

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SEB INVESTMENT MANAGEMENT AB,  
et al.,

Plaintiffs,

v.

WELLS FARGO & COMPANY, et al.,

Defendants.

Case No. 22-cv-03811-TLT

**ORDER GRANTING MOTION TO  
DISMISS**

Re: ECF No. 100

Pending before the Court is Defendants Wells Fargo & Company, Charles W. Scharf, Kleber R. Santos, and Carly Sanchez’s motion to dismiss Lead Plaintiff SEB investment Management AB and additional plaintiff West Palm Beach Firefighters’ Pension Fund’s Amended Complaint. ECF No. 100. The Court finds that Plaintiffs have not sufficiently pled the requirements of falsity and scienter as to the allegedly misleading statements.

Accordingly, Defendants’ motion is **GRANTED**. Plaintiffs’ claims for violation of Sections 10(b) and 20(a) of the Exchange Act are dismissed, **with leave to amend**.

**I. BACKGROUND**

Plaintiffs bring this securities fraud class action against Defendants for making allegedly misleading statements between February 24, 2021, and June 9, 2022 (“Class Period”). Am. Compl. (“Complaint”), ECF No. 69.

Wells Fargo is a Delaware corporation headquartered in San Francisco, California, that provides financial services and employs over 247,000 people. *Id.* ¶¶ 31, 43. Scharf has been Wells Fargo’s CEO since 2019. *Id.* ¶¶ 32, 75. Santos was Wells Fargo’s Head of Diverse Segments, Representation, and Inclusion during the Class Period and was also the interim Head of Human Resources from April 23, 2021, to October 1, 2021. *Id.* ¶ 33. Sanchez was Wells Fargo’s

1 EVP, Talent Acquisition, Affirmative Action/Equal Employment Opportunity, Diversity  
2 Recruiting during the Class Period. *Id.* ¶ 34.

3 In March 2020, Wells Fargo announced the Diverse Search Requirement, which required  
4 that “for most U.S. roles with total direct compensation greater than \$100,000, at least 50% of  
5 interview candidates must be diverse with respect to at least one diversity dimension.” *Id.* ¶¶ 6,  
6 10. Race/ethnicity, gender, LBGTQ individuals, veterans, and people with disabilities were  
7 considered “diversity dimensions.” *Id.* ¶ 125. Defendants discussed the Diverse Search  
8 Requirement on multiple instances, including (1) Wells Fargo’s 2020 Annual Report, released on  
9 February 23, 2021; (2) Wells Fargo’s March 2021 Proxy, filed on March 16, 2021; (3) Wells  
10 Fargo’s 2020 Social Impact and Sustainability Highlights, filed on April 26, 2021; (4) Scharf’s  
11 testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs on  
12 May 26, 2021; (5) Wells Fargo’s 2021 ESG Report, published on July 15, 2021; (6) Sanchez’s  
13 interview on Talent Acquisition Next Practices Monthly on October 7, 2021; (7) Wells Fargo’s  
14 Priority Recommendations of the Wells Fargo Human Rights Impact Assessment and Actions in  
15 Response, published on February 15, 2022; (8) Wells Fargo’s March 2022 Proxy, filed on March  
16 14, 2022; (9) Wells Fargo’s 2022 DE&I Report, published on June 1, 2022; and (10) Business  
17 Insider’s article on June 3, 2022, with comments from Sanchez. *Id.* ¶¶ 189–203.

18 On May 19, 2022, the New York Times published an article titled “At Wells Fargo, a  
19 Quest to Increase Diversity Leads to Fake Job Interviews.” *Id.* ¶ 158. The article alleged that  
20 Wells Fargo’s Wealth Management division regularly conducted sham interviews of diverse  
21 candidates for positions that had already been filled. *Id.* ¶ 157. Wells Fargo issued a statement on  
22 May 20, 2022, denying the claim. *Id.* ¶ 162. On May 27, 2022, Business Insider published an  
23 article titled “Wells Fargo exec responds to reports that it denied mortgages to Black applicants  
24 and held sham job interviews.” *Id.* ¶ 163. On June 3, 2022, Business Insider published another  
25 article titled “Wells Fargo’s first diversity report shows progress but also that work remain to  
26 make Wall Street look more like Main Street.” *Id.* ¶ 165. On June 6, 2022, Scharf announced  
27 suspension of the hiring policy, as reported by The New York Times in an article titled “Wells  
28 Fargo Announces ‘Pause’ of Policy That Led to Fake Job Interviews.” *Id.* ¶¶ 166–67.

1 Subsequently, on June 9, 2022, The New York Times reported in an article titled “Federal  
2 Prosecutors Open Criminal Inquiry of Wells Fargo’s Hiring Practices” that additional employees  
3 confirmed the sham interviews and that the United States Attorney’s Office for the Southern  
4 District of New York had opened an investigation. *Id.* ¶ 168.

5 The price of Wells Fargo common stock dropped 10.2% from a close of \$44.63 on June 8,  
6 2022, to \$40.08 on June 10, 2022. *Id.* ¶ 170.

7 Plaintiffs alleged that during the Class Period, Defendants made material  
8 misrepresentations and omissions in statements discussing the Diverse Search Requirement. *Id.* ¶  
9 1. Plaintiffs bring this action for (1) violation of violation of Section 10(b) of the Securities  
10 Exchange Act (“Exchange Act”) and Rule 10b-5 promulgated thereunder and (2) violation of  
11 Section 20(a) of the Exchange Act. Defendants filed the instant motion to dismiss. ECF No. 100.  
12 The Court heard oral arguments on August 15, 2023. ECF No. 110.

## 13 **II. JUDICIAL NOTICE**

14 “The Court may judicially notice a fact that is not subject to reasonable dispute because it:  
15 (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and  
16 readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.  
17 201(b). The Court may “consider materials that are submitted with and attached to the Complaint.  
18 [The Court] may also consider unattached evidence on which the complaint ‘necessarily relies’ if:  
19 (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and  
20 (3) no party questions the authenticity of the document.” *United States v. Corinthian Colleges*,  
21 655 F.3d 984, 999 (9th Cir. 2011).

22 Defendants request judicial notice of six exhibits. ECF No. 100-2. Plaintiffs oppose. ECF  
23 No. 102-1.

### 24 **A. Exhibits A, E**

25 Exhibit A is Wells Fargo’s 2022 Form 10-K filed on February 21, 2023. Exhibit E is a  
26 press release issued by the Federal Reserve Board on February 2, 2018. Both exhibits are readily  
27 available on government websites, and Plaintiffs do not contest their accuracy.

28 Defendants cite Exhibit A in their motion for the purpose of supporting the background

1 information that Wells Fargo employs 250,000 people across four business lines. Mot. at 3:18–20.  
2 Defendants cite Exhibit E to support their argument that Wells Fargo’s regulatory challenges  
3 “have nothing to do with the allegations in this case.” *Id.* at 6:16. As the Court finds that facts  
4 from these exhibits are not needed to resolve the instant motion, the Court takes judicial notice of  
5 only the existence and availability of Exhibits A and E.

6 **B. Exhibits B–D, F**

7 Exhibit B is an article published by Business Insider on June 3, 2022, titled “Wells Fargo’s  
8 first diversity report shows progress but also that work remains to make Wall Street look like  
9 Main Street.” Exhibit C is an article published by The New York Times on June 6, 2022, titled  
10 “At Wells Fargo, a Quest to Increase Diversity Leads to Fake Job Interviews.” Exhibit D is an  
11 article published by The New York Times on June 9, 2022, titled “Federal Prosecutors Open  
12 Criminal Inquiry of Wells Fargo’s Hiring Practices.” Exhibit F is an article published by Business  
13 Inside on May 27, 2022, titled “Wells Fargo exec responds to reports that it denied mortgages to  
14 Black applicants and held sham job interviews.” The parties do not dispute that these exhibits are  
15 authentic.

16 Defendants argue that these four exhibits are incorporated by reference in Plaintiffs’  
17 complaint. The Court agrees. “[I]ncorporation-by-reference is a judicially created doctrine that  
18 treats certain documents as though they are part of the complaint itself. The doctrine prevents  
19 plaintiffs from selecting only portions of documents that support their claims, while omitting  
20 portions of those very documents that weaken—or doom—their claims.” *Khoja v. Orexigen*  
21 *Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018) (citation omitted).

22 The Complaint quotes directly from these four articles. *See, e.g.*, Compl. ¶¶ 163, 165, 166,  
23 168. In addition, rather than as a passing reference, Plaintiffs rely on these articles to form the  
24 basis of their claims. For example, Plaintiffs cite to statements in an article from a former Wells  
25 Fargo employee, Joe Bruno, to support their allegation that sham interviews took place. Thus, this  
26 is not a situation where “the mere mention of the existence of a document is insufficient to  
27 incorporate the contents of a document.” *Khoja*, 899 F.3d at 1002 (citation omitted). Moreover,  
28 during oral argument, Plaintiffs conceded that the Court may take judicial notice of these exhibits

1 for their existence and their content. As such, the Court finds that Exhibits B–D and F are  
2 incorporated by reference into Plaintiffs’ Complaint. The Court takes judicial notice of these  
3 articles for their existence and their content but not for the truth of the matter. *See In re Kalobios*  
4 *Pharms., Inc. Sec. Litig.*, 258 F. Supp. 3d 999, 1003 (N.D. Cal. 2017) (“Judicial notice of news  
5 articles may be appropriate in securities fraud cases to show ‘that the market was aware of the  
6 information contained in news articles.’”) (citation omitted). The Court does not take judicial  
7 notice of the statistics included in Exhibit D, as the parties dispute those facts.

### 8 **III. LEGAL STANDARD**

9 Under Rule 12(b)(6), a party may move to dismiss for “failure to state a claim upon which  
10 relief can be granted.” Fed. R. Civ. P. 12(b)(6). To overcome a motion to dismiss, a plaintiff’s  
11 “factual allegations [in the complaint] ‘must . . . suggest that the claim has at least a plausible  
12 chance of success.’” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (citing *Ashcroft v.*  
13 *Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007)). The  
14 court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the  
15 light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519  
16 F.3d 1025, 1031 (9th Cir. 2008). However, “conclusory allegations of law and unwarranted  
17 inferences are insufficient to avoid a Rule 12(b)(6) dismissal.” *Cousins v. Lockyer*, 568 F.3d  
18 1063, 1067 (9th Cir. 2009).

19 “Securities fraud class actions must meet the higher, more exacting pleading standards  
20 of Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act  
21 (‘PSLRA’).” *Or. Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598, 604 (9th Cir.  
22 2014). Rule 9(b) dictates that the “circumstances constituting fraud or mistake shall be stated with  
23 particularity.” Fed. R. Civ. Proc. 9(b). It is not enough for a plaintiff merely to identify an  
24 allegedly fraudulent statement made by defendants. *In re GlenFed, Inc. Secs. Litig.*, 42 F.3d 1541,  
25 1548 (9th Cir. 1994) (en banc). Plaintiffs must allege “why the disputed statement was untrue or  
26 misleading when made.” *Id.* at 1549. Moreover, “the complaint shall specify each statement  
27 alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an  
28 allegation regarding the statement or omission is made on information and belief, the complaint

1 shall state with particularity all facts on which that belief is formed.” 15 U.S.C. § 78u-4(b)(1)(B).

2 The PSLRA additionally requires a complaint to “state with particularity facts giving rise  
3 to a strong inference that the defendant acted with the required state of mind” with respect to each  
4 alleged false statement or omission. 15 U.S.C. § 78u-4(b)(2)(A). Plaintiffs alleging securities  
5 fraud must plead all the elements of a securities fraud action with particularity. *Or. Pub. Emps.*,  
6 774 F.3d at 605.

7 **IV. DISCUSSION**

8 **A. Section 10(b) of the Exchange Act and Rule 10b-5**

9 “To recover damages for violations of section 10(b) and Rule 10b-5, a plaintiff must prove  
10 (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection  
11 between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon  
12 the misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Halliburton Co. v.*  
13 *Erica P. John Fund, Inc.*, 573 U.S. 258, 267 (2014) (citation and modifications omitted). Here,  
14 Defendants challenge the first and second elements, falsity, and scienter.

15 **1. Falsity**

16 “The PSLRA has exacting requirements for pleading ‘falsity.’ The plaintiff’s complaint  
17 ‘shall specify each statement alleged to have been misleading, the reason or reasons why the  
18 statement is misleading, and, if an allegation regarding the statement or omission is made on  
19 information and belief, the complaint shall state with particularity all facts on which that belief is  
20 formed.’” *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1070 (9th Cir. 2008)  
21 (citing 15 U.S.C. § 78u-4(b)(1)). “[A] statement is misleading if it would give a reasonable  
22 investor ‘the impression of a state of affairs that differs in a material way from the one that  
23 actually exists.’” *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985 (9th Cir. 2008) (citation  
24 omitted). “A litany of alleged false statements, unaccompanied by the pleading of specific facts  
25 indicating why those statements were false, does not meet this standard.” *Metzler*, 540 F.3d at  
26 1070.

27 Defendants argue that Plaintiffs did not plausibly allege the falsity of the allegedly  
28 misleading statements.



1 teams *for designated posted positions.*” *Id.* ¶ 201 (emphasis and  
2 modifications in original).

3 (9) “*For most posted roles in the U.S. with total direct compensation*  
4 *greater than \$100,000 per year, Wells Fargo requires that at*  
5 *least 50% of the interview candidates must represent a*  
6 *historically under-represented group with respect to at least one*  
7 *diversity dimension* and at least one interviewer on the hiring  
8 panel must also represent a historically under-represented group  
9 with respect to at least one diversity dimension.” *Id.* ¶ 202  
10 (emphasis in original).

11 These statements largely describe the Diverse Search Requirement. Defendants contend  
12 that Plaintiffs failed to allege that they were false because Plaintiffs did not allege facts that the  
13 Diverse Search Requirement was not implemented or that it was not as described.

14 Plaintiffs instead, counter that even if the statements were literally true, they were  
15 nonetheless misleading when considered in context. Specially, Plaintiffs point to allegations that  
16 Wells Fargo conducted systemic sham interviews. *See* Opp’n at 12:12–15 (“Far from ‘isolated  
17 incidents,’ Plaintiffs allege, based on reports by over 25 current and former Wells Fargo  
18 employees, that fake interviews were widespread across myriad business lines and took place  
19 before and during the Class Period. This is more than sufficient.”).

20 The Court agrees that a reasonable investor, under the circumstances alleged, would not  
21 expect sham interviews to be conducted to fulfill the Diverse Search Requirement. The PSLRA,  
22 however, requires particularized allegations sufficient to infer that sham interviews took place  
23 during the Class Period and that they were widespread. The Plaintiffs fall short of satisfying this  
24 requirement.

25 Plaintiffs’ claim depends on Joe Bruno and confidential witnesses Former Employee 1  
26 (“FE-1”) and Former Employee 2 (“FE-2”). Bruno is a former Senior Vice President-Market  
27 Leader for the Wealth Management division in Jacksonville, Florida. Compl. ¶ 40. Meanwhile,  
28 FE-1 is a former employee in the HR Department from late 2012 to early 2022, most recently as a  
Military Acquisition Talent Liaison for the Wealth Management division. FE-2 is a contractor  
from early 2019 to early 2020 who was Corporate Recruiter for the Wealth Management division.



1 *Id.* ¶¶ 41–42.<sup>1</sup> In addition, Plaintiffs cite to related news articles.

2 First, the Court notes that these three individuals relied upon by Plaintiffs are all from the  
3 Wealth Management division, similar to the focus of the May 19 article from The New York  
4 Times. While The New York Times asserted in its article on June 9 that “sham interviews  
5 occurred across multiple business lines,” Cullen Decl., Ex. D at 1, the article did not provide any  
6 particularized facts to support that statement. Instead, the article stated only that additional  
7 anonymous current and former Wells Fargo employees have shared stories with The New York  
8 Times. While Plaintiffs may rely on allegations that stem from news reports that cite anonymous  
9 sources, the articles here, and thus Plaintiffs, fall shy of providing particularized factual allegations  
10 that the alleged sham interviews also occurred outside of the Wealth Management division. *See In*  
11 *re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d 1248, 1272 (N.D. Cal. 2000) (“To the extent  
12 that a newspaper article corroborates plaintiff’s own investigation and provides detailed factual  
13 allegations, it can—at least in combination with plaintiff’s investigative efforts—be a reasonable  
14 source of information and belief allegations.”); *see also In re Silicon Graphics Inc. Sec. Litig.*, 183  
15 F.3d 970, 985 (9th Cir. 1999), *as amended* (Aug. 4, 1999) (“It is not sufficient for a plaintiff’s  
16 pleadings to set forth a belief that certain unspecified sources will reveal, after appropriate  
17 discovery, facts that will validate her claim.”). Plaintiffs must allege additional facts from their  
18 own investigation.

19 Moreover, while Plaintiffs’ allegations are sufficient to draw the inference that some sham  
20 interviews likely occurred, as acknowledged by Defendants during oral argument, they fall short  
21 of the inference that sham interviews took place during the Class Period. For example, while the  
22 May 19 article from The New York Times alleged the existence of sham interviews taking place  
23 prior to the implementation of the Diverse Search Requirement, and specifically before the start of  
24 the Class Period, the article contains only generalized allegations that sham interviews continued  
25 after the Diverse Search Requirement was announced and during the Class Period. *See Cullen*  
26 *Decl., Ex. C* (“But six current and former Wells Fargo employees, including Mr. Bruno, said that

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiffs do not allege the locations where FE-1 and FE-2 were based during their employment  
with Wells Fargo.

1 fake interviews were conducted for many types of positions. Three current employees said they  
2 conducted fake job interviews or knew of them as recently as this year.”); *see also* Compl. ¶ 139.  
3 As the news reports do not provide particularized allegations of sham interviews during the Class  
4 Period, they can only corroborate Plaintiffs’ factual allegations. Here, Plaintiffs included  
5 allegations from only two identified individuals that were employed during the Class Period,  
6 Bruno, and FE-1. Plaintiffs, however, did not include particularized allegations from either to  
7 suggest that sham interviews took place during the Class Period. As Plaintiffs confirmed during  
8 oral argument, they seek liability only for conduct during the Class Period. Thus, alleging that  
9 sham interviews took place without specifying whether they occurred during the Class Period is  
10 not sufficient to meet the falsity requirement. *See Or. Pub. Emps.*, 774 F.3d at 605 (noting that all  
11 elements must be pled with particularity).

12 Relatedly, as Plaintiffs did not adequately allege that sham interviews took place during  
13 the Class Period, they have also not adequately alleged that sham interviews were a widespread or  
14 systemic practice during the Class Period. While the parties disputed at oral argument the number  
15 of sham interviews sufficient for the practice to be considered widespread, they do not dispute that  
16 sham interviews must be widespread in order for the statements to be misleading. The Court does  
17 not set a threshold number but note that Plaintiffs must allege more than isolated incidents to  
18 support Plaintiffs’ theory that Defendants’ statements were misleading due to widespread sham  
19 interviews.

20 Lastly, the Court notes that Plaintiffs’ allegations regarding FE-1 and FE-2 fall short of  
21 drawing the inference that sham interviews occurred. For example, FE-1 averred that “hiring  
22 managers were directed by the senior lead to hire the referral and that the hiring managers had to  
23 choose the non-diverse referral candidate,” while FE-2 averred that “hiring managers often had a  
24 candidate in mind for a position.” Compl. ¶¶ 145, 149. As pled, these are not sufficient for the  
25 Court to infer that non-standard hiring practices took place.

26 For the reasons above, the Court finds that Plaintiffs have not sufficiently pled that the  
27 challenged statements are false.

28 //



1 the defendant or is so obvious that the actor must have been aware of it.” *Nguyen v. Endologix,*  
2 *Inc.*, 962 F.3d 405, 414 (9th Cir. 2020) (citations omitted) (emphasis in original).

3 “The inquiry . . . is whether all of the facts alleged, taken collectively, give rise to a strong  
4 inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that  
5 standard.” *Tellabs*, 551 U.S. at 322–23 (citation omitted). “[I]n determining whether the pleaded  
6 facts give rise to a ‘strong’ inference of scienter, the court must take into account plausible  
7 opposing inferences.” *Id.* at 323. “[T]he inference of scienter must be more than merely  
8 ‘reasonable’ or ‘permissible’—it must be cogent and compelling, thus strong in light of other  
9 explanations.” *Id.* at 324. “A complaint will survive . . . only if a reasonable person would deem  
10 the inference of scienter cogent and at least as compelling as any opposing inference one could  
11 draw from the facts alleged.” *Id.*

12 **a. Individual Defendants**

13 Plaintiffs argue that they adequately pled scienter because the individual Defendants were  
14 deliberately reckless in not knowing about the allegedly widespread and systemic fake interviews.  
15 Plaintiffs cite to a number of allegations as support—Bruno’s accounts of widespread fake  
16 interviews; The New York Times articles; data kept of each job interview; the individual  
17 Defendants’ positions and roles in various committees, etc. Plaintiffs also point to Wells Fargo’s  
18 past regulatory challenges.

19 Defendants contend that Plaintiffs’ allegations of the individual Defendants’ scienter are  
20 insufficient because they are based on the Defendants’ “positions and access to unspecified data,  
21 the Company’s general focus on regulatory matters and improving diversity, and vague allegations  
22 from a handful of employees that never mention any of the individual Defendants.” Reply at  
23 9:14–17. The Court agrees that Plaintiffs fall short of adequately alleging scienter as to the  
24 individual Defendants.

25 The glaring issue with Plaintiffs’ allegations is that there are no particularized allegations  
26 supporting a strong inference that each of the individual Defendants were aware or should have  
27 been aware of widespread sham interviews. Plaintiffs’ allegations regarding the individual  
28 Defendants’ positions, attendance at regular meetings, and reports received at those meetings are

1 insufficient, as they do not connect the individual Defendants to specific knowledge of the alleged  
2 sham interviews. Even if the individual Defendants were focused on diversity initiatives,  
3 Plaintiffs must nonetheless plead particularized facts regarding how information regarding  
4 widespread sham interviews may have been included in a report to the individual Defendants,  
5 presented at a meeting where the individual Defendants were present, or otherwise communicated  
6 to the individual Defendants in a manner such that it would have been so obvious that they must  
7 have been aware of it. *See Nguyen*, 962 F.3d at 414.

8 As the Court noted during oral argument, it is unlikely that records of sham interviews  
9 were explicitly created. Thus, even if there was a “record of every job interview,” *id.* ¶ 151, it is  
10 unlikely that collectively the records amounted to a database of sham interviews. Despite this  
11 difficulty, Plaintiffs must nonetheless allege more than that the sham interviews were “an open  
12 secret at Wells Fargo” and that one employee had “complained for years to HR, to [] immediate  
13 managers, and to senior leaderships.” *See Compl.* ¶ 142.<sup>2</sup> While the New York Times articles  
14 recited an email from an unnamed human resources employee, Plaintiffs do not allege how the  
15 individual Defendants may have been aware of the email. *See id.* ¶¶ 142, 168, 247. Without such  
16 allegations, the inference that the individual Defendants had or should have had knowledge of the  
17 sham interviews is not as compelling as the alternative that they were not aware of this alleged  
18 practice.

19 Lastly, Plaintiffs’ allegations regarding other regulatory challenges by Wells Fargo is not  
20 sufficient to imbue the individual Defendants with scienter of the fake interviews alleged in this  
21 action. While Plaintiffs’ attempt to tie them together under the broad general category of diversity  
22 may add color to their claims, none of Wells Fargo’s past regulatory issues dealt specifically with  
23 sham interviews conducted to fulfill the Diverse Search Requirement. Thus, while Wells Fargo’s  
24 history provides some context for the allegedly misleading statements, it is not sufficient to confer  
25 scienter.

26 Accordingly, whether individually or holistically, Plaintiffs’ allegations fall short of a  
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28 <sup>2</sup> Plaintiffs do not specifically allege that the individual Defendants received or were aware of the complaints mentioned.

1 compelling inference that is “strong in light of other explanations”—that the individual  
 2 Defendants were not aware of the allegedly widespread sham interviews. *See Tellabs*, 551 U.S. at  
 3 324. Thus, the Court finds that Plaintiffs’ allegations do not give rise to a strong inference of  
 4 scienter as to the individual Defendants.

5 **b. Wells Fargo**

6 “[A] corporation is responsible for a corporate officer’s fraud committed ‘within the scope  
 7 of his employment’ or ‘for a misleading statement made by an employee or other agent who has  
 8 actual or apparent authority.’” *In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d 471, 476 (9th  
 9 Cir. 2015) (citation omitted). “The scienter of the senior controlling officers of a corporation may  
 10 be attributed to the corporation itself to establish liability as a primary violator of § 10(b) and Rule  
 11 10b–5 when those senior officials were acting within the scope of their apparent authority.” *Id.*  
 12 (citation omitted).

13 As discussed above, the Court finds that Plaintiffs did not plausibly allege scienter as to the  
 14 individual Defendants. Thus, there is no scienter that can be imputed to Wells Fargo. The Court  
 15 does not separately address the parties’ dispute regarding whether Plaintiff has adequately pled  
 16 that individual Defendants made the statements contained in various statements and filings issued  
 17 by Wells Fargo.

18 **B. Section 20(a) of the Exchange Act**

19 “In order to prove a prima facie case under § 20(a), plaintiff must prove: (1) a primary  
 20 violation of federal securities laws . . . ; and (2) that the defendant exercised actual power or  
 21 control over the primary violator . . .” *Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1065 (9th Cir.  
 22 2000) (citation omitted). “Section 20(a) provides derivative liability for those who control others  
 23 found to be primarily liable under the Act.” *Kyung Cho v. UCBH Holdings, Inc.*, 890 F. Supp. 2d  
 24 1190, 1205 (N.D. Cal. 2012) (citation omitted). “Where a plaintiff asserts a Section 20(a) claim  
 25 based on an underlying violation of Section 10(b), the pleading requirements for both violations  
 26 are the same.” *Id.* (citation omitted).

27 As discussed above, the Court found that Plaintiffs failed to plausibly plead a violation of  
 28 Section 10(b) of the Exchange Act. Accordingly, Plaintiffs’ claim under Section 20(a) also fails

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and is dismissed.

**V. CONCLUSION**

For the foregoing reasons, Defendants’ motion to dismiss is **GRANTED**. Plaintiffs’ claims for violation of Sections 10(b) and 20(a) of the Exchange Act are **DISMISSED WITHOUT PREJUDICE, WITH LEAVE TO AMEND**. Plaintiffs may amend their complaint within 21 days of this Order. The parties next appear before the Court for a further Case Management Conference on October 5, 2023, at 2 PM via video. *See* ECF No. 96.

This Order terminates ECF No. 100.

**IT IS SO ORDERED.**

Dated: August 18, 2023



TRINA L. THOMPSON  
United States District Judge

United States District Court  
Northern District of California