

FILED  
06 MAR 29 PM 4:00  
CLERK OF DISTRICT COURT  
BY: *smv* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALASKA ELECTRICAL PENSION  
FUND, On Behalf of Itself and All Others  
Similarly Situated,

Plaintiffs,

v.

ADECCO S.A.; JOHN BOWMER;  
JEROME CAILLE; and FELIX A.  
WEBER,

Defendants.

Civil No. 04cv0129-L(WMc)

**ORDER: (1) GRANTING MOTION  
TO DISMISS AMENDED  
COMPLAINT; (2) DISMISSING  
AMENDED COMPLAINT WITH  
PREJUDICE**

[Docket No. 61]

In re ADECCO S.A. SECURITIES  
LITIGATION

This Document Relates to:  
ALL ACTIONS

On January 30, 2006, this matter came on regularly for a hearing on Defendants' Motion to Dismiss the Consolidated Amended Complaint. Scott H. Saham of Lerach Coughlin Stoia Geller Rudman & Robbins, LLP appeared for Plaintiffs. Laurie B. Smilan of Latham & Watkins, LLP appeared for the Defendants.

///

74 *smv*

1 Having carefully reviewed the parties' briefs, oral argument, and applicable law, the  
2 Court finds the Consolidated Amended Complaint ("Amended Complaint") does not meet the  
3 pleading requirements under the Private Securities Litigation Reform Act of 1995 ("PSLRA"),  
4 15 U.S.C. §§ 78u-4(b)(1) and (2), and therefore **GRANTS** Defendants' motion to dismiss, and  
5 **DISMISSES** the Amended Complaint **WITH PREJUDICE**.

6 **BACKGROUND**

7 Plaintiffs filed this action under §§ 10(b) and 20(a) of the Securities Exchange Act of  
8 1934, 15 U.S.C. §§ 78j(b) and 78(t)(a), and Rule 10b-5 of the Securities and Exchange  
9 Commission ("SEC"), 17 C.F.R. § 240.10b-5. Plaintiffs allege violations of the statute and  
10 regulation on behalf of a class of investors who purchased Defendant Adecco S.A. ("Adecco" or  
11 "the Company") stock between March 16, 2000 and January 9, 2004 (the "Class Period").  
12 (Consolidated Amended Complaint ("AC") ¶ 1.) Defendants are Adecco and four of its officers  
13 and directors. Defendant John P. Bowmer was Chairman of Adecco from February 2002  
14 through the end of the Class Period and previously was CEO of the Adecco Group since its  
15 inception in 1996. *Id.* ¶ 47. Defendant Jerome Caille has been the CEO of Adecco since March  
16 2002, and prior to that served as President of the Adecco Staffing division. *Id.* ¶ 48. Defendant  
17 Felix A. Weber was CFO of Adecco from 1998 until 2004. *Id.* ¶ 49. Defendant Klaus J. Jacobs  
18 is one of the Company's founders and currently co-Chairman of the Board of Directors of  
19 Adecco. *Id.* ¶¶ 50, 160.

20 Adecco is a Swiss company primarily engaged in providing personnel services to  
21 companies and industry worldwide. *Id.* ¶¶ 1, 46. Adecco provides these services by contract to  
22 businesses located throughout North America, Europe, Asia Pacific and Latin America. *Id.* ¶¶ 1,  
23 46. The Company's North American ("Adecco North America") operations accounted for  
24 approximately 24% of total revenue at Adecco in 2003 with U.S. revenue over 3.8 billion Euros  
25 in 2003. *Id.* ¶¶ 35, 46. The Company's stock trades on the SWX Swiss Stock Exchange and is  
26 listed on Euronext Premier Marché. *Id.* ¶ 29. Adecco's stock is also traded as American  
27 Depository Shares on the New York Stock Exchange. *Id.*

28 ///

1 In March 2000, Adecco acquired Olsten Corporation, a U.S. company, primarily for its  
2 more advanced technology. *Id.* ¶¶ 2, 30, 61. After the Olsten takeover, Adecco North America  
3 converted its operating system to the legacy Olsten IT system. *Id.* ¶¶ 2, 52(i), 60. With the  
4 conversion, Defendants became aware of massive problems in the Company's North American  
5 receivables; not just with Olsten but also with Adecco's legacy accounts. *Id.* ¶¶ 2, 60.

6 During 2000 and 2001, Adecco had millions of dollars in bad debt it could not collect  
7 from customers who had gone bankrupt, become insolvent, or were otherwise unable to pay  
8 bills. *Id.* ¶¶ 3, 71. In addition, Adecco North America did not have an automatic system in  
9 place to match payments to the proper invoice, and as a result, payments were often manually  
10 credited to the wrong invoice. *Id.* ¶ 70. When this happened, many customers said they had  
11 already paid the outstanding amount and refused to pay the new invoice until Adecco "got its act  
12 together." *Id.* Further, many of the inherited Olsten customers refused to pay because Adecco  
13 utilized a different process when billing customers. *Id.* ¶ 72. The combination of millions of  
14 dollars in uncollectible debt and the amount that customers refused to pay resulted in hundreds  
15 of millions of dollars of outstanding receivables on Adecco's books during 2000 and 2001. *Id.*  
16 ¶¶ 3, 71.

17 According to Plaintiffs, when faced with the problem of these uncollectible receivables,  
18 Defendants did not disclose them to the market and write them off. *Id.* ¶ 3. Instead, Defendants  
19 chose to cover up the uncollectible receivables and violate Generally Accepted Accounting  
20 Principles ("GAAP"). Defendants disseminated press releases and filed year-end financial  
21 statements for 2000 and 2001 that understated the Company's allowance for doubtful accounts  
22 by over \$100 million and therefore overstated earnings.<sup>1</sup> *Id.* ¶¶ 4, 10, 11, 134-36, 138, 140; *see*  
23 *id.* ¶¶ 90-125. Plaintiffs maintain that during the Class Period, Defendants issued false and  
24 misleading financial statements that failed to disclose material internal control weaknesses and  
25 pervasive problems concerning Adecco's account receivables in Adecco North America. *Id.* ¶ 9.

---

26  
27 <sup>1</sup> Adecco is a foreign company and therefore does not have to issue its financial  
28 statements for any given fiscal year until six months after the close of that year. (AC ¶ 10.)  
Thus, Adecco's year 2000 financial statements were not issued until June 2001, and its 2001  
financial statement was issued in June 2002. *Id.*

1 Plaintiffs allege Defendants concealed the uncollectible receivables by, among other  
2 things, improperly applying current cash receipts that were intended to satisfy recent customer  
3 invoices to old outstanding receivables. *Id.* ¶¶ 3, 54, 65, 140, 145. Plaintiffs also aver that  
4 Adecco North America manipulated its financial statements and violated GAAP by billing  
5 customers at incorrect rates, improperly classifying its workers, engaging in State  
6 Unemployment Tax Act (“SUTA”) dumping, delaying its payments to vendors, and violating  
7 Regulation S-K 303. *Id.* ¶¶ 58, 78-82, 88-89, 141-43, 145, 147-52.

8 On June 24, 2003, as part of its year-end financial statements, Adecco wrote off  
9 receivables that had been on its books for more than 90 days. *Id.* ¶¶ 5, 11, 73. The amount  
10 written off was approximately \$95 million Euros (approximately \$100 million). *Id.* ¶¶ 5, 11, 73.  
11 Prior to that time, some receivables had remained on Adecco’s books more for two years. *Id.* ¶  
12 73. The disclosure accompanying this write off was incomplete, false, and misleading because it  
13 did not state that the true reason for the write-off, which was the result of material weaknesses in  
14 the Company’s internal controls, had yet to be corrected. *Id.* ¶¶ 5, 11. Another 28 million Euros  
15 (approximately \$35 million) were written off for year-end 2003. *Id.* ¶ 11.

16 Adecco switched auditors from Arthur Andersen to Ernst & Young, LLP (“E&Y”) in late  
17 2002. *Id.* ¶¶ 4, 76. In early 2003, E&Y warned Defendants they needed to correct the  
18 misallocation of current cash receipts by year-end 2003. *Id.* ¶¶ 4, 54, 76. Toward the end of that  
19 year, because the Company had failed to correct its internal control problems, E&Y informed  
20 Defendants it would not sign off on the Company’s 2003 year-end financial statements. *Id.* ¶¶ 6,  
21 54, 76.

22 On January 12, 2004, Adecco issued a press release entitled “Adecco S.A. Delays  
23 Announcement of FY 2003 Audited Results.” *Id.* ¶¶ 17, 127. The press release stated in part:

24 Adecco S.A. announced that it does not expect the audit of its consolidated  
25 financial statements for the 2003 fiscal year, ended on December 28, 2003, to be  
26 completed by Adecco’s auditors, by the previously announced release date of  
27 February 4, 2004.

27 The reasons for the delay in completion of the audit include:

- 28 - The identification of *material weaknesses in internal controls in the Company’s North American operations of Adecco Staffing*

1 - ***The resolution of possible accounting, control and compliance***  
2 ***issues*** in the Company's operations in certain countries

3 - The completion of the Company's efforts to address these matters  
4 and determine their effect on the Company's consolidated financial  
5 statements.

6 In this regard an independent Counsel has been appointed by the Audit &  
7 Finance Committee of the Company's Board of Directors to conduct an  
8 investigation.

9 The Company is not yet able to predict when the 2003 audit of its  
10 consolidated financial statements will be completed.

11 *Id.* ¶ 17, 126. Following this news, Adecco's stock dropped from almost \$17 per share to as low  
12 as \$10 per share. *Id.* ¶¶ 8, 17, 20-21. The SWX Swiss Stock Exchange, SEC, and United States  
13 Department of Justice initiated investigations into possible violations of the law. *Id.* ¶¶ 19, 32,  
14 128, 130. The SEC subsequently concluded its investigation without taking action. (Horton  
15 Decl. Ex. 1.)

16 On January 16, 2004, the Company issued a press release that stated, in part:

17 ***Material weaknesses, related to Adecco Staffing North America, include***  
18 ***IT system security; reconciliation of payroll bank accounts; application of***  
19 ***accounts receivable;*** and several issues affecting revenue recognition including  
20 lack of systematic documentation of agreed rates and hours; billing errors not  
21 timely identified and corrected; and lack of segregation of duties in the branches  
22 increasing the likelihood of undetected errors. Of the foregoing, some have  
23 already been corrected, and the balance are being actively addressed. The Audit  
24 and Finance Committee of the Board initiated certain measures to help to identify  
25 any further weaknesses and permanently resolve them. The chief focus of these  
26 measures is to investigate accounting, control and compliance issues in the US and  
27 in certain other countries, as well as to investigate accusations made by  
28 "whistleblowers" in the US. Outside of the US, these other countries together  
accounted for less than 10% of the group's reported 2002 net service revenues.

(AC ¶¶ 8, 18, 128). Following the announcements, E&Y and the law firm of Paul Weiss  
conducted an investigation that cost Adecco over \$120 million. *Id.* ¶¶ 8, 59, 68. This  
investigation did not review the Company's 2000 and 2001 financial statements. *Id.* ¶¶ 8, 59,  
144.

Several plaintiffs filed securities fraud class actions against Adecco shortly after these  
announcements, contending the Company would have to restate its FY 2000-2003 results to  
eliminate millions in improperly-recorded revenues. The cases were filed in this district and in

///

1 the Southern District of New York. The New York cases were transferred to this district, and all  
2 actions were consolidated.

3 In June 2004, Adecco released its 2003 Annual Report that included an additional write  
4 off of \$35 million in bad receivables. (*Id.* ¶¶ 8, 59, 133; Parry Decl.<sup>2</sup> Ex. H.) Adecco announced  
5 in this report that its “accounts were signed by [the] auditors with no qualification, no  
6 restatement of prior year results and with no evidence of material irregularities.” (Parry Decl.  
7 Ex. H at 599.) Plaintiffs allege Adecco’s 2003 Annual Report conceded problems in controls  
8 had existed and that it had not just been overcautiousness on the part of the Board or the  
9 Company’s outside officers. (AC ¶ 133.) Defendant Bowmer hoped that the “unfortunate  
10 episode” was ending, and stated that Adecco had “taken a number of significant steps to  
11 reinforce our audit and control functions throughout the Company.” *Id.* In the report, Defendant  
12 Caille stated that Adecco had “used this opportunity to review [its] operations and systems in the  
13 U.S. and drive process efficiencies as well as strengthen[] . . . internal controls.” *Id.*

14 On September 13, 2004, Plaintiffs filed a Consolidated Complaint. The Defendants who  
15 had been served moved to dismiss, and by order dated May 16, 2005, the Court granted  
16 Defendants’ motion and dismissed the Consolidated Complaint without prejudice. *Alaska Elec.*  
17 *Pension Fund v. Adecco S.A.*, 371 F. Supp. 2d 1203 (S.D. Cal. 2005). Plaintiffs filed a  
18 Consolidated Amended Complaint (“Amended Complaint”), alleging Defendants issued positive  
19 statements throughout the Class Period regarding the Company’s financial status that were false  
20 and misleading as they failed to disclose: (1) the Company’s material internal control  
21 weaknesses; (2) the Company’s extremely large amount of uncollectible receivables; (3) the  
22 Company’s 2000 and 2001 financial statements, which were operative until June 2003 were in  
23 fact false as they understated the Company’s bad debt expense; and (4) the true reason for the  
24 write off in year-end 2002. *Id.* ¶¶ 11-12. This conduct caused Adecco’s stock to trade at  
25 inflated levels, which in turn allowed Adecco to complete a public offering of \$533 million

26 ///

27 \_\_\_\_\_  
28 <sup>2</sup> The Parry Declaration was filed in support of Defendants’ motion to dismiss the  
Consolidated Complaint on November 12, 2004.

1 worth of convertible bonds on July 23, 2003. *Id.* ¶ 12. The Defendants who have been served  
2 move to dismiss the Amended Complaint.

3 **APPLICABLE LAW REGARDING MOTIONS TO DISMISS**

4 **SECURITIES CLASS ACTIONS**

5 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency  
6 of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal of a claim  
7 under this rule is appropriate only where “it appears beyond doubt that the plaintiff can prove no  
8 set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355  
9 U.S. 41, 45-46 (1957); *Navarro*, 250 F.3d at 732. In reviewing a motion to dismiss under Rule  
10 12(b)(6), the court must assume the truth of all factual allegations and must construe them in the  
11 light most favorable to the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir.  
12 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). However, legal  
13 conclusions need not be taken as true merely because they are cast in the form of factual  
14 allegations. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987); *Western Mining*  
15 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

16 Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful to use in  
17 connection with the mails or facilities of interstate commerce any “manipulative or deceptive  
18 device or contrivance in contravention of such rules and regulations as the Commissioner may  
19 prescribe.” 15 U.S.C. § 78j. SEC Rule 10b-5, promulgated under section 10(b), provides:

20 It shall be unlawful for any person, directly or indirectly, by the use of any  
21 means or instrumentality of interstate commerce, or of the mails or of any facility  
of any national securities exchange,

22 (a) To employ any device, scheme, or artifice to defraud,

23 (b) To make any untrue statement of a material fact or to omit to state a  
24 material fact necessary in order to make the statements made, in the light of the  
circumstances under which they were made, not misleading, or

25 (c) To engage in any act, practice, or course of business which operates or  
26 would operate as a fraud or deceit upon any person, in connection with the  
purchase or sale of any security.

27 17 C.F.R. § 240.10b-5. The elements of a Rule 10b-5 claim are: (1) a misrepresentation or  
28 omission of a material fact; (2) scienter; (3) causation; (4) reliance; and (5) damages. *In re Daou*

1 *Sys., Inc. Sec. Litig.*, 411 F.3d 1006, 1014 (9th Cir. 2005), *cert. denied*, \_\_ U.S. \_\_, 126 S.Ct.  
2 1335 (2006).

3 Claims brought under Rule 10b-5 and § 10(b) must meet Federal Rule of Civil Procedure  
4 9(b)'s particularity requirement that "[i]n all averments of fraud or mistake, the circumstances  
5 constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b); *see Daou*,  
6 411 F.3d at 1014; *Yourish v. Cal. Amplifier*, 191 F.3d 983, 993 (9th Cir. 1999). In addition, in  
7 1995, Congress enacted the PSLRA and altered the pleading requirements in private securities  
8 fraud litigation by requiring a complaint "'plead with particularity both falsity and scienter.'" *Daou*,  
9 411 F.3d at 1014 (quoting *Gompper v. VISX, Inc.*, 298 F.3d 893, 895 (9th Cir. 2002)). As  
10 interpreted by the Ninth Circuit, a complaint alleging securities fraud "must now 'specify each  
11 statement alleged to have been misleading, the reason or reasons why the statement is  
12 misleading, and, if an allegation regarding the statement or omission is made on information and  
13 belief, the complaint shall state with particularity all facts on which that belief is formed.'" *Id.*  
14 (quoting *Gompper*, 298 F.3d at 895).

15 **SUFFICIENCY OF THE ALLEGATIONS OF**  
16 **VIOLATIONS OF § 10(B) AND RULE 10B-5**

17 **I. Misleading Statements or Omissions**

18 Plaintiffs argue Defendants violated GAAP by causing the Company to recognize revenue  
19 improperly. (AC ¶ 145.) In particular, Plaintiffs contend Defendants overstated Adecco's  
20 revenues in its year-end financial statements for 2000 and 2001 by failing to increase the  
21 Company's allowance for bad debt reserves. Plaintiffs further allege the Company should have  
22 written off the uncollectible receivables earlier than it did. Regarding the write-down, Plaintiffs  
23 maintain Adecco's year-end 2002 financial statement was materially false and misleading  
24 because it attributed the write-off to worsening economic conditions and failed to mentioned the  
25 material weaknesses in internal controls. The Amended Complaint alleges Defendants  
26 perpetuated this accounting fraud by: (1) applying new moneys received from customers to old  
27 outstanding invoices; (2) billing customers at incorrect rates; (3) engaging in SUTA dumping;

28 ///

1 (4) delaying payment of vendor invoices; and (5) violating Regulation S-K 303. *Id.* ¶¶ 3, 54, 58,  
2 65, 78-82, 88-89, 140-43, 147-52.

3 Plaintiff's theory of malfeasance rests on accounting fraud. "To properly state a claim for  
4 accounting fraud, plaintiffs must plead facts sufficient to support a conclusion that defendant  
5 prepared the fraudulent financial statements and that the alleged financial fraud was material."  
6 *Daou*, 411 F.3d at 1016 (internal quotations and alterations omitted). "When pleading  
7 irregularities in revenue recognition, plaintiffs should allege: (1) such basic details as the  
8 approximate amount by which revenues and earnings were overstated; (2) the products involved  
9 in the contingent transaction; (3) the dates of any of the transactions; or (4) the identities of any  
10 of the customers or [company] employees involved in the transaction." *Id.* (alteration in  
11 original) (internal quotations omitted). Although plaintiffs need not allege each of those  
12 particular details, they must allege enough to allow a court to "discern whether the alleged  
13 GAAP violations were minor or technical in nature, or whether they constituted widespread and  
14 significant inflation of revenue." *Id.* at 1017 (quoting *In re McKesson HBOC, Inc. Sec. Litig.*,  
15 126 F. Supp. 2d 1248, 1273 (N.D. Cal. 2000)). Thus, to support a claim of fraud, a plaintiff  
16 must plead with particularity how the accounting manipulations "affected the company's  
17 financial statements and whether they were material in light of the company's overall financial  
18 position." *Id.* at 1018.

19 **A. The Company's Reserves and Write Down of Uncollectible Receivables**

20 Plaintiffs allege the Company's 2000 and 2001 year-end financial statements understated  
21 Adecco's allowance for uncollectible receivables in the amount of \$100 million, and that the  
22 Company should have written off that bad debt before year-end 2002. Understatements of bad  
23 debt reserves can support a securities fraud claim because "[c]ompanies are obliged to make  
24 reasonable predictions about the collectability of their accounts receivable. Underestimates of  
25 bad debt reserves lead to overstatement of income, and ultimately inflation of stock price." *Kane*  
26 *v. Madge Networks N.V.*, No. C-96-20652-RMW, 2000 WL 33208116, at \* 5 (N.D. Cal. May  
27 26, 2000). However, a bare allegation that bad debt reserves were inadequate is insufficient  
28 "because even reasonable predictions turn out to be wrong. Instead, plaintiffs must allege with

1 particularity facts that show the initial prediction was ‘a falsehood.’” *Id.* (quoting *In re GlenFed,*  
2 *Inc. Sec. Litig.*, 42 F.3d 1541, 1549 (9th Cir. 1994) (en banc)). A company’s reserve amounts  
3 can be “‘fraudulent only if, when established, the responsible parties knew or should have  
4 known that they were derived in a manner inconsistent with reasonable accounting practices.’”  
5 *In re GlenFed*, 42 F.3d at 1549 n.10 (quoting *Christidis v. First Penn. Mortgage Trust*, 717 F.2d  
6 96, 100 (3d Cir. 1983)). Accordingly, a complaint alleging fraud based on understated reserves  
7 must “include details about when and to what level the accounts receivable should have been  
8 written down, when and to what level the allowance should have been changed, why the  
9 allowance made by the corporation was unreasonable in light of the [bed debt] experienced, and  
10 how many accounts ultimately were uncollectible.” *In re Loewen Group Inc. Sec. Litig.*, No.  
11 Civ.A. 98-6740, 2004 WL 1853137, at \*11 (E.D. Pa. Aug. 18, 2004).

12 Similarly, to support their claim Defendants should have written off the uncollectible  
13 receivables before the year-end 2002 financials, Plaintiffs must allege facts showing Defendants  
14 knew, when preparing the year-end financials for 2000 and 2001, that the receivables should  
15 have been written off, but they fraudulently chose to delay the write-down. *See In re PetSmart,*  
16 *Inc. Sec. Litig.*, 61 F. Supp. 2d 982, 993 (D. Ariz. 1999) (finding the complaint’s theory that a  
17 write-down of obsolete inventory should have been taken earlier to be deficient because the  
18 pleading “fail[ed] to include any particularized facts indicating that the timing of the write-down  
19 was unusual or reckless”); *see also In re K-Tel Int’l, Inc. Sec. Litig.*, 300 F.3d 881, 891 (8th Cir.  
20 2002) (“‘Mere allegations that statements in one report should have been made in earlier reports  
21 do not make out a claim of securities fraud.’”) (quoting *Acito v. IMCERA Group, Inc.*, 47 F.3d  
22 47, 53 (2d Cir. 1995)). “[A] delinquent write-down of the impaired assets, without anything  
23 more, does not state a claim of securities fraud, stating at best a bad business decision.” *In re*  
24 *ICN Pharms., Inc. Sec. Litig.*, 299 F. Supp. 2d 1055, 1065 (C.D. Cal. 2004).

25 The order dismissing the Consolidated Complaint found deficient the allegations  
26 regarding the Company’s allowance for bad receivables and its failure to write off uncollectible  
27 receivables before year-end 2002 financials. *Adecco*, 371 F. Supp. 2d at 1213-14. In particular,  
28 the Court found there were no factual allegations that Defendants knew when preparing the

1 Company's 2000 and 2001 financial statements that certain accounts at Adecco North America  
2 were uncollectible and should have been written off during that time frame. *Id.* at 1213. To the  
3 contrary, the Complaint suggested Adecco North America intended to collect the outstanding  
4 receivables, alleging that after the Olsten acquisition, "Adecco North American corporate offices  
5 instructed every branch to begin making efforts to collect the outstanding receivables." *Id.*  
6 There were no allegations explaining why the allegedly uncollectible receivables were outside of  
7 the range provided for by the Company's allowance for doubtful accounts, and by how much.  
8 *Id.* The Court also found the Consolidated Complaint did not contain factual allegations  
9 regarding the amount of Adecco North America's revenue inflation and quantifying the impact  
10 of Adecco North America's financials on Adecco's consolidated financial statements for its  
11 worldwide operations. *Id.* at 1214.

12 Plaintiffs maintain the Amended Complaint addresses these issues and is based upon the  
13 testimony of confidential witnesses. CW1, a former Senior Vice President of Adecco North  
14 America who later held higher top executive positions, helped negotiate the Olsten-Adecco  
15 merger. (AC ¶¶ 52(a), 60.) CW1 reports that Olsten had done a poor job in keeping on top of its  
16 receivables and collections. *Id.* ¶ 60. Plaintiffs argue that part of the reason Adecco acquired  
17 Olsten was for its operating system, and according to CW14, a former business analyst for  
18 Adecco Staffing North America, following the merger Adecco converted from its legacy systems  
19 over to Olsten's system. *Id.* ¶¶ 52(n), 61. CW14 and CW5 (a former Adecco technical sales  
20 manager) attest this process took over a year to complete. *Id.* ¶¶ 52(e), 61. After the system  
21 changeover, Adecco discovered massive problems in Adecco's North American receivables as  
22 well as Olsten's receivables. *Id.* ¶¶ 60-61.

23 According to CW1, CW8, CW9, and CW11, after the acquisition and during 2000 and  
24 2001, the Company discovered it would be unable to collect tens, if not hundreds of millions in  
25 receivables from Olsten's customers who had gone bankrupt or who had unresolved billing  
26 disputes. *Id.* ¶¶ 3, 52(h), 52(i), 52(k), 56, 60, 62, 63-64. Plaintiffs' confidential witnesses report  
27 that because Adecco North America's operations did not have an automatic system in place to  
28 match payments to the proper invoice, payments were often manually credited to the wrong

1 invoice. *Id.* ¶¶ 52(i), 52(k), 69-70. When this happened, many customers contended they had  
2 already paid the outstanding amount and refused to pay the new invoice until Adecco North  
3 America determined the correct outstanding amount. *Id.* at 70. This issue compounded Adecco  
4 North America's problems with uncollectible receivables. *Id.* CW9 reports that many of the  
5 inherited Olsten customers refused to pay invoices because Adecco utilized a process different  
6 from Olsten when billing customers. *Id.* ¶ 72. Plaintiffs also allege that as of May 2001,  
7 according to CW11, the aggregate "unapplied payments" figure was in the tens of millions of  
8 dollars, and estimated to be about \$40 million by a former executive. *Id.* ¶ 67.

9 Plaintiffs maintain the understatement of doubtful accounts in North America was  
10 material to investors because Adecco's North American operations accounted for approximately  
11 28% of Adecco's worldwide revenue in 2001 (27% in 2002 and 24% in 2003). *Id.* ¶¶ 56, 63.  
12 Additionally, the North American operations' allowance for doubtful accounts was 28% in 2001,  
13 26% in 2002, and 24% in 2003 of the entire Company. *Id.* ¶ 63.

14 Having reviewed the amended pleading in its entirety, the Court is not persuaded  
15 Plaintiffs have adequately alleged an understatement of doubtful accounts, or that the Company  
16 committed fraud by failing to take a write-off earlier. The first deficiency is that the Amended  
17 Complaint does not plead sufficient facts to support its allegation the Company's 2000 and 2001  
18 year-end financial statements overstated revenues and understated allowance of bad debt by  
19 approximately \$100 million. *See id.* ¶ 11. To support that statement, the Amended Complaint  
20 must allege facts that support the inference Adecco should have increased its reserves in its 2000  
21 and 2001 year-end financial statements by \$100 million (or alternatively, written off that  
22 amount). Instead, the Amended Complaint reiterates the vague and conclusory assertion that the  
23 Company had "tens if not hundreds of millions" in uncollectible revenue. The only allegations  
24 that attempt to quantify the amount of uncollectible receivables come from two confidential  
25 witnesses. CW5 relates that in 2001, Deutsche Bank was 360 days past due on over \$100,000 in  
26 accounts receivable, and Kodak was approximately 180 days past due on a \$200,000 outstanding  
27 balance. *Id.* ¶ 52(e). CW17 states that St. Paul Insurance, AIG, CitiMortgage, and Excel  
28 Shipping & Logistics had outstanding balances in the tens of thousands of dollars, and that

1 MetLife and IBM were two other customer accounts that had even larger outstanding receivables  
2 in the very high tens of thousands of dollars to over \$100,000. *Id.* ¶ 52(q). CW16 also reports  
3 that three legacy Olsten customers had outstanding receivables, one dating as far back as 1999,  
4 but notably that confidential witness does not state the amount of outstanding receivables. *See*  
5 *id.* ¶ 52(p). CW2 recalls “that her branch wrote off thousands in outstanding receivables.” *Id.* ¶  
6 52(b).

7 The total amount of outstanding receivables discussed by CW5 and CW17 is  
8 approximately \$1 million. Although the Amended Complaint alleges the “outstanding  
9 receivables from CW5’s branch were indicative of receivables outstanding at Adecco’s more  
10 than 1500 North American offices,” *id.* ¶ 52(e), that conclusion is not supported by allegations of  
11 any confidential witness who would be in a position to make that extrapolation or compute the  
12 total amount of uncollectible receivables that should have been reserved for to be \$100 million.  
13 *Cf. Cal. Pub. Employees’ Ret. Sys. v. Chubb Corp.*, 394 F.3d 126, 155 (3d Cir. 2004) (“Plaintiffs  
14 repeatedly attribute specific nationwide information and statistics regarding Chubb’s  
15 performance to former employees who worked in local branch offices. These sources have not  
16 been described with sufficient particularity to support the probability that a person in the position  
17 occupied by the source would possess the information alleged.”). CW5, CW16, and CW 17 also  
18 appear to be low-level employees,<sup>3</sup> and the Amended Complaint does not contain any allegations  
19 indicating how they would be privy to how delinquent accounts would be reserved for in the  
20 Company’s worldwide financial statements. Further, the information provided by the  
21 confidential witnesses is incomplete. CW2 states thousands in outstanding receivables were  
22 written off, but does not state whether they had been reserved for. CW5, CW16, and CW17  
23 indicate certain accounts were past due, but they do not state whether those outstanding  
24 receivables were reserved for, had to be written off, or were ultimately collected. Indeed, certain  
25 of the Amended Complaint’s allegations indicate the Company intended to collect its

---

27 <sup>3</sup> CW 5 is a former Adecco sales manager. (AC ¶ 52(e).) CW16 is a former collections  
28 specialist. *Id.* ¶ 52(p). CW17 is a former Adecco Collections Department employee. *Id.* ¶  
52(q).

1 outstanding receivables. For example, the Amended Complaint indicates Adecco North America  
2 intended to collect the outstanding receivables, alleging that “following discovery of the Olsten  
3 accounts receivable problem and the Adecco accounts receivable problem, the Melville, New  
4 York, corporate office delegated to the hundreds of branch offices the actual collection function  
5 because the problems were so pervasive. Corporate put various incentives in place at the branch  
6 level to encourage collecting on old accounts receivable more quickly.” (AC ¶ 85.) These  
7 allegations therefore, do not adequately plead falsity regarding the Company’s 2000 or 2001  
8 year-end financial statements, or falsity in Adecco’s 2002 year-end statement’s discussion of the  
9 write-off.

10 **B. Application of Current Cash Receipts to Old Receivables**

11 As with the Consolidated Complaint, the Amended Complaint alleges accountants in the  
12 Cash Application division of the Corporate Accounts Receivable Department in Melville, New  
13 York violated GAAP and manipulated the Company’s 2000 and 2001 year-end financial  
14 statements by applying new receivables to old and uncollectible accounts. *Id.* ¶¶ 3, 65-73, 140.  
15 The Amended Complaint attributes the misapplication of payments to different causes. Certain  
16 paragraphs of the Complaint suggest the misapplication was purposeful, and intended to allow  
17 Defendants to avoid writing off the uncollectible receivables and to understate Adecco’s  
18 reserves and overstate earnings. Paragraph 3 alleges that “Adecco was faced with either  
19 disclosing and writing off these [outstanding] receivables (and thereby reducing its net income)  
20 or trying to cover it up. *The defendants chose the latter course: they attempted to ‘work off’ the*  
21 *receivables by, among other things, using current funds to pay old debts.” Id.* ¶ 3 (emphasis  
22 added). Similarly, paragraph 65 states, “[a]ccording to CW1, *in order to address the massive*  
23 *uncollected receivables discussed above without having to write them off, current cash receipts*  
24 *were applied to old accounts receivable.” Id.* ¶ 65 (emphasis added); *see id.* ¶ 50 (“At  
25 approximately the same time [as KJ Jacobs AG sold \$196 million worth of Adecco stock], *the*  
26 *Company started concealing its uncollectible receivables by applying newly received moneys to*  
27 *old receivables.”) (emphasis added); id.* ¶ 64 (“Rather than acknowledge the extensive problems

28 ///

1 and accurately reporting the financial results of the Company, *defendants chose to cover-up the*  
2 *problem with a variety of manipulations.*) (emphasis added).

3 Other paragraphs of the Complaint, however, ascribe the misapplication of cash to  
4 “material weaknesses in internal controls.” *See id.* ¶ 6 (stating that the Company had failed to  
5 correct its internal control problems “*which continued to allow the application of new moneys to*  
6 *old receivables*”) (emphasis added); *id.* ¶ 12 (“[t]he *material weaknesses in internal controls*  
7 *referenced herein also allowed the company to apply new moneys to old receivables*, in violation  
8 of Generally Accepted Accounting Principles (“GAAP”)” (emphasis added).) CW1, who in  
9 another paragraph indicated the improper application was directed by Defendants, (*see id.* ¶ 65),  
10 alleges also that the Company’s “weaknesses in internal controls allowed the Company to violate  
11 GAAP by applying new moneys to old receivables in order to eliminate them from the  
12 Company’s books.” *Id.* ¶ 52(a). Similarly, paragraph 55 alleges “[t]his lack of accounting  
13 controls resulted in the improper application of accounts receivable and a material  
14 understatement of the Company’s uncollectible accounts, resulting in overstated earnings during  
15 the Class Period.” *Id.* ¶ 55; *see id.* ¶ 68 (“These material weaknesses which are described, in  
16 part, above, allowed Adecco’s financial statements to be materially misstated during the Class  
17 Period.”).

18 Having reviewed the Amended Complaint in its entirety, the Court is not persuaded  
19 Plaintiffs properly alleged misrepresentations and omissions based on the application of current  
20 cash receipts to old receivables. This Court rejected the Consolidated Complaint’s allegations  
21 regarding this issue in part because the pleading did not corroborate its assertions with any  
22 examples. *Adecco*, 371 F. Supp. 2d at 1214. This deficiency remains in the Amended  
23 Complaint. Although CW1 now is the source for certain allegations regarding misapplication of  
24 receivables, that witness does not provide any examples of the improper cash applications, nor  
25 are there any allegations quantifying the impact of the alleged misapplication on Adecco’s 2000  
26 and 2001 year-end financial statements. Further, the Amended Complaint contains a significant  
27 inconsistency. As discussed above, certain paragraphs allege a purposeful scheme by  
28 Defendants to apply new moneys to old receivables. Other testimonials, however, suggest the

1 misapplication of current cash receipts was not intentional, but due to the Company's computer  
2 system. For example, CW11 attributes the difficulty in matching payments received to  
3 corresponding accounts receivable to the lack of "an automatic system in place at the corporate  
4 North American office" that required matching to be done manually (AC ¶¶ 52(k), 69-70.)  
5 Similarly, CW9 recounts that Adecco was *unable* to apply customer payments to proper  
6 invoices. *Id.* ¶ 52(i). These allegations suggest at most poor management, not fraud.

7 Further, the allegations regarding the confidential witnesses who Plaintiffs relied upon are  
8 deficient. There is an absence of allegations indicating how those witnesses possess the  
9 knowledge they purport to report. CW1 "is a former Senior Vice President of Adecco North  
10 America who later held other higher top executive positions," *id.* ¶ 52(a), but there are no  
11 averments regarding the nature of that witnesses' employment or explain how that witness would  
12 have obtained the information presented. Similarly, there are no allegations regarding how CW9  
13 and CW11 learned of the information attributed to them. Accordingly, the Amended Complaint  
14 fails to properly plead falsity or omissions regarding the improper application of current cash  
15 receipts to old accounts receivables.

### 16 C. Violation of Regulation S-K 303

17 The Amended Complaint advances a new theory of liability. In particular, Plaintiffs  
18 allege Defendants violated Rule 10b-5 by failing to comply with Item 303 of Regulation S-K.  
19 *See id.* ¶¶ 147-52. "S-K 303 requires a company to include in its SEC filings a discussion of  
20 'any known trends or uncertainties that have had or that the registrant reasonably expects will  
21 have a material favorable or unfavorable impact on net sales or revenues or income from  
22 continuing operations.'" *Oran v. Stafford*, 226 F.3d 275, 287 (3d Cir. 2000) (quoting 17 C.F.R.  
23 § 229.303(a)(3)(ii)). According to Plaintiffs, Adecco violated S-K 303 by failing to disclose:  
24 (1) the company had "material internal control weaknesses" in 2000 and 2001; (2) the  
25 acquisition of Olsten had caused a pervasive problem with aging receivables in its North  
26 American segment; (3) the Company had failed to properly take allowances for doubtful  
27 accounts for at least 2000 and 2001 and that no write-off for these receivables was taken until  
28 year-end December 31, 2002; and (4) when the Company first announced it was taking a large

1 write-off for its bad debts, the Company failed to disclose the true reason for the write-off. (AC  
2 ¶ 152.)

3 The Court is unpersuaded. “The standards for disclosure under section 10(b) differ from  
4 the standards for disclosure under 17 C.F.R. § 229.303.” *Wietschner v. Monterey Pasta Co.*, 294  
5 F. Supp. 2d 1102, 1118 (N.D. Cal. 2003). Consequently, “demonstration of a violation of the  
6 disclosure requirements of Item 303 does not lead inevitably to the conclusion that such  
7 disclosure would be required under Rule 10b-5. Such a duty to disclose must be separately  
8 shown.” *Alfus v. Pyramid Tech. Corp.*, 764 F. Supp. 598, 608 (N.D. Cal. 1991); *In re Caere*  
9 *Corporate Sec. Litig.*, 837 F. Supp. 1054, 1061 n.4 (N.D. Cal. 1993) (“The fact that Defendants  
10 may or may not have violated Item 303 is irrelevant to Plaintiffs’ Rule 10b-5 claims.”); *Oran*,  
11 226 F.3d at 287-88 (quoting *Alfus*). Accordingly, Plaintiffs’ allegations based on SEC  
12 Regulation S-K 303 are insufficient to state a Rule 10b-5 claim.

#### 13 **D. Remaining Accounting Improprieties**

14 The Consolidated Complaint alleged Defendants manipulated the Company’s financial  
15 statements by: (1) billing customers at incorrect rates; (2) improperly classified its workers;  
16 (3) engaged in SUTA dumping; and (4) delayed its payments to vendors. The Court found these  
17 allegations deficient because there were no facts regarding what impact these accounting  
18 improprieties had on Adecco North America’s revenues or more importantly, Adecco’s  
19 consolidated worldwide financial results. *Adecco*, 371 F. Supp. 2d at 1215-16. The Amended  
20 Complaint reiterates these allegations. (AC ¶¶ 58, 78-82, 88-89, 141-43.)

21 The Amended Complaint and Consolidated Complaint contain virtually identical  
22 allegations regarding Defendants’ alleged practices of: improperly billing customers at high  
23 rates; improperly classifying its workers for compensation purposes and candidates’ marital  
24 status and number of dependents; and delaying payment to vendors. (*Compare* Consolidated  
25 Complaint (“CC”) ¶¶ 59-63, 69-70 *with* AC ¶¶ 78-82, 88-89 .) The only difference is that the  
26 Amended Complaint attributes these averments to CW1 and CW6. (AC ¶¶ 52(f), 78-82, 88-89.)  
27 This additional information does not address the deficiencies discussed in this Court’s order  
28 dismissing the Consolidated Complaint. There is no information indicating how CW1 and CW6

1 would have learned about these facts. Further, these confidential witnesses do not provide any  
2 allegations quantifying the impact of these alleged improprieties on Adecco North America's  
3 revenues, or more importantly, Adecco's worldwide year-end financial results for 2000 and  
4 2001.

5 The two pleadings are also almost indistinguishable regarding Plaintiffs' SUTA dumping  
6 claim. (*Compare* CC ¶ 40 with AC ¶ 58.) The Amended Complaint does not attribute the  
7 allegations to any confidential witnesses, and again fails to plead facts indicating what impact  
8 this accounting irregularity had on Adecco North America's finances or Adecco's worldwide  
9 year-end financial reports for 2000 and 2001.

10 In brief, the Amended Complaint does not plead sufficient facts to support a Rule 10b-5  
11 claim based on these miscellaneous accounting improprieties. Like the Consolidated Complaint,  
12 the Amended Complaint's allegations do not allow a court to discern whether the accounting  
13 manipulations "were minor or technical in nature, or whether they constituted widespread and  
14 significant inflation of revenue." *Daou*, 411 F.3d at 1017 (quoting *McKesson*, 126 F. Supp. 2d  
15 at 1273).

## 16 **II. Scienter**

17 The PSLRA requires federal securities complaints to state with particularity facts giving  
18 rise to a strong inference the defendants acted with scienter. 15 U.S.C. § 78u-4(b)(2). Scienter  
19 is defined as "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst*  
20 *v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). The Ninth Circuit has interpreted the PSLRA as  
21 requiring plaintiff to "plead, in great detail, facts that constitute strong circumstantial evidence of  
22 deliberately reckless or conscious misconduct." *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d  
23 970, 974 (9th Cir. 1999). Recklessness satisfies the scienter requirement only insofar as it  
24 reflects some degree of conscious or deliberate misconduct; *i.e.*, "a degree of recklessness that  
25 strongly suggests actual intent." *Id.* at 979. In determining whether plaintiffs have adequately  
26 pled scienter, courts must consider "whether the total of plaintiffs' allegations, even though  
27 individually lacking, are sufficient to create a strong inference that defendants acted with  
28 deliberate or conscious recklessness." *No. 84 Employer-Teamster Jt. Council Pension Trust*

1 *Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 938 (9th Cir. 2003) (quoting *Lipton v.*  
2 *Pathogenesis Corp.*, 284 F.3d 1027, 1038 (9th Cir. 2002)). When conducting this analysis, the  
3 court must consider all reasonable inferences, whether or not favorable to the plaintiffs. *Daou*,  
4 411 F.3d at 1022.

5 **A. Scierer Based on Defendants' Awareness of and Involvement in Accounting**  
6 **Manipulations**

7 Plaintiffs argue they have adequately pled scierer based on the Defendants' awareness of  
8 and involvement in the accounting manipulations alleged. Although violations of GAAP  
9 standards can provide evidence of scierer, *Daou*, 411 F.3d at 1016, a failure to follow GAAP,  
10 without more, does not establish scierer. *DSAM Global Value Fund v. Altiris Software, Inc.*,  
11 288 F.3d 385, 390. Rather, plaintiffs must allege that the defendants "knew or must have been  
12 aware of the improper revenue recognition" or "intentionally or knowingly falsified the financial  
13 statements." *Id.* at 390-91.

14 According to Plaintiffs, because Defendants were top-ranking officers of the Company, it  
15 strains credulity to believe they would not have been aware of the improper accounting alleged  
16 in the Amended Complaint. Plaintiffs contend the Ninth Circuit held that defendants' positions  
17 in a company can create a "reasonable inference" that the defendants would be aware of the  
18 falsity of some or all of the statements at issue. (Pls.' Opp'n at 13 (quoting *In re Read-Rite*  
19 *Corp. Sec. Litig.*, 335 F.3d 843, 848 (9th Cir. 2003)). Acknowledging that a "reasonable  
20 inference" is insufficient under the PSLRA, Plaintiffs maintain that the reasonable inference  
21 drawn from Defendants' positions, compiled with the allegations that Weber was aware of the  
22 accounts receivables issues being experienced at Adecco North America and expressed the issue  
23 was a major concern for Swiss headquarters, raises a strong inference of scierer. *Id.* The Court  
24 disagrees.

25 The allegations regarding Weber are virtually unchanged from the Consolidated  
26 Complaint that this Court found deficient. Like the Consolidated Complaint, the Amended  
27 Complaint avers that former Adecco North America CFO Mark Eaton, who regularly  
28 communicated with Adecco's Treasurer Patrick Dobler, who reported directly to Weber, was

1 aware of the problem with Olsten's receivables at the time of the acquisition and with Adecco's  
2 receivables following the 2000-2001 system conversion. (*Compare* CC ¶ 54 with AC ¶ 66.)  
3 That paragraph also alleges Defendant Weber "attended a meeting at the Company's Melville,  
4 New York, North America headquarters, where this problem was discussed as a significant  
5 concern for Swiss headquarters." (*Compare* CC ¶ 54 with AC ¶ 66.)

6 The Court finds these allegations still fail to implicate Defendant Weber in the improper  
7 application of new cash to old accounts receivables. The Amended Complaint, like the  
8 Consolidated Complaint, is vague as to the "problem" discussed at the meeting. In the context  
9 of the paragraph, the "problem" could be Olsten's receivables at the time of acquisition and  
10 Adecco's receivables following the 2000-2001 system conversion. Alternatively, the "problem"  
11 could be in reference to the misapplication of cash receipts. The only difference in the two  
12 pleadings is that the Amended Complaint attributes this information to CW11. (AC ¶ 66.)  
13 Significantly, CW11 provides no insight on who attended the meeting or what was said. The  
14 absence of these details undermines a strong inference of scienter. Further, there are no  
15 allegations indicating how CW11 would know what Mr. Eaton was aware of, or how CW11  
16 would know what was discussed at the undated meeting Weber attended. Thus, these allegations  
17 remain too vague and conclusory on which to impute scienter. *Cf. Daou*, 411 F.3d at 1015  
18 (stating a complaint must describe sources "with sufficient particularity to support the  
19 probability that a person in the position occupied by the source would possess the information  
20 alleged") (internal quotations omitted).

21 The Amended Complaint alleges Defendants were aware of Adecco North America's  
22 receivables problems and improper application of current cash receipts because these problems  
23 were "well known throughout the Company." (AC ¶ 66.) According to CW9, "[s]enior Adecco  
24 executives routinely discussed" the "pervasive problem" of outstanding and uncollected  
25 receivables. *Id.* ¶ 73. In dismissing the Consolidated Complaint, Court found these allegations  
26 to be too vague and conclusory to give rise to a strong inference of scienter. *Adecco*, 371 F.  
27 Supp. 2d at 1218. That one of the statements is attributed to CW9 does not persuade this Court  
28 to revisit its conclusion. CW9 is a former Regional Vice President for Adecco Staffing North

1 America. (AC ¶ 52(i).) There are no allegations regarding that confidential witness's  
2 responsibilities, what interaction, if any, CW9 had with Defendants, or any other information  
3 indicating how CW9 would be in a position to know what senior Adecco executives discussed.  
4 Further, CW9 provides no details as to *what* was discussed, or more importantly, that those  
5 discussions reflected Defendants acted with the requisite state of mind.

6 Like the Consolidated Complaint, the Amended Complaint relies on internal reports to  
7 support Plaintiffs' theory Defendants were aware of or involved in the alleged accounting  
8 manipulations. This Court found the Consolidated Complaint's allegations regarding internal  
9 reports did not give rise to a strong inference of scienter because the pleading did not describe  
10 how or when any of the individual Defendants received the reports, how the individual  
11 Defendants knew the reports contained false information, or the sources of Plaintiffs'  
12 information regarding those reports. *Adecco*, 371 F. Supp. 2d at 1218-19. The Amended  
13 Complaint contains additional allegations regarding these internal reports.

14 CW1 recalls that Adecco North America's financial information was transmitted via  
15 Excel spreadsheet to Switzerland. (AC ¶ 52(a).) CW10, a former international financial analyst  
16 for Adecco Staffing North America, adds that Defendant Weber maintained an office and spent  
17 time at Adecco's Redwood City, California Office, and that once a month financial information  
18 was sent to Redwood City for review. *Id.* ¶ 52(j). According to CW5, "corporate disseminated  
19 monthly operating reports reflecting billing, collections, age trial balance ["ATB"], and NSB"  
20 that "continually revealed outstanding receivables." *Id.* ¶ 52(e).

21 Plaintiffs further allege Adecco North America's reports regarding aging receivables  
22 were inaccurate. According to CW6, a former Area Vice President for Adecco Staffing North  
23 America, Adecco's receivables procedures failed to record and track customers' payments,  
24 erroneously billed customers, and improperly charged interest to branch offices on outstanding  
25 receivables. *Id.* ¶ 52(f). CW6 states that Adecco's corporate offices in Melville, New York  
26 prepared a weekly ATB report that tracked the aging for the Company's outstanding receivables.  
27 *Id.* ¶¶ 52(f), 83. According to CW6, the ATB reports were consistently inaccurate. *Id.* ¶ 84.  
28 CW2, a former office manager and executive recruiter for Adecco similarly states that "flash

1 reports” were consistently inaccurate and had to be submitted multiple times before updated  
2 information appeared in the reports. *Id.* ¶ 52(b). CW7, a former employee in the Accounts  
3 Receivable Department Adecco fabricated monthly reports regarding write-offs of bad  
4 receivables. *Id.* ¶ 87. CW7 also claims he refused to complete a false report regarding the  
5 amounts of bad receivables written off by Adecco North America in March 2003. *Id.* ¶ 52(g).

6 The allegations that financial information was provided to Defendants via internal reports  
7 do not suggest scienter, but rather routine business practice. Thus, that Swiss headquarters  
8 received an Excel spreadsheet, and that Weber received financial information at his Redwood  
9 office are insufficient to support a strong inference of scienter. There are no details as to the  
10 information provided in those reports or more particularly, facts indicating those reports  
11 contained information indicating the reserves were too low or uncollectible receivables should  
12 have been written earlier before year-end 2002. *See Silicon Graphics*, 183 F.3d at 985 (holding  
13 that a complaint that relies on internal reports must “contain some specifics from those reports”  
14 and facts that indicate their reliability such as who drafted the reports, which officers reviewed  
15 them, and their contents).

16 The allegations that internal reports regarding aging receivables were inaccurate do not  
17 compel the conclusion Defendants engaged in fraud when reporting the Company’s performance  
18 in 2000 and 2001. There are no averments quantifying the impact, if any of these purportedly  
19 inaccurate reports on the Company’s allowance for receivables during the relevant time frame.  
20 Similarly, CW7’s statement that he refused to falsify a report in March 2003 does not indicate  
21 why Adecco’s 2000 and 2001 year-end financials understated reserves. Further, he does not  
22 provide any information regarding the impact of the allegedly fabricated monthly reports on  
23 Adecco’s 2000 and 2001 financial statements.

24 The Amended Complaint relies on CW1 and CW8 for its scienter allegations. According  
25 to CW1, the reserve was reevaluated monthly at corporate headquarters. (AC ¶ 63.) Plaintiffs  
26 maintain that increasing the allowance for doubtful accounts by tens or hundreds of millions of  
27 dollars would have materially impacted the Company’s earnings, and would have revealed that  
28 the merger was not what it had been represented to be. *Id.* According to CW1, other senior

1 managers recognized that a higher reserve would reduce operating profits and bonuses and  
2 argued that the reserve should be lowered. *Id.* ¶¶ 63-64. CW8, a former Senior Regional Vice  
3 President of Adecco North America, was told by Southern Division Vice President Joyce Russell  
4 that “Adecco maintained a reserve account to cover the outstanding receivables written off each  
5 quarter and that Adecco maintained a ‘slush fund’ to cover the losses.” ¶¶ 52(h).

6 These allegations also fail to give rise to a strong inference of scienter. That reserves  
7 were reevaluated on a monthly basis does not mandate the conclusion the Defendants knew they  
8 should have raised their reserves to adequately cover the uncollectible receivables. Further, the  
9 fact that senior managers wanted to *lower* the reserve does not support the inference that  
10 reserves were too low during the time frame at issue or that Adecco should have written off the  
11 uncollectible receivables before year-end 2002. Finally, the allegation that Adecco “maintained  
12 a reserve account to cover the outstanding receivables written off each quarter and that Adecco  
13 maintained a ‘slush fund’ to cover the losses,” *id.*, does not suggest that during the relevant time  
14 frame Adecco failed to adequately reserve for the uncollectible receivables or should have  
15 written off those receivables. To the contrary, that statement would suggest Adecco had  
16 reserved for uncollectible receivables.

17 Plaintiffs contend Swiss headquarters was aware of Adecco North America’s receivables  
18 problem because Adecco North America suffered from liquidity problems. (Pls.’ Opp’n at 10.)  
19 According to CW11, Adecco North America had cash shortages on a fairly regular basis,  
20 meaning that the money coming in was not enough to cover the payments going out. (AC ¶ 74.)  
21 Plaintiffs contend this was mainly due to the uncollected receivables problem. *Id.* When  
22 collections problems led to liquidity shortages, Adecco North America employed three different  
23 means of obtaining the cash needed to cover short-term expenses: short-term bank loans, short-  
24 term loans from the Company’s Swiss headquarters, and liquidation of investments. *Id.* ¶ 75.  
25 According to Plaintiffs, the fact that Swiss headquarters loaned money to Adecco North America  
26 compels the conclusion Defendants were aware of the problems with the receivables.

27 These allegations do not support a strong inference of scienter. Absent from the  
28 Amended Complaint are detailed allegations indicating the Defendants made these loans to

1 perpetuate a fraud. Further, the Court does not find as a matter of fact or law that a loan from a  
2 parent company to a subsidiary is indicative of accounting malfeasance. One company may need  
3 to borrow money from a related company because its business has taken a downturn due to  
4 changing market conditions. Simply, that Adecco loaned its North American operations money  
5 because the latter suffered from liquidity problems does not lead to the conclusion Defendants  
6 were actively engaged in fraud.

7 The Amended Complaint also relies on events occurring in 2003 to support scienter.  
8 According to CW1, E&Y raised the Company's internal control weaknesses relating to North  
9 American receivables as early as January 2003, and towards the end of 2003 E&Y informed  
10 Defendants it would not sign off on the Company's year-end financial statements due to the  
11 continuing misapplication of new moneys to old receivables. *Id.* ¶¶ 52(a), 54, 76. Plaintiffs  
12 further argue that the \$100 million write-off in June 2003 and the \$35 million write-off the  
13 following year are basically admissions that the earlier allowances for doubtful accounts were  
14 not large enough.

15 As discussed above, the Amended Complaint does not allege facts indicating Adecco  
16 should have increased its allowance for uncollectible receivables by \$100 million in its year-end  
17 financial statements for 2000 and 2001. The subsequent write-offs of \$100 million in year-end  
18 2002 and additional \$35 million in year-end 2003 therefore are not corroborative of anything.  
19 Plaintiffs' reliance on those write-offs constitutes impermissible "fraud by hindsight." *See*  
20 *Ronconi v. Larkin*, 253 F.3d 423, 430 n.12 (9th Cir. 2001) (stating that "[f]raud by hindsight is  
21 not actionable") (alteration in original) (internal quotations omitted); *Silicon Graphics*, 183 F.3d  
22 at 988 ("Congress enacted the PSLRA to put an end to the practice of pleading 'fraud by  
23 hindsight.'"). Similarly, that E&Y raised concerns about Adecco North America's internal  
24 controls in January 2003 does not, by itself, impugn the Defendants' actions in 2000 and 2001.

25 In sum, the Amended Complaint's allegations are too vague and conclusory to support a  
26 strong inference of scienter based on Defendants' positions or their purported knowledge of the  
27 accounting manipulations.

28 ///

1           **B.     Scienter Based on Stock Sales**

2           Unusual or suspicious stock sales can serve as circumstantial evidence of scienter.  
3 *Ronconi*, 253 F.3d at 434; *Silicon Graphics*, 183 F.3d at 986. “But not every sale of stock by a  
4 corporate insider shows that the share price is about to decline.” *Ronconi*, 253 F.3d at 435.  
5 Accordingly, “courts have repeatedly held that the mere existence of stock sales does not raise a  
6 strong inference of fraudulent intent. [citation] Plaintiffs have the burden at the pleading stage  
7 of explaining why the stock sales were unusual or suspicious.” *PetSmart*, 61 F. Supp. 2d at  
8 1000; *Ronconi*, 253 F.3d at 435; *Silicon Graphics*, 183 F.3d at 987. To meet this burden, the  
9 plaintiffs must show the trading was in amounts “dramatically out of line with prior trading  
10 practices, *at times calculated to maximize the personal benefit from undisclosed inside*  
11 *information.*” *Ronconi*, 253 F.3d at 435 (internal quotations omitted). The Ninth Circuit has  
12 identified three relevant factors when analyzing insider sales: ““(1) the amount and percentage  
13 of shares sold by insiders; (2) the timing of the sales; and (3) whether the sales were consistent  
14 with the insider’s prior trading history.”” *Id.* (quoting *Silicon Graphics*, 183 F.3d at 986).

15           The Consolidated Complaint alleged that Defendant Jacobs is the chairman of the Jacobs  
16 Family Foundation, a private philanthropic organization with a 100% beneficial interest in KJ  
17 Jacobs AG. According to Plaintiffs, during December 2003, KJ Jacobs AG sold approximately  
18 80,000 shares of Adecco common stock and transferred by way of gift over 6 million shares of  
19 Adecco common stock. The Court held these allegations were insufficient because the  
20 Consolidated Complaint did not allege facts indicating the stock transactions at issue were out of  
21 line with prior trading history. *Adecco*, 371 F. Supp. 2d at 1221-22. Further, the stock  
22 transactions occurred in December 2003, *after* the Company wrote off uncollectible receivables  
23 in its year-end 2002 financial statements, and at a time that is not temporally proximate to the  
24 alleged accounting fraud occurring in 2000 and 2001. *Id.* at 1222.

25           The Amended Complaint again relies on the December 2003 stock sale by KJ Jacobs AG  
26 to support an inference of scienter. (AC ¶¶ 7, 50, 53.) The pleading has added the allegation  
27 that Jacobs caused KJ Jacobs AG to sell \$196 million worth of Adecco stock on February 9,  
28 2001. *Id.* ¶¶ 2, 50, 53. Plaintiffs contend this sale occurred at approximately the same time

1 Defendant Weber attended a meeting at North American headquarters where the company's  
2 North American receivables were discussed as a major concern for Swiss Headquarters. *Id.* ¶  
3 50. The Amended Complaint also alleges that during that time the Company "started concealing  
4 its uncollectible receivables by applying newly received moneys to old receivables." *Id.*

5 The additional stock sale, although within the relevant time period, is still insufficient to  
6 raise a strong inference of scienter. Even assuming Jacobs controlled the disposition of the stock  
7 — a matter disputed by the parties — there are no allegations he obtained any personal benefit  
8 from the transactions pleaded. Further, as with the Consolidated Complaint, there is no  
9 information provided indicating the transactions were out of line with prior trading history. Also  
10 significant is the absence of any allegations that the other Defendants engaged in insider sales  
11 during the Class Period. "One insider's well timed sales do not support the 'strong inference'  
12 required by the statute where the rest of the equally knowledgeable insiders act in a way  
13 inconsistent with the inference that the favorable characterizations of the company's affairs were  
14 known to be false when made." *Ronconi*, 253 F.3d at 436 (internal footnote omitted); *see also*  
15 *Acito*, 47 F.3d at 54 (holding that one individual defendant's stock sales did not give rise to a  
16 strong inference of scienter when he sold only 11% of holdings and other officers did not sell  
17 stock). Accordingly, the Court concludes the Amended Complaint's averments regarding stock  
18 sales do not raise a strong inference of scienter. *Cf. Lipton*, 284 F.3d at 1036-37 (finding that  
19 one insider's stock sales did not provide an inference of fraudulent intent was reinforced by the  
20 fact he was the only insider to sell stock during the class period); *Ronconi*, 253 F.3d at 436  
21 (holding that one defendant's trading supported only a weak inference of scienter because the  
22 other equally-knowledgeable insiders sold too soon to take advantage of their allegedly  
23 fraudulent statements).

#### 24 C. Scienter Allegations In Totality

25 When reviewing whether a complaint properly states a securities fraud claim under the  
26 PSLRA, the court must consider "whether the total of plaintiffs' allegations, even though  
27 individually lacking, are sufficient to create a strong inference that defendants acted with  
28 deliberate or conscious recklessness." *Daou*, 411 F.3d at 1022 (quoting *Nursing Home*, 380

1 F.3d at 1230); *Am. West*, 320 F.3d at 938. When “considering whether a strong inference of  
2 scienter has been pled, ‘the court must consider *all* reasonable inferences to be drawn from the  
3 allegations, including inferences unfavorable to the plaintiffs.’” *Daou*, 411 F.3d at 1022  
4 (quoting *Gompper*, 298 F.3d at 897).

5 The crux of Plaintiffs’ theory is that Defendants overstated revenues by failing to write  
6 off or properly reserve for uncollectible receivables. However, the Amended Complaint  
7 advances seemingly dissonant theories for how this fraud was perpetuated. On the one hand,  
8 certain paragraphs suggest the Defendants directed the application of new moneys to old  
9 accounts receivable. Other averments indicate the misapplication of current cash receipts to old  
10 receivables occurred because of material weaknesses in internal controls. This suggests  
11 mismanagement, not fraud. The deficiencies in the Amended Complaint’s allegations regarding  
12 falsity undermine any inference of scienter.

13 Further, even if the Amended Complaint’s allegations regarding the Defendants’  
14 positions in Adecco were sufficient to raise a reasonable inference of scienter, the Court finds  
15 the remaining scienter allegations are insufficient to bolster this inference into a strong  
16 inference. The remaining allegations are either too vague and conclusory, basing the  
17 Defendants’ knowledge on Plaintiffs’ theory that the problems were “well known” and  
18 “discussed,” or reflected in various internal reports whose contents, authors, recipients, and  
19 dates, are not described in any detail. *See Daou*, 411 F.3d at 1022 (“General allegations of  
20 defendants’ ‘hands-on’ management style, their interaction with other officers and employees,  
21 their attendance at meetings, and their receipt of unspecified weekly or monthly reports are  
22 insufficient” to support a strong inference of scienter.”). In addition, that KJ Jacobs AG is the  
23 only purported insider who traded stock during the relevant time period negates any inference of  
24 scienter. Also undermining a strong inference of scienter is the lack of information indicating  
25 any of the confidential witnesses would have been in a position to know what Defendants knew  
26 during the relevant time period. Accordingly, taken as a whole, the Amended Complaint fails to  
27 plead sufficient facts indicating Defendants knowingly or recklessly made false or misleading

28 ///

1 statements when reporting the Company's 2000 and 2001 financial results in SEC filings and  
2 press releases, and must be dismissed.

3 **SUFFICIENCY OF THE ALLEGATIONS OF A § 20(a) VIOLATION.**

4 Section 20(a) of the 1934 Securities and Exchange Act provides for controlling person  
5 liability for every person who, directly or indirectly, controls any person liable under any of the  
6 provisions of this title. 15 U.S.C. § 78t(a). To establish control person liability, a plaintiff must  
7 show that a primary violation occurred, and that the defendant exercised actual power or control  
8 over the primary violator. *Am. W.*, 320 F.3d at 945. Accordingly, because Plaintiffs' § 10(b)  
9 claim fails, the § 20(a) claim must be dismissed as well. *Heliotrope General, Inc. v. Ford*  
10 *Motor, Co.*, 189 F.3d 971, 978 (9th Cir. 1999).

11 **LEAVE TO AMEND**

12 Leave to amend a complaint should be freely granted unless amendment would be futile.  
13 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003); *Lipton*, 284 F.3d at  
14 1039. This Court's previous order detailed the various deficiencies in the Consolidated  
15 Complaint. The Amended Complaint's allegations are not significantly different, adding only  
16 averments regarding confidential witnesses who do not appear to have been in a position to  
17 knew the information they purport to report. The Court finds further leave to amend is not  
18 warranted under these circumstances. Accordingly, the Amended Complaint will be dismissed  
19 with prejudice.

20 **CONCLUSION**

21 Having considered the parties' briefs, the record, oral argument, applicable law, and good  
22 cause appearing, **IT IS HEREBY ORDERED:**

- 23 1. Defendants' motion to dismiss is **GRANTED**.
- 24 2. Because the Plaintiffs have had an opportunity to amend the complaint to meet the  
25 pleading requirements under the PSLRA and *Silicon Graphics*, the Amended Complaint is  
26 **DISMISSED WITH PREJUDICE**.
- 27 3. Defendants' request for judicial notice is **GRANTED** insofar as the Court has relied  
28 on those documents.

1           4. The Clerk of the Court is directed to enter judgment in this action, and the judgment  
2 shall apply to all matters that have been consolidated to the instant master file, *In re Adecco*  
3 *Securities Litigation*, 04cv0129-L(WMc).

4           **IT IS SO ORDERED.**

5 Dated: 3/29/06

6   
M. JAMES LORENZ  
UNITED STATES DISTRICT JUDGE

7 COPY TO:

8 HON. WILLIAM McCURINE, JR.  
9 UNITED STATES MAGISTRATE JUDGE

10 ALL PARTIES/COUNSEL

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28