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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CURRY, et al.,
Plaintiffs,
v.
YELP INC., et al.,
Defendants.

Case No. 14-cv-03547-JST

**ORDER DENYING MOTION FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION**

Re: ECF No. 52

Lead Plaintiff City of Miami Fire Fighters’ and Police Officers’ Retirement Trust and Plaintiff Joseph Curry (collectively, “Plaintiffs”) have filed a motion for leave to file a motion for reconsideration. ECF No. 52. The motion argues that this Court’s April 21, 2015 order granting Defendants’ motion to dismiss the consolidated class action complaint, ECF No. 48, contained several manifest errors justifying reconsideration pursuant to Civil Local Rule 7-9(b)(3).

Rule 7-9(b)(3) states that “[a] manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order” can form the basis for a reconsideration motion. Nonetheless, much of Plaintiffs’ motion concerns arguments that were not presented to the Court during its consideration of the motion to dismiss, specifically arguments relating to the Supreme Court’s decision in Matrixx Initiatives, Inc. v. Siracusano, ___ U.S. ___, 131 S. Ct. 1309, 1324 (2011). Plaintiffs did not even cite Matrixx in their opposition. See ECF No. 39. Moreover, Matrixx is not a change of law, having been decided in 2011.

Even if Plaintiffs’ arguments relating to Matrixx were properly before the Court, however, those arguments would not compel the Court to reconsider its order. Like the Court’s order, Matrixx applies the materiality standard of whether “a reasonable investor would have viewed the nondisclosed information as having significantly altered the ‘total mix’ of information made

1 available.” Matrixx, 131 S. Ct. 1309, 1321 (2011) (emphasis in original) (citations and quotations
2 omitted); accord ECF No. 48 at 9. In Matrixx, the defendants had withheld, or failed to disclose,
3 complaints by physicians and users claiming that defendants’ over-the-counter cold remedy
4 caused anosmia. Matrixx, 131 S. Ct. at 1324. Although defendants were aware of these claims,
5 they did not disclose the existence of the claims or the related litigation to investors. Id. at 1315.
6 The defendants argued that this failure to disclose the existence of the complaints was not material
7 because the volume of the complaints was not “statistically significant” and thus did not prove
8 causation. Id. at 1315. The Court disagreed, noting “that medical professionals and regulators act
9 on the basis of evidence of causation that is not statistically significant,” and therefore “it stands to
10 reason that in certain cases reasonable investors would as well.” Id. at 1321.

11 Plaintiffs’ motion alleges the Court’s order was in manifest error because it required “a
12 numerical threshold or a critical mass of facts to allege material falsity,” ECF No. 52 at 6, an
13 approach the Matrixx Court rejected. But the Court’s order did not hold that the complaints had to
14 be statistically significant before Yelp was required to disclose the existence of the complaints.
15 Instead, the Court concluded that the Yelp Defendants had not concealed the existence of the
16 complaints, because they had acknowledged in their Registration Statement that “[n]egative
17 publicity could adversely affect our reputation and brand,” specifically noting previous media
18 reports of allegations that Yelp “manipulates [] reviews, rankings and ratings in favor of our
19 advertisers and against non-advertisers,” ECF No. 35-1 at 16, and that “various businesses have
20 sued us alleging that we manipulate Yelp reviews in order to coerce them and other businesses to
21 pay for Yelp advertising (one such suit was voluntarily dismissed and two others were conciliated
22 and recently dismissed with prejudice, although the plaintiffs are seeking an appeal).” Id. at 12.
23 Accordingly, the disclosure of the existence of the FTC complaints did not significantly alter the
24 total mix of available information available to reasonable investors, because, unlike the Matrixx
25 defendants, defendants here had already informed investors of the existence of such complaints
26 and even of the pending litigation concerning the complaints.

27 The Court’s order allowed that Yelp’s disclosure of the existence of the complaints
28 coupled with Yelp’s continued denial of the allegations contained in the complaints could have

1 been shown to be materially false if the complaints had been so corroborative or numerous as to
2 indicate that Yelp's previous denials were likely to have been false. Id. at 14-16. But the Court
3 examined the disclosed complaints, as presented by Plaintiffs, and concluded that nothing revealed
4 in those complaints altered the total mix of information available to investors, to whom Yelp had
5 already disclosed the existence of similar allegations. Id. This is not inconsistent with Matrixx,
6 because Matrixx did not concern a defendant's acknowledgement of customer complaints and
7 denial of their veracity, but rather involved a defendant's failure to disclose the existence of
8 customer complaints to investors.

9 Plaintiffs' motion for leave to file a motion for reconsideration is denied.

10 IT IS SO ORDERED.

11 Dated: May 12, 2015


JON S. TIGAR
United States District Judge