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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re DOT HILL SYSTEMS  
CORPORATION SECURITIES  
LITIGATION,

Case No. 06-CV-228 W (WMc)

**ORDER GRANTING  
MOTION TO DISMISS**

Plaintiffs commenced this securities class action against Defendants Dot Hill Systems Corporation (“Dot Hill” or the “Company”) and four of its officers and directors alleging fraud under Sections 10(b) and 20(a) of the Securities Exchange Act. Plaintiffs filed the operative First Amended Consolidated Complaint (Complaint) on August 25, 2006. Defendants move to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6). The court decides the motion on the papers submitted and without oral argument. S.D. Cal. Civ. L.R. 7.1(d)(1). Because Plaintiffs have failed to comply with the pleading standards of the Private Securities Litigation Reform Act of 1995 (PSLRA), the Court will **GRANT** the motion to dismiss the Complaint, with **LEAVE TO AMEND**.

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**I. Background**

Plaintiffs represent a class of shareholders who purchased shares of Dot Hill between April 23, 2003, and April 27, 2006. Dot Hill provides data storage devices (essentially, hard disk drives) to clients. Sun Microsystems (Sun) was Dot Hill’s largest customer, accounting for roughly 85% of their revenue. (Compl. at 3:6–7) In February of 2004, Dot Hill acquired Chaparral Network Storage, Inc. (Chaparral), to cut costs and thereby improve profit margins. The Complaint asserts that, during the class period, Dot Hill and four of its officers and directors made materially false and misleading statements about various aspects of Dot Hill’s business. Plaintiff alleges that these misrepresentations artificially increased Dot Hill’s stock price from \$3 per share to more than \$18. Dot Hill then sold \$155 million in securities—including approximately \$23 million that Defendants owned personally—in a September 2003 stock offering. After Dot Hill fully disclosed all material facts, the stock tumbled to \$4.50 per share.

In support of their theory, Plaintiffs cite the “firsthand accounts” of 23 former Dot Hill employees (confidential witnesses or “CWs”). The statements bolster five general allegations:

- (1) Dot Hill was aware—but purposefully concealed—that Sun was growing dissatisfied with Dot Hill products.
- (2) Because of known internal problems within the company, Dot Hill was having little success attracting new customers.
- (3) The integration of Chaparral controllers into Dot Hill products was, contrary to Defendants statements, not proceeding successfully.
- (4) Dot Hill’s “lean” business model was not efficient. Rather, it was the known cause for the inadequate internal operations that were causing “fleeting and illusory” profits. (Pls.’ Mem. in Opp. at 2:2–5.)
- (5) The accounting errors that Dot Hill revealed in February 2005 resulted from known inadequate accounting practices that Defendants refused to correct.

1 **II. Legal Standards**

2 Under Federal Rule 12(b)(6), the court may dismiss a cause of action for failure  
3 to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion  
4 to dismiss under Rule 12(b)(6) tests the claim's sufficiency. See N. Star Int'l. v. Ariz.  
5 Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983). In ruling on a motion to dismiss, the  
6 court assumes the truth of all factual allegations and construes them in the light most  
7 favorable to the plaintiff. Gompper v. VISX, Inc., 298 F.3d 893, 895 (9th Cir. 2002).  
8 The court may dismiss if it "appears beyond doubt that the plaintiff can prove no set of  
9 facts in support of his claim which would entitle him to relief." Levine v. Diamantheset,  
10 Inc., 950 F.2d 1478, 1482 (9th Cir. 1991) (quoting Conley v. Gibson, 355 U.S. 41,  
11 45-46 (1957)).

12 A complaint alleging fraud must meet the particularity requirements of Federal  
13 Rule of Civil Procedure 9(b). A plaintiff must specifically identify the allegedly  
14 fraudulent statements or acts of fraud. Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir.  
15 1994). This requires the plaintiff to plead evidentiary facts including the dates, times,  
16 places, and persons associated with each misrepresentation or act of fraud. In re  
17 GlenFed, Inc. Sec. Litig., 42 F.3d 1541, 1548-49 n.7 (9th Cir. 1994) (*en*  
18 *banc*) (superseded by statute on other grounds); Neubronner v. Milken, 6 F.3d 666, 672  
19 (9th Cir. 1993).

20 In a securities case, the complaint must also conform to the PSLRA. Ronconi v.  
21 Larkin, 253 F.3d 423, 429 (9th Cir. 2001). The PSLRA "altered the pre-Act pleading  
22 requirements in private securities fraud litigation by requiring that a complaint plead  
23 with particularity both falsity and scienter." Id. Accordingly, plaintiffs "must state  
24 specific facts indicating no less than a degree of recklessness that strongly suggests actual  
25 intent." In re Silicon Graphics Inc. Sec. Litig., 183 F.3d 970, 979 (9th Cir. 1999). The  
26 Court must dismiss under 12(b)(6) if the allegations are not sufficiently particular or  
27 where, taken as a whole, they do not raise a "strong inference" of knowing and  
28 deliberate recklessness. Ronconi, 253 F.3d at 429.

1 **III. Discussion**

2 **A. The complaint lacks the required particularity to establish falsity.**

3 According to the PSLRA, a complaint must “specify each statement alleged to  
4 have been misleading, the reason or reasons why the statement is misleading, and, if an  
5 allegation regarding the statement or omission is made on information and belief, the  
6 complaint shall state with particularity all facts on which that belief is formed.” 15  
7 U.S.C. § 78u-4(b)(1) (2000). But the Complaint repeatedly fails to link the allegedly  
8 false statement with the supporting reasons. Further, Plaintiffs fail to distinguish  
9 between *reasons* supporting actual falsity and particular *facts* supporting an allegation  
10 based on information or a belief, or even what that belief might be. This is true, in large  
11 part, because the Complaint’s lack of organization drowns these distinctions in an ocean  
12 of redundancy, cross-reference, and irrelevant factual overkill.

13 For example, paragraph 46 of the Complaint, states:

14 46. Throughout the Class Period, Defendants maintained that their  
15 relationship with Sun was excellent and only continued to improve, and  
16 that the integration of Chaparral RAID technology was likewise  
17 proceeding excellently and producing enthusiastic customer response (as  
18 detailed in ¶¶ 93–175 below). Such statements were materially false and  
19 misleading because they omitted the following material adverse facts:

19 (a) Dot Hill was having significant trouble integrating Chaparral  
20 RAID technology into Dot Hill storage devices - thus frustrating its  
21 own sales staff (which didn't have a product to sell) and purported  
22 customers (who weren't offered a product to buy), which

22 (b) Consequently was preventing achievement of the Chaparral  
23 acquisition's other goals: freeing Dot Hill of the problematic  
24 relationship with Infortrend, the problematic costs imposed by  
25 Infortrend, and the problematic technology provided by Infortrend;  
26 improving revenues, and improving margins; and which

26 (c) Was leading to further problems in Dot Hill's relationship with  
27 Sun, who, was dissatisfied with Infortrend and unwilling to wait for  
28 Dot Hill to solve its technology problems, ultimately de-committed  
to Dot Hill's new technology and selected a new provider for its  
entry-level data storage devices.

1 (Compl. ¶ 46). In a single paragraph, Plaintiffs allege two separate misleading  
2 statements: (1) about the reality of the relationship with Sun, and (2) about the  
3 difficulties with integrating Chaparral technology. To find these statements, the reader  
4 is then directed to paragraphs 93 through 175. Paragraphs 93 through 175, should the  
5 reader follow the cross-reference, consist of various press releases and transcripts from  
6 conference calls and covers nearly 47 pages of the Complaint. Some of the press  
7 statements are given in their entirety and many appear to be *randomly* bolded. (Compl.  
8 ¶¶ 15, 106, 116, 124, 127, 130, 133, 136, 150, 155, 160, 165.)

9 Next, Plaintiffs offer the three reasons for falsity, or allegations formed on  
10 information or belief—they never explain which—in subsections (a) through (c). These  
11 sections also introduce a *third* topic, problems with Infortrend, bearing no apparent  
12 relationship to the first two topics. Finally, the reader is provided ten confidential  
13 witness statements in support of the allegations in paragraph 46. (Compl. ¶ 47.) Not  
14 surprisingly, the statements do not include an explanation about why they prove falsity  
15 or justify any belief therein.

16 To make any sense of paragraph 46, the reader must wade back and forth between  
17 unconnected allegations and pages of randomly bolded material, searching for  
18 supporting evidence relevant to three separate aspects of wrongdoing. And paragraph  
19 46 is by no means the only paragraph in the Complaint that makes that demand. This  
20 disorganized, unclear, and confusing manner of pleading fails to meet the heightened  
21 standard under the PSLRA. See Silicon Graphics, 183 F.3d at 979. Each section of the  
22 complaint must focus on one allegation, detail who made the statement, why that  
23 statement was false or misleading, and state with particularity all the facts justifying any  
24 belief in falsity. See GlenFed, 42 F.3d at 1548; 15 U.S.C. § 78u-4(b)(1). The  
25 Complaint fails that simple standard and must be dismissed. Ronconi, 253 F.3d at 429.

26 The Court has also examined the paragraphs alleging scienter. (Compl. ¶¶  
27 176–186.) Plaintiffs are advised to take note of the requirements for pleading scienter  
28 with particularity, clarity, and simplicity. See Silicon Graphics, 183 F.3d at 975.

1 **B. Meeting a heightened pleading standard does not require a lengthy complaint.**

2 The original complaints in Brody v. Dot Hill (No. 06-228), the lead case, and  
3 three member cases (Naryznai v. Dot Hill (No. 06-281), Jardin v. Dot Hill (No. 06-341),  
4 and Steinberg v. Dot Hill (No. 06-662)) total 113 pages. Now, the First Amended  
5 Consolidated Complaint is 112 pages. While the Court acknowledges the original  
6 complaints had some differences, it seems Plaintiffs chose to collate, rather than to  
7 consolidate, their complaints.

8 The Court acknowledges Plaintiffs' concern about showing sufficient details to  
9 meet the PSLRA's heightened pleading standards. However, a heightened pleading  
10 standard does not automatically translate to a lengthy complaint. See McHenry v.  
11 Renne, 84 F.3d 1172, 1178 (9th Cir. 1996) (noting in another context requiring  
12 heightened pleading that “[a] heightened pleading standard is not an invitation to  
13 disregard Rule 8’s requirement of simplicity, directness, and clarity.”) Redundancy does  
14 not help to establish the “strong inference” necessary to survive a motion to dismiss—  
15 only relevant factual allegations, probative of each element under Section 10(b), and  
16 supported with details where necessary, will suffice.

17  
18 **C. The Complaint is deficient but Plaintiffs are granted leave to amend.**

19 Defendants have argued that “it is doubtful any viable amendment” to the  
20 Complaint is possible. (Defs.’ Br. at 2:26–28.) In support of their contention, they cite  
21 the size of the Complaint, the number of confidential witnesses relied upon, and the  
22 length of time that has passed since the initial Complaint was filed. (Id.) They request  
23 the Court dismiss the Complaint *with prejudice*.

24 However, the Complaint at issue was the Plaintiffs’ first attempt at consolidation.  
25 While the Complaint currently lacks the organization and particularity to meet the  
26 heightened pleading standards of the PSLRA, the Court will not preclude Plaintiffs from  
27 attempting to correct these deficiencies.

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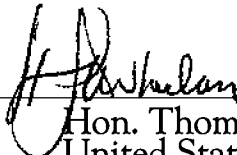
1           Thus, Plaintiffs are granted **LEAVE TO AMEND**. The Court would urge  
2 Plaintiffs, if they choose to amend, to plead with greater particularity and clarity as  
3 explained earlier, while using *substantially* fewer pages in the body of the Complaint.  
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5 **III. Conclusion**

6           The court hereby **GRANTS** Defendants' motion to dismiss and **DISMISSES**  
7 Plaintiffs' complaint **WITH LEAVE TO AMEND**. Plaintiffs shall have until no later  
8 than April 20, 2007 to file and serve a second consolidated amended complaint.  
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10           **IT IS SO ORDERED.**

11 DATED: March 15, 2007

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14 Hon. Thomas J. Whelan  
15 United States District Judge  
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