

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE HERLEY INDUSTRIES INC. : CIVIL ACTION
SECURITIES LITIGATION : No. 06-2596
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ORDER

AND NOW, this 17th day of July, 2007, Defendants Herley Industries, Inc.'s (Document 51) and Lee N. Blatt's (Document 50) Motions to Dismiss are DENIED. Defendants Myron Levy's, Anello C. Garefino's, John M. Kelley's, and Thomas V. Gilboy's Motion to Dismiss (Document 49) is GRANTED in part and DENIED in part. Defendants Levy's, Garefino's, Kelley's, and Gilboy's Motion to Dismiss is granted only as to Plaintiff's claims under Section 10(b) of the Securities and Exchange Act against Defendants Levy, Garefino, Kelley, and Gilboy without prejudice to repleading within twenty (20) days of the date of this Order.¹ All other claims survive.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.

¹ The Supreme Court recently interpreted the standard for pleading scienter under the Private Securities Litigation Reform Act in *Tellabs, Inc. v. Makor Issues & Rights Ltd.*, 551 U.S.--, 2007 WL 1773208 (June 21, 2007). The Act clearly states the complaint must, "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. § 78-4(b). Because I find the Plaintiff did not meet this standard as interpreted by the Supreme Court in *Tellabs*, I will grant the Motion to Dismiss in part, without prejudice, giving the Plaintiff an opportunity to replead. *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004) (holding "a District Court must permit a curative amendment, unless an amendment would be inequitable or futile.").