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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re NOVATEL WIRELESS
SECURITIES LITIGATION

Civil No.08cv1689 AJB (RBB)

ORDER DENYING DEFENDANTS'
MOTION FOR
RECONSIDERATION

This Document Relates to
ALL ACTIONS.

(Doc. No. 489)

Before the Court is Defendants' Motion for Reconsideration. (Doc. No. 489.) Defendants seek reconsideration of the Court's previous order denying Defendants' Motion to Exclude Plaintiff's Expert, Bjorn Steinholt. (Doc. No. 485.) For the reasons set forth, Defendants' Motion is DENIED.

I. PROCEDURAL BACKGROUND

On October 29, 2013, the Court issued an Order denying Defendants' Motion to Exclude Plaintiffs' Loss Causation and Damages Expert, Bjorn Steinholt. (*Id.*) A detailed explanation of the procedural background with regards to that *Daubert* motion can be found in the Order, and the Court incorporates by reference the details contained therein.

Defendants now seek reconsideration on the grounds that the Court committed clear error, arguing that the Court sua sponte raised an alternative theory for which Plaintiffs may

1 prove loss causation for the 2008 corrective disclosures. (Doc. No. 489 at 2.) The Court
2 respectfully disagrees with Defendants' interpretation of the Court's *Daubert* Order.

3 **II. DISCUSSION**

4 **a. Legal Standard**

5 A motion for reconsideration may be brought under Federal Rules of Civil Procedure
6 59(e) or 60(b). A motion is treated as a motion to alter or amend judgment under Rule 59(e)
7 if it is filed within 28 days of entry of judgment; otherwise, it is treated as a Rule 60(b)
8 motion for relief from a judgment or order. *See Am. Ironworks & Erectors, Inc. v. N. Am.*
9 *Constr. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001) (noting that a motion for reconsidera-
10 tion filed within the time period set forth in Rule 59(e) is treated as a motion to alter or
11 amend the judgment under Fed. R. Civ. P. 59(e), while a motion filed beyond that time
12 period is treated as a Rule 60(b) motion for relief from a judgment or order). Inasmuch as
13 Plaintiff's motion was filed within twenty-eight days of the Court's previous order,
14 Plaintiff's motion is properly characterized as arising under Rule 59(e) rather than Rule
15 60(b). *Id.* The Court may grant a motion to alter or amend under Rule 59(e) when: (1) the
16 district court is presented with newly discovered evidence, (2) the district court committed
17 clear error or made an initial decision that was manifestly unjust, or (3) there is an
18 intervening change in controlling law. *Duarte v. Bardales*, 526 F.3d 563, 567 (9th Cir.
19 2008) (quoting *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001)). The
20 standard for reconsideration under Rule 60(b) is substantially similar. *United Nat'l Ins. Co.*
21 *v. Spectrum Worldwide, Inc.*, 666 F.3d 772, 780 (9th Cir. 2009).

22 **B. Analysis**

23 Under Rule 59(e), reconsideration may be appropriate if the Court committed clear
24 error or rendered a manifestly unjust decision. Defendants seek reconsideration of the
25 Court's Order upholding Steinholt's loss causation as to the 2008 disclosure dates, arguing
26 that there is no other method by which Plaintiffs may be able to establish loss causation in
27 light of the Court's previous summary judgment order issued November 23, 2011. (*See*
28

1 Doc. No. 414.) The Court dismissed Plaintiffs’ channel stuffing claim finding that Plaintiffs
2 failed to demonstrate falsity, materiality or scienter.

3 Defendants misinterpret the spirit of the Court’s Order. The Court is not raising a
4 new theory by which Plaintiffs may establish loss causation, the Court was merely
5 responding to Defendants’ assertion raised in their *Daubert* Motion. In that Motion,
6 Defendants argued that with the dismissal of Plaintiffs’ channel stuffing claim, Defendants’
7 financial statements are necessarily deemed accurate. (Doc. No. 468 at 13-14.) It was as
8 if Defendants were seeking a summary adjudication from the Court declaring that all of
9 Novatel’s financial statements were accurate and without irregularities. The Court was not
10 and is not of a position to confirm and bless such a declaration. The Court stated that “it
11 may still be the case” that there were some financial irregularities, and this is a burden upon
12 Plaintiffs to show. (Doc. No. 485 at 16.) Defendants cite to the Court’s Order stating that
13 “[i]f Defendants’ contention, that the financial statements are now ‘accurate’ is true, then
14 Plaintiffs would not be able to establish loss causation from the 2008 disclosure dates,” as
15 the disclosures would merely be repeating information known to the public about the true
16 level of product demand. (Doc. No. 485 at 16.) For the Court, this theory would only work
17 if the financial statements indeed accurately represented the level of product demand in a
18 way that the reasonable investor could comprehend despite any alleged active misrepresen-
19 tations from the Company and its officials. *If* this were the case, then the truth with regards
20 to Novatel’s ability or inability to meet the needs of its customers would be known to the
21 public.


22 However, Plaintiffs have continuously represented that the Company’s financial
23 results were false and misleading and that Defendants actively concealed the true financial
24 condition of the Company. (*See e.g.*, Consolidated Complaint, Doc. No. 23 at ¶ 57.) Indeed,
25 Plaintiffs objected to Defendants’ characterization that the financial statements are
26 “accurate,” even with the dismissal of the channel stuffing claim and any evidence that
27 purports to show improper revenue recognition resulting from channel stuffing.

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1 The Court realizes the confusion its Order may have caused and takes this opportunity
2 to further clarify. The confusion stemmed from the fact the Order referred to testimony of
3 Plaintiffs' accounting expert Paul Regan.¹ What the Order meant to convey was that to the
4 extent Plaintiffs have properly disclosed and pursued discovery on alleged accounting
5 misrepresentations that sought to conceal the true level of product demand, based on
6 Plaintiffs' product mix claim and unrelated to channel stuffing, such evidence *may* still
7 properly be a part of the litigation. However, if Plaintiffs asserted nothing other than
8 channel stuffing relative to accounting misrepresentations for the 2008 disclosures in the
9 case to date, then Plaintiffs will not be allowed to attempt to prove loss causation with
10 regards to the 2008 disclosure dates as no triable issue will exist in that regard. Such
11 matters will be addressed during the upcoming Pretrial Conference and subsequent Motion
12 *in Limine* hearing, and at the end of the day, would be the subject of a Rule 50(a) Motion
13 for Judgment as a Matter of Law at trial.

14 IT IS SO ORDERED.

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16 DATED: November 13, 2013

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19 Hon. Anthony J. Battaglia
20 U.S. District Judge
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¹ The 125 transactions allegedly in violation of Generally Accepted Accounting Principles should not have been mentioned in the Order as those transactions relate to alleged pull-in transactions that are related to the channel stuffing claim. This evidence would be impermissible.