that, in September, October, and November of 2006, various other  
22 defendants sold stock in Priortech, whose stock price plaintiff alleges was “closely linked” to  
23 Camtek’s (see SAC ¶¶ 53, 54, 55). These allegations, however, fail to raise a strong  
24 inference of scienter.

25 First, plaintiff’s failure to allege facts showing the sales were inconsistent with any  
26 defendant’s prior trading history renders the allegations insufficient to raise a strong  
27 inference of scienter. See Zucco Partners, LLC v. Digimarc Corp., 552 F.3d 981, 1005 (9th  
28 Cir. 2009) (“For individual defendants’ stock sales to raise an inference of scienter, plaintiffs

1 must provide a meaningful trading history for the purposes of comparison to the stock sales  
2 within the class period.”).

3 Second, other than the allegations concerning sales by Moshe Amit and Priortech,  
4 from which certain calculations can be made, the SAC contains no information as to the  
5 percentage of any defendant’s holdings that is represented by the alleged sales. Moreover,  
6 as to Priortech’s sales, the allegations show Priortech sold only 11.6% of its Camtek stock  
7 (see SAC ¶ 5, Zelichov Decl. Ex. 1 at 40, Ex. 8 at 3), a percentage too small to raise a  
8 suspicion of fraud. See, Ronconi v. Larkin, 253 F.3d 423, 435 (9th Cir. 2001) (holding  
9 sales of 10% and 17% of holdings not suspicious).<sup>7</sup>

10 Third, the timing of the sales does not raise a strong inference of scienter. Moshe  
11 Amit’s alleged sales occurred shortly after he resigned from his position as CFO, and,  
12 consequently, in the absence of any allegations of inconsistent trading history, such sales  
13 are insufficient to raise an inference of scienter. See Wietschner v. Monterey Pasta Co.,  
14 294 F. Supp. 2d 1102, 1116 (N.D. Cal. 2003) (holding, where trading history not  
15 inconsistent, insider’s “pending retirement” rendered sales “not sufficiently suspicious”).  
16 Indeed, all of the alleged sales occurred more than five months after the alleged  
17 misstatements began in November 2005 and well before plaintiff alleges the truth began to  
18 emerge on June 29, 2007 (see SAC ¶ 45; see also SAC ¶ 36 (alleging truth about

---

19  
20 <sup>7</sup> Although plaintiff cites to cases in which sales of a relatively small percentage of an  
21 insider’s holdings raised an inference of scienter, those cases are distinguishable on their  
22 facts. See Nursing Home Pension Fund, Local 144 v. Oracle Corp., 380 F.3d 1226, 1232  
23 (9th Cir. 2004) (finding sale of 2.1% of holdings sufficient to raise inference of scienter  
24 where sale resulted in “truly astronomical figure” of \$900 million); Provenz v. Miller, 102  
25 F.3d 1478, 1491 (9th Cir. 1996) (finding sale of 20% of holdings raised inference of scienter  
26 where sales occurred during two-month period between misleading statement and  
27 corrective disclosure); In re SeeBeyond Tech. Corp. Sec. Litig., 266 F. Supp. 2d 1150,  
28 1169 (C.D. Cal. 2003) (finding sale of 7.6% of holdings sufficient to raise inference of  
scienter where defendants admitted lying to analysts and investors and sale was atypical  
given defendant’s trading history); McCarthy v. C-COR Elec. Inc., 909 F. Supp. 970, 978-  
79 (E.D. Pa. 1995) (finding sales of between 15% and 20% of holdings raised inference of  
scienter where sale occurred roughly one month before corrective disclosure); In re  
SmartTalk Teleservices, Inc. Sec. Litig., 124 F. Supp. 2d 527, 542 (S.D. Ohio 2000) (finding  
sales of between 11% and 40% of holdings sufficient to raise inference of scienter where  
made at various peaks in stock price); Oxford Health, 187 F.R.D. at 140 (finding sales of  
between 17% and 67% of holdings raised inference of scienter where made shortly before  
negative press release and during state investigation).

1 defendants' inventories not disclosed prior to 2008 20-F filed April 8, 2009)),<sup>8</sup> nearly all of  
2 the sales occurred several weeks or more after any allegedly misleading statement, and  
3 none of the sales are alleged to have occurred at Camtek's peak price. Consequently, the  
4 allegations do not show the sales were "calculated to maximize personal benefit from inside  
5 information," and, thus, are insufficient to support a strong inference of scienter. See  
6 Ressler v. Liz Claiborne, Inc., 75 F. Supp. 2d 43, 60 (E.D.N.Y. 1998) (holding, where "most  
7 of [defendants'] sales took place well over two weeks after [allegedly misleading] comments  
8 were made" and "took place, for the most part, over six months prior to the release of the"  
9 corrective disclosure, stock sales did not raise strong inference of scienter); see also In re  
10 Copper Mountain Sec. Litig., 311 F. Supp. 2d 857, 875 (N.D. Cal. 2004) (noting that "[h]ad  
11 [defendants] sales been calculated to reap the benefits of the undisclosed information, it is  
12 likely that at least some of the stock sales would have been at a price closer to the stock's  
13 maximum value").

## 14 **2. Defendants' Corporate Positions/Core Operations**

15 Plaintiff alleges the individual defendants, "because of their positions with Camtek,  
16 controlled the contents of the quarterly reports and press releases disseminated throughout  
17 the Class Period" (see SAC ¶ 124), that such "defendants actively participated in the  
18 preparation and authorized the release of public filings and press releases which materially  
19 misstated and omitted facts related to the real condition of Camtek's ongoing business"  
20 (see SAC ¶ 128), and that they "had access to the adverse non-public information . . . via  
21 access to internal corporate documents, conversations, or connections . . . attendance at  
22 management meetings and committees" (see SAC ¶ 122).

23 "Where a complaint relies on allegations that management had an important role in  
24 the company but does not contain additional detailed allegations about the defendants'

---

25  
26 <sup>8</sup> Although the SAC alleges that a sale by defendant Yotam Stern was made "just 18  
27 days before Camtek's disastrous fourth quarter preliminary earnings announcement" on  
28 December 21, 2006 (see SAC ¶¶ 54, 94), the SAC does not allege such announcement  
revealed the alleged misrepresentations and omissions, and, indeed, plaintiff alleges  
defendants continued making misleading statements and omitting to disclose the "improper  
revenue recognition techniques" (see SAC ¶ 98).

1 actual exposure to information, it will usually fall short of the PSLRA standard.” South Ferry  
2 LP, No. 2 v. Killinger, 542 F.3d 776, 784 (9th Cir. 2008) (noting reliance on “core operations  
3 inference” unavailing absent “unusual circumstances”; citing as example of unusual  
4 circumstances case where defendant allegedly failed to disclose loss of two largest  
5 customers, comprising 80% of company’s revenue). Here, plaintiff’s conclusory allegation  
6 as to the individual defendants’ “access” to “adverse non-public information” (see SAC ¶  
7 122) is insufficient, and plaintiff fails to allege any facts showing any of the individual  
8 defendant’s had actual exposure to such information or that the information was of such  
9 “unusual” nature as to give rise to the core operations inference. “[C]orporate  
10 management’s general awareness of the day-to-day workings of the company’s business  
11 do not establish scienter absent some additional allegations of specific information.” South  
12 Ferry, 542 F.3d at 784-85. Consequently, plaintiff fails to plead scienter on the basis of the  
13 position any individual defendant held in Camtek.

### 14 **3. Plaintiff’s Scienter Allegations as a Whole**

15 Although none of the SAC’s allegations of scienter is sufficient to raise a strong  
16 inference of scienter under the PSLRA, the Court must also “consider the complaint in its  
17 entirety,” to determine whether “all of the facts alleged, taken collectively, give rise to a  
18 strong inference of scienter.” Tellabs, 551 U.S. at 322-23. “Vague or ambiguous  
19 allegations are . . . properly considered as part of a holistic review when considering  
20 whether the complaint raises a strong inference of scienter.” South Ferry, 542 F.3d at 784.  
21 “When conducting this holistic review, however, [courts] must also ‘take into account  
22 plausible opposing inferences that could weigh against a finding of scienter.’” Zucco, 552  
23 F.3d at 1006 (quoting Tellabs, 551 U.S. at 323).

24 In this instance, the allegations in the SAC, even when viewed as a whole, are not  
25 as “cogent and at least as compelling as any opposing inferences of nonfraudulent intent.”  
26 See Tellabs, 551 U.S. at 2505. Weighing against an inference of scienter, are (1) the  
27 SAC’s allegations that defendants announced early their missed revenues for the fourth  
28 quarter of 2006 (see SAC ¶¶ 64, 94); see also Rombach v. Chang, 355 F.3d 164, 176-77

1 (2d Cir. 2004) (holding allegation of scienter “weakened by disclosure of certain financial  
2 problems prior to the deadline to file [defendant’s] financial statements”); (2) the absence  
3 from the SAC of any allegation that defendants have restated their financials, see Zucco,  
4 552 F.3d at 998 n.5 (finding no inference of scienter; noting, inter alia, defendant  
5 corporation did not restate inventory reserves); and (3) the absence from the SAC of any  
6 allegation that defendant Ronit Dulberg, Camtek’s CFO during much of the relevant period,  
7 sold any of her Camtek stock, see Roconi, 253 F.3d at 436 (holding inference of scienter  
8 weakened where “equally knowledgeable insiders act in a way inconsistent with the  
9 inference that the favorable characterizations of the company’s affairs were known to be  
10 false when made”). Accordingly, even under a holistic Tellabs analysis, plaintiff fails to  
11 raise the requisite “strong inference” of scienter. See South Ferry, 542 F.3d at 784-85.

#### 12 **D. Loss Causation**

13 To state a claim for securities fraud under the Exchange Act, a plaintiff must plead  
14 “loss causation,” the “causal connection between the [defendant’s] material  
15 misrepresentation and the [plaintiff’s] loss.” Dura, 544 U.S. at 342. To plead loss  
16 causation, a plaintiff must allege (1) the fraudulent statement that caused the stock price to  
17 increase, (2) the disclosure that revealed the statement was fraudulent, and (3) the decline  
18 in stock price after the truth became known. See id. at 346-47. A plaintiff does not need to  
19 show, however, that the misrepresentation was the only reason for the decline in value.  
20 See In re Daou, 411 F.3d at 1025.

21 With respect to loss causation, the SAC alleges the following: (1) on December 21,  
22 2006, Camtek preliminarily announced its financial results for the fourth quarter, reporting  
23 lower than expected revenues, and leading to a 22% drop in Camtek’s stock price from the  
24 previous day’s price (see SAC ¶¶ 94, 95); (2) on March 20, 2007, Camtek announced a net  
25 loss of \$2.2 million for the fourth quarter of 2006, causing a 10% drop in Camtek’s stock  
26 price from the previous day’s price (see SAC ¶¶ 97-102); (3) on April 10, 2007, Camtek

1 revised downward its revenue guidance for the first quarter of 2007 (see SAC ¶¶ 103-104);<sup>9</sup>  
2 (4) on May 24, 2007, Camtek announced its first quarter 2007 financial results, disclosing a  
3 41.8% revenue drop from the first quarter of 2006 (see SAC ¶¶ 105-106);<sup>10</sup> (5) on June 29,  
4 2007, Camtek issued its Form 20-F for 2006, itemizing inventory located at customer  
5 locations and disclosing factoring agreements (see SAC ¶¶ 37, 45);<sup>11</sup> and (6) on April 7,  
6 2009, Camtek issued its Form 20-F for 2008, disclosing write-offs taken in previous years  
7 and reclassifying inventory (see SAC ¶ 36).<sup>12</sup> These allegations suffer from two  
8 deficiencies.

9 First, the disclosures plaintiff identifies as leading to the declines in Camtek's stock  
10 price have not been connected to the alleged misleading statements. Although plaintiff  
11 alleges Camtek's disclosure that it would miss its projections caused the stock price to fall  
12 (see SAC ¶¶ 93, 95, 102), plaintiff does not allege how Camtek's disclosure that it would  
13 miss its projections amounts to a revelation of the alleged improper revenue recognition  
14 techniques. Without factual allegations demonstrating how Camtek's negative financial  
15 results disclosed that Camtek, by reason of the alleged fraudulent financial activities, was  
16 incorrectly reporting cash flow, plaintiff cannot sufficiently plead loss causation.<sup>13</sup> See

---

17  
18 <sup>9</sup> The April 10, 2007 disclosure resulted in no change in Camtek's stock price from  
19 the previous day; on April 11, 2007, however, Camtek closed 5.7% down. (See Zelichov  
20 Decl. Ex. 25.)

21 <sup>10</sup> Camtek closed 6.7% lower on May 24, 2007 than on the previous day.  
22 (See Zelichov Decl. Ex. 25.)

23 <sup>11</sup> Camtek's June 29, 2007 stock price closed \$.01 higher than its stock price for the  
24 previous day. (See Zelichov Decl. Ex. 25.)

25 <sup>12</sup> Camtek's stock price remained unchanged from April 6, 2009 to April 7, 2009,  
26 and fell by \$.01 on April 8, 2009. (See Zelichov Decl. Ex. 25.)

27 <sup>13</sup> Plaintiff cites In re Daou, 411 F.3d 1006, to support his argument that a reported  
28 drop in revenue may establish loss causation where a plaintiff alleges a defendant inflated  
revenue. (See Opp. at 21:7-10). In Daou, however, investors were confronted not only  
with a reported drop in revenue, but also with a concurrent disclosure of an increase in  
"unbilled receivables," which the Daou plaintiff alleged was "the direct result of prematurely  
recognizing revenue." 411 F.3d at 1026. Here, by contrast, the SAC alleges defendants  
disclosed information about the increased inventory and factoring at a time long after their  
announcement of the decrease in revenues, and, as noted below, those later disclosures  
were not followed by a decline in Camtek's stock price.



1 Metzler Inv. GMBH v. Corinthian Colleges, Inc., 540 F.3d 1049, 1064 (9th Cir. 2008)  
2 (finding drop in stock price insufficient to demonstrate market “understood a defendant’s  
3 statement precipitating a loss as a coded message revealing the fraud”).

4 Second, the June 29, 2007 and April 7, 2009 Forms 20-F, which contained the  
5 disclosures pertaining to defendants’ use of factoring and inventory levels (see SAC ¶¶ 36,  
6 37, 45), the information defendants are alleged to have fraudulently omitted from earlier  
7 reports, were not followed by decreases in Camtek’s stock price (see Zelichov Decl., Ex.  
8 25); see also Dura, 544 U.S. at 347 (finding allegation of loss causation insufficient; noting  
9 “complaint’s failure to claim . . . share price fell significantly after the truth became known”).  
10 In sum, without facts supporting plaintiff’s theory that the alleged omissions and  
11 misrepresentations caused plaintiff’s loss, plaintiff has not sufficiently alleged loss  
12 causation.

### 13 **III. Section 20(a)**

14 Under § 20(a) of the Exchange Act, any person who controls a person liable for  
15 violating § 10(b) is jointly or severally liable for the violation. See 15 U.S.C. § 78t(a)  
16 (providing, to allege control person liability, plaintiff must allege (1) primary violation of  
17 federal securities laws and (2) defendant exercised actual power or control over primary  
18 violator). As discussed above, plaintiff fails to state a primary violation of the securities  
19 laws. Consequently, plaintiff’s allegations under Section 20(a) of the Exchange Act  
20 likewise fail.<sup>14</sup>

### 21 **IV. Leave to Amend**

22 On June 2, 2009, the Court dismissed plaintiff’s Consolidated Amended Class Action  
23 Complaint (“CAC”) for failure to allege plaintiff purchased Camtek shares on a United  
24 States exchange. In their motion to dismiss the CAC, however, defendants had identified a  
25 number of pleading deficiencies. (See Defs.’ Mot. to Dismiss, filed Feb. 17, 2009).  
26 Although plaintiff was on notice of such asserted deficiencies, plaintiff filed an amended

---

27  
28 <sup>14</sup> In light of these findings, the Court does not address herein the individual  
defendants’ arguments based on lack of personal jurisdiction.

1 complaint that was, essentially, a duplicate of the CAC, curing only that deficiency on which  
2 the Court based its order and failing to cure any other deficiencies on which defendants  
3 had based their motion. Nevertheless, the Court will afford plaintiff leave to amend to cure  
4 the additional deficiencies discussed herein.


5 **CONCLUSION**

6 For the reasons set forth above, defendants' motion to dismiss the SAC is hereby  
7 GRANTED, and the SAC is hereby DISMISSED with leave to amend.

8 Plaintiff's Third Amended Complaint, if any, shall be filed no later than March 16,  
9 2011.

10 **IT IS SO ORDERED.**

11  
12 Dated: February 2, 2011

13   
14 MAXINE M. CHESNEY  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28