EXHIBITS 21 THROUGH 25
EXHIBIT 21
FORM 10-K

☐ Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the fiscal year ended December 31, 2004

☐ Transition Report under Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from to 

Commission File Number: 000-15637

SILICON VALLEY BANCSHARES
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

3003 Tasman Drive, Santa Clara, California 95054-1191
(Address of principal executive offices including zip code)

http://www.svb.com/company/investor_financials.asp
(Registrant's URL)

Registrant’s telephone number, including area code: (408) 654-7400

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes ☒ No ☐

The aggregate market value of the voting stock held by non-affiliates of the registrant as of June 30, 2004, the last business day of the registrant’s most recently completed second fiscal quarter, based upon the closing price of its common stock on such date, on the NASDAQ National Market was $1,410,622,539.

At February 28, 2005, 35,901,144 shares of the registrant’s common stock ($0.001 par value) were outstanding.

Definitive proxy statement for the Company’s 2005 Annual Meeting of Stockholders to be filed within 120 days of the end of the fiscal year ended December 31, 2004

Parts of Form 10-K
Into Which Incorporated

Part III
For further information on our business segments, see Item 8. Consolidated Financial Statements and Supplementary Data—Note 24 Segment Reporting.

Business Combinations
On October 1, 2002, we acquired substantially all of the assets of Woodside Asset Management, Inc., an investment advisor firm, which had approximately $200 million under management for 70 clients. We offer Woodside Asset Management’s services as part of our Private Client Services. Additionally, as part of this acquisition, Silicon Valley Bancshares obtained the general partner interests in two limited partnerships: Taurus Growth Partners, LP and Libra Partners, LP. Both of these funds were liquidated and funds were fully disbursed to the limited partners by December 31, 2004. We had less than a 1% ownership interest in each of these funds. The remaining ownership interest represented limited partners’ funds invested on their behalf by the general partner in certain fixed income and marketable equity securities. However, due to our ability to control the investing activities of these limited partnerships, we were required to consolidate the related results of operations and financial condition into our consolidated financial statements for all periods presented.

On September 28, 2001, SVB Securities, a subsidiary of Silicon Valley Bank, completed the acquisition of SVB Alliant, an investment banking firm providing merger and acquisition and corporate partnering services. Our investment banking business continues to do business under the name “SVB Alliant.” See Item 8. Consolidated Financial Statements and Supplementary Data—Note 3 Business Combinations. On October 1, 2002, SVB Alliant was sold from our Silicon Valley Bank subsidiary to the Silicon Valley Bancshares parent company. This transfer allowed SVB Alliant (formerly Alliant Partners) to operate under less restrictive bank holding company regulations and increased our capital ratios at Silicon Valley Bank.

Competition
The banking and financial services industry is highly competitive, and evolves as a result of changes in regulation, technology, product delivery systems, and the general market and economic climate. Our current competitors include other banks and specialty and diversified financial services companies that offer lending, leasing, other financial products, and advisory services to our target client base. The principal competitive factors in our markets include product offerings, service, and pricing. Given our established market position with the client segments that we serve, we believe we compete favorably in all our markets in these areas.

Employees
As of December 31, 2004, we employed approximately 1,028 full-time equivalent employees. To our knowledge, none of our employees are represented by a labor union. Competition for qualified personnel in our industry is significant, particularly for client relationship manager positions, officers, and employees with strong relationships with the venture capital community. Our future success will depend in part on our continued ability to attract, hire, and retain qualified personnel.

Supervision and Regulation
General
Our operations are subject to extensive regulation by federal and state regulatory agencies. As a bank holding company, Silicon Valley Bancshares is subject to the Federal Reserve Board’s supervision, regulation, examination and reporting requirements under the Bank Holding Company Act of 1956 (BHC Act). Silicon Valley Bancshares has also qualified and elected to be treated as a financial holding company under the BHC Act. Silicon Valley Bank, as a California-chartered bank and a member of the Federal Reserve System, is subject to primary supervision and examination by the Federal Reserve Bank of San Francisco.
Adoption of FIN No. 46 and SFAS No. 150 in the latter half of 2003 resulted in a change of classification of trust preferred securities distribution expense from noninterest expense to interest expense on a prospective basis. Additionally, the adoption of FIN No. 46 and SFAS No. 150 resulted in a change of classification of trust preferred securities from noninterest bearing funding sources to interest-bearing liabilities on a prospective basis. Prior to adoption of FIN No. 46 and SFAS No. 150, in accordance with accounting rules in effect at that time, we recorded trust preferred securities distribution expense as noninterest expense. On October 30, 2003, $50.0 million in cumulative 7.0% trust preferred securities were issued through a newly formed special purpose trust, SVB Capital II. We received $51.5 million in proceeds from the issuance of 7.0% junior subordinated debentures to SVB Capital II. A portion of the net proceeds were used to redeem the existing $40.0 million of newly formed special purpose trust, SVB Capital II. We received $51.5 million in proceeds from the issuance of 7.0% junior subordinated debentures to SVB Capital II. A portion of the net proceeds were used to redeem the existing $40.0 million of 8.25% trust preferred securities. Approximately $1.3 million of deferred issuance costs related to redemption of the $40.0 million 8.25% trust preferred securities were included in interest expense in the fourth quarter of 2003.

### Income Statement Summary

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income</td>
<td>$ 65,376</td>
<td>$ 11,977</td>
<td>$ 53,358</td>
<td>$ 88,156</td>
<td>$ 159,068</td>
</tr>
</tbody>
</table>

### Common Share Summary:

- Earnings per share—basic: $1.86
- Earnings per share—diluted: $1.74
- Book value per share: $14.80
- Weighted average shares outstanding—basic: 35,215
- Weighted average shares outstanding—diluted: 37,595

### Year-End Balance Sheet Summary:

- Investment securities: $2,588,207
- Loans, net of unearned income: 2,312,143
- Goodwill: 35,639
- Assets: 5,153,600
- Deposits: 4,219,514
- Contingently convertible debt: 146,740
- Junior subordinated debentures: 49,421
- Stockholders’ equity: 532,268

### Average Balance Sheet Summary:

- Investment securities: $1,943,132
- Loans, net of unearned income: 1,954,465
- Goodwill: 37,066
- Assets: 4,766,721
- Deposits: 3,905,465
- Contingently convertible debt: 49,362
- Junior subordinated debentures: 49,362
- Stockholders’ equity: 486,613

### Capital Ratios:

- Tier 1 risk-based capital ratio: 15.9%
- Tier 1 leverage ratio: 10.9%
- Average stockholders’ equity to average assets: 10.2%

### Selected Financial Ratios:

- Return on average assets: 1.4%
- Net interest margin(1): 5.5%
- Net nonperforming assets as a percentage of total assets: 0.3%
- Allowances for loan and lease losses as a percent of total gross loans(2): 1.6%

### Other Data:

- Private label client investment funds: $7,260,320
- Client investment assets under management: 2,678,042
- Sweep funds: 1,351,244

### Total client investment funds:

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$ 11,289,606</td>
<td>$ 9,346,128</td>
<td>$ 8,495,321</td>
<td>$ 9,283,368</td>
<td>$ 10,905,694</td>
</tr>
</tbody>
</table>
EXHIBIT 22
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

☐ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the Fiscal Year Ended December 31, 2002

☒ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES AND EXCHANGE ACT OF 1934
For the transition period from to

Commission file number 000-23305

First Virtual Communications, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of incorporation or organization)
3393 Octavius Drive, Santa Clara, CA
(Address of principal executive offices)

(408) 567-7200
(Registrant’s Telephone Number, including area code)

77-0357037
(I.R.S. Employer identification No.)

95054
(Zip code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant’s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to this Form 10-K. ☐

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). Yes ☐ No ☐

As of June 30, 2002 there were 40,116,179 shares of the registrant’s Common Stock outstanding, and the aggregate market value of such shares held by non-affiliates of the registrant (based upon the closing sale price of $0.45 for such shares on The Nasdaq National Market on June 28, 2002) was approximately $18.1 million. Shares of the registrant’s Common Stock held by each executive officer, director and holder of five percent or more of the registrant’s Common Stock outstanding as of June 30, 2002 have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of shares of Common Stock outstanding as of April 14, 2003 was 40,483,594.

DOCUMENTS INCORPORATED BY REFERENCE

Designated portions of the registrant’s definitive proxy statement for the 2003 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.
FIRST VIRTUAL COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 — The Company and a Summary of its Significant Accounting Policies

The Company

First Virtual Communications, Inc. (the "Company") was incorporated in California under the name First Virtual Corporation in October 1993 and subsequently reincorporated in Delaware in December 1997. In July 1998, the Company changed its name to FVC.COM, Inc., and on February 5, 2001 the Company changed its name to First Virtual Communications, Inc. The Company develops and markets rich media Web conferencing and collaboration solutions for telecommunications service providers, enterprises and government agencies. The Company sells its products worldwide through original equipment manufacturers ("OEM partners"), distributors and resellers.

On June 19, 2001, the Company and CUseeMe Networks, Inc. ("CUseeMe") completed a merger, pursuant to which CUseeMe became a wholly owned subsidiary of the Company. CUseeMe provided innovative software-based solutions to enable voice, video, and data collaboration over IP-based networks. CUseeMe specialized in delivering a solution that was both centrally managed and centrally deployed, enabling large-scale deployments of rich media collaboration to enterprise desktops. As a result of the merger, the Company is able to provide a broad range of integrated rich media Web conferencing solutions that run seamlessly across multiple network types to enterprise customers and service providers worldwide.

The Company has one reporting segment based on its management structure.

Liquidity

In April of 2003, the Company entered into an agreement with Silicon Valley Bank for a $3 million credit facility that may be used by the Company at any time prior to December 31, 2003. The Company also entered into an agreement with Ralph Ungermann, Executive Chairman of the Company's Board of Directors, under which the Company may require Mr. Ungermann to purchase up to $1 million of our common stock at $0.31 per share during the period from April 14, 2003 through April 13, 2004. (see Note 14).

The Company has experienced significant net operating losses from inception. In 2002, the Company incurred net losses of $24.3 million and used $4.8 million of cash in its operating activities. Management expects that operating losses and negative cash flows will continue in 2003. In 2002, the Company decreased the size of its workforce by 7% and instituted measures to control discretionary expenditures. The Company believes that existing cash and investments together with the new term loan facility with Silicon Valley Bank and the financing agreement with Ralph Ungermann will be adequate to fund its operations through December 31, 2003. However, the Company's cash requirements depend on several factors, including the rate of market acceptance of its products and services, the ability to expand and retain its customer base and other factors. If the Company fails to achieve its planned revenue or expense targets, management believes that it has the plans, intent and the ability to curtail capital and operating spending to ensure that cash and investments will be sufficient to meet the Company's cash requirements at least for the next twelve months.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expense during the reporting period. Actual results could differ from those estimates.

F-6
EXHIBIT 23
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

☐ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the Fiscal Year Ended December 31, 2001

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES AND EXCHANGE ACT OF 1934
For the transition period from ______ to ______

Commission file number 000-23305

FIRST VIRTUAL COMMUNICATIONS, INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of incorporation or organization) 77-0357037
(I.R.S. Employer identification No.)

3393 Octavius Drive, Santa Clara, CA
(Address of principal executive offices) 77-0357037
(Registrant’s Telephone Number, including area code)

795054
(Zip code)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:
None

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:
Common Stock, $0.001 par value

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant’s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to this Form 10-K. ☐

As of March 25, 2002 there were 33,430,179 shares of the registrant’s Common Stock outstanding, and the aggregate market value of such shares held by non-affiliates of the registrant (based upon the closing sale price of such shares on the Nasdaq National Market on March 25, 2002) was approximately $22.9 million. Shares of the registrant’s Common Stock held by each executive officer, director and holder of five percent or more of the registrant’s Common Stock outstanding as of March 25, 2001 have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

DOCUMENTS INCORPORATED BY REFERENCE

Designated portions of the registrant’s definitive proxy statement for the 2002 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

PART I

ITEM 1. BUSINESS.

In addition to the historical information contained in this report, this report contains forward-looking statements within the meaning of Section 27(a) of the Securities Act of 1933, as amended, or the Securities Act, and Section 21(e) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, that involve risks and uncertainties. These forward-looking statements include, without limitation, statements containing the words "believes," "anticipates," "expects," and words of similar import. Such forward-looking statements will have known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Company, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the risk factors set forth below, under "Overview," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this Form 10-K. The Company assumes no obligation to update any forward-looking statements contained herein.

OVERVIEW
FIRST VIRTUAL COMMUNICATIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1—THE COMPANY AND A SUMMARY OF ITS SIGNIFICANT ACCOUNTING POLICIES.

THE COMPANY

First Virtual Communications, Inc. (the "Company") was incorporated in California under the name First Virtual Corporation in October 1993 and subsequently reincorporated in Delaware in December 1997. In July 1998, the Company changed its name to FVC.COM, Inc., and on February 5, 2001 the Company changed its name to First Virtual Communications, Inc. The Company develops and markets rich media Web conferencing and collaboration solutions for telecommunications service providers, enterprises and government agencies. The Company sells its products worldwide through original equipment manufacturers ("OEM partners"), distributors and resellers.

On June 19, 2001, the Company and CUseeMe Networks, Inc. ("CUseeMe Networks") completed a merger, pursuant to which CUseeMe Networks became a wholly owned subsidiary of the Company. CUseeMe Networks provided innovative software-based solutions to enable voice, video, and data collaboration over IP-based networks. CUseeMe Networks specialized in delivering a solution that was both centrally managed and centrally deployed, enabling large-scale deployments of rich media collaboration to enterprise desktops. As a result of the merger, the Company is able to provide a broad range of integrated rich media Web conferencing solutions that run seamlessly across multiple network types to enterprise customers and service providers worldwide.

The Company has one reporting segment based on its management structure.

LIQUIDITY

Subsequent to year end, the Company signed a definitive binding agreement to sell common stock and warrants to purchase common stock to investors in a private placement for aggregate proceeds of approximately $4.8 million (see Note 13). The closing is expected to occur on or about April 10, 2002.

The Company has experienced significant net operating losses from inception. In 2001, the Company incurred net losses of $31.6 million and used $20.7 million of cash in its operating activities. Management currently expects that operating losses and negative cash flows will continue for the foreseeable future.

The accompanying notes are an integral part of these consolidated financial statements.

<table>
<thead>
<tr>
<th>Account</th>
<th>2001</th>
<th>2000</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impairment of ICAST</td>
<td>1,083</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Loss on disposal of fixed assets</td>
<td>217</td>
<td>161</td>
<td>305</td>
</tr>
<tr>
<td>Other</td>
<td>(259)</td>
<td>(3,546)</td>
<td>(6,751)</td>
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<tr>
<td>Changes in assets and liabilities net of effects of acquisitions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>3,642</td>
<td>3,605</td>
<td>(3,570)</td>
</tr>
<tr>
<td>Inventory</td>
<td>1,192</td>
<td>2,259</td>
<td>1,846</td>
</tr>
<tr>
<td>Prepaid expenses and other assets</td>
<td>1,923</td>
<td>1,864</td>
<td>1,824</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>451</td>
<td>1,186</td>
<td>1,164</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>1,793</td>
<td>602</td>
<td>2,160</td>
</tr>
<tr>
<td>Net cash used in operating activities</td>
<td>(20,666)</td>
<td>(10,620)</td>
<td>(16,502)</td>
</tr>
<tr>
<td>Cash flows from investing activities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition of businesses, net of cash received</td>
<td>—</td>
<td>—</td>
<td>(750)</td>
</tr>
<tr>
<td>Acquisition of property and equipment</td>
<td>(1,416)</td>
<td>(1,371)</td>
<td>(2,000)</td>
</tr>
<tr>
<td>Sale/(Purchase) of short-term investments, net</td>
<td>14,362</td>
<td>(9,027)</td>
<td>8,609</td>
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<tr>
<td>Repayment of shareholder notes receivable</td>
<td>321</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>Cash Acquired in acquisition of CUseeMe Networks, Inc.</td>
<td>6,601</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Net cash provided by (used in) investing activities</td>
<td>19,547</td>
<td>(10,077)</td>
<td>6,040</td>
</tr>
<tr>
<td>Cash flows from financing activities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repayment of long-term debt and notes payable</td>
<td>—</td>
<td>—</td>
<td>(1,300)</td>
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<tr>
<td>Proceeds from issuance of stock, net</td>
<td>1,071</td>
<td>26,886</td>
<td>2,581</td>
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<tr>
<td>Repayment of capital lease obligations</td>
<td>(83)</td>
<td>(109)</td>
<td>(137)</td>
</tr>
<tr>
<td>Net cash provided by financing activities</td>
<td>988</td>
<td>26,777</td>
<td>1,144</td>
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<tr>
<td>Net (decrease) increase in cash and cash equivalents</td>
<td>(131)</td>
<td>6,080</td>
<td>(9,318)</td>
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<tr>
<td>Cash and cash equivalents at beginning of period</td>
<td>7,077</td>
<td>997</td>
<td>10,315</td>
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<tr>
<td>Cash and cash equivalents at end of period</td>
<td>6,946</td>
<td>7,077</td>
<td>997</td>
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<tr>
<td>Supplemental cash flow information:</td>
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<td></td>
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</tr>
<tr>
<td>Cash paid for interest</td>
<td>32</td>
<td>32</td>
<td>54</td>
</tr>
<tr>
<td>Issuance of options and warrants to third parties</td>
<td>593</td>
<td>593</td>
<td>70</td>
</tr>
<tr>
<td>Common stock issued and options and warrants issued or assumed in connection with acquisitions</td>
<td>20,190</td>
<td>—</td>
<td>292</td>
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</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
future. In 2001, the Company decreased the size of its workforce by 26% and instituted measures to control discretionary expenditures. The Company believes that existing cash and investments together with the cash from the financing (see Note 13) will be adequate to fund its operations through December 31, 2002. However, the Company's cash requirements depend on several factors, including the rate of market acceptance of its products and services, the ability to expand and retain its customer base and other factors. If the Company fails to achieve its planned revenue or expense targets, management believes that it has the plans, intent and the ability to curtail capital and operating spending to ensure that cash and investments will be sufficient to meet the Company's cash requirements through December 31, 2002.

USE OF ESTIMATES

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expense during the reporting period. Actual results could differ from those estimates.

PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of the Company and its subsidiaries. All significant intercompany accounts and transactions have been eliminated. Investments in entities of which the Company owns between 20% and 50% and on which the Company has the ability to exercise significant influence but not control are accounted for under the equity method. The Company owns, directly or indirectly, 100% of all affiliates, except for the Company's distributor in the United Kingdom, where it owns 52%.

Minority interest reflects the interest of minority shareholders in the operating results of consolidated subsidiaries.

CASH EQUIVALENTS AND SHORT-TERM INVESTMENTS

The Company considers all highly liquid investment with a maturity of three months or less when purchased to be cash equivalents and those with maturities greater than three months are considered short-term investments. The Company has classified all short-term investments as available for sale.

ALLOWANCE FOR DOUBTFUL ACCOUNTS

The Company maintains allowances for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments. This estimate is based on historical experience, current conditions, trends in the industry and other business factors. In the year ended December 31, 2001, the Company recorded a provision for bad debt in the amount of $912,000. If the financial condition of the Company's customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

INVENTORY

Inventory is stated at the lower of cost or market. Cost is determined using the first-in, first-out method. During the year ended December 31, 2001, the Company recorded inventory related charges of $7.3 million. During the years ended December 31, 2000 and 1999, the Company recorded inventory related charges of $2.3 million and $5 million, respectively. The majority of these charges related to the write down of inventories for certain excess and obsolete products and to record physical inventory adjustments. The charge has been included in cost of revenue.

PROPERTY AND EQUIPMENT

Property and equipment are stated at cost and are depreciated on a straight-line basis over the estimated useful lives of the assets, generally three years. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful lives of the assets or the remaining lease term. When property or equipment is retired or otherwise disposed of, the Company removes the asset and accumulated depreciation from its records and recognizes any related gain or loss in the determination of income.

GOODWILL AND OTHER PURCHASED INTANGIBLE ASSETS

Goodwill, representing the excess of purchase price and acquisition costs over the fair value of net assets of businesses acquired, and other purchased intangibles are amortized on a straight-line basis over the estimated economic life of five years. Amortization expense relating to goodwill and other intangible assets was $2.3 million for 2001 and $720,000 for 2000.

IMPAIRMENT OF LONG-TERM ASSETS

The Company continually monitors events and changes in circumstances that could indicate carrying amounts of long-term assets, including intangible assets, may not be recoverable. When such events or changes in circumstances are present, the Company assesses the recoverability of long-term assets by determining whether the carrying value of such assets will be recovered through undiscounted expected future cash flows. If the total of future cash flows is less than the carrying amount of these assets, the Company recognizes an impairment loss based on the excess of the carrying amount over the fair value of the assets. As discussed in Note 7, the Company recorded $1.1 million of impairment losses related to goodwill and other intangible assets during the year ended December 31, 2001.

REVENUE RECOGNITION

The Company's revenue is derived from primarily two sources (i) product revenue, which includes software license and hardware revenue and (ii) services and support revenue which includes software license maintenance and support, training and consulting revenue.

The Company licenses its software products under perpetual licenses. The Company sells its products and services via its direct sales force, through domestic and foreign distributors and via the Internet.
EXHIBIT 24
CERTIFICATION OF NAMED PLAINTIFF

I, Garry Crabtree, hereby certify that the following is true and correct to the best of my knowledge, information and belief:

1. I have reviewed the complaint (the "Complaint") and would be willing to serve as a lead plaintiff on behalf of the class (the "Class") as defined in the Complaint, including providing testimony at deposition and trial, if necessary.

2. I did not purchase the security that is the subject of this action at the direction of Plaintiffs' counsel or in order to participate in this private action.

3. My transactions in the securities of First Virtual Communications, Inc. during the Class Period defined in the Complaint are set forth on Schedule A attached hereto.

4. During the three years prior to the date of this Certificate, I have not sought to serve, nor have I served, as a representative party on behalf of a class in any private action arising under the federal securities laws.

5. I will not accept any payment for serving as a representative party on behalf of the Class beyond my pro rata share of any possible recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of September, 2004.

GARRY CRABTREE
### Schedule A - Transactions in First Virtual Communications, Inc.

**Purchases in First Virtual Communications, Inc.**

<table>
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**Sales in First Virtual Communications, Inc.**

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</table>
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROB BLACKIN, et al.,

Plaintiffs, v.

RED BRICK SYSTEMS, INC., et al.,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Defendants' motion to dismiss pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) was heard on April 27, 1999. The court has read the moving and responding papers and heard the oral argument of counsel. For the reasons set forth below, the court grants defendants' motion to dismiss with leave to amend.

I. BACKGROUND

On September 2, 1998, plaintiffs filed their Amended Complaint in this class action alleging violation of the federal securities laws.¹ In their Amended Complaint plaintiffs allege that during the class period, January 15, 1997 through April 15, 1997, defendants² “perpetrated a scheme to inflate

¹Specifically, plaintiffs allege that defendants have violated sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Exchange Commission Rule 10b-5.

Red Brick's stock price by issuing materially false and misleading public statements about the
Company's operations and financial results." Amended Complaint ("AC") ¶ 1.

Red Brick designs, develops and markets "Red Brick Warehouse" a relational database
management system software product. AC ¶ 13. Red Brick was founded in 1986 and is
headquartered in Los Gatos, California. AC ¶ 13. Red Brick completed an initial public offering in
January 1996. AC ¶ 32.

Plaintiffs allege that defendants misrepresented earnings for the fourth quarter and fiscal year
ended December 31, 1996 by failing to reserve adequately for doubtful accounts receivable in
violation of generally accepted accounting principles ("GAAP"). AC ¶ 2, 39, 44. Plaintiffs further
allege that defendants violated GAAP by deferring expenses from the fourth quarter of 1996 into
following quarters. AC ¶ 3, 39, 44. Plaintiffs also allege that defendants artificially inflated revenues
by improperly "pulling in" sales, that is recording sales that had not yet been completed, in the fourth
quarter of 1996. AC ¶ 5, 39, 44. As a result of these acts, plaintiffs allege that defendant Red
Brick's 1996 Annual Report was misleading. AC ¶ 2.

Plaintiffs allege that company insiders took advantage of Red Brick's false financial statements
by selling stock at inflated prices during the class period. AC ¶ 7. Plaintiffs assert that when
defendants disclosed the allegedly misrepresented facts on April 15, 1997 Red Brick's stock fell to
$6.68 per share which was 71 percent below its high during the class period. AC ¶ 7.

Plaintiffs allege that Erickson sold 20,000 shares during the class period, Hausmann sold
15,000 shares during the class period, Fernandez sold 49,500 shares during the class period and Henn
sold 75,000 shares during the class period. AC ¶ 14(a), (b), (d), (e). Plaintiffs allege that Shoch was
a general partner of AMC Partners 89 L.P. which is a general partner of Asset Management
Associates which owned approximately 2.5 million shares of Red Brick and which distributed
approximately 1.7 shares during the class period. AC ¶ 14(c).

II. LEGAL STANDARDS

A court may dismiss a complaint pursuant to Rule 12(b)(6) for either lack of a cognizable
legal theory or the pleading of insufficient facts under a cognizable legal theory. Robertson v. Dean
Witter Reynolds, Inc., 749 F.2d 530, 533-34 (9th Cir. 1984). In ruling on a motion to dismiss the court must assume that plaintiff’s allegations are true, must construe the complaint in the light most favorable to the plaintiff and must resolve any doubt in plaintiff’s favor. United States v. City of Redwood City, 640 F.2d 963, 966 (9th Cir. 1981). However, “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.” In re Verifone Sec. Litig., 11 F.3d 865, 868 (9th Cir. 1993).

Rule 9(b) provides that “in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” Rule 9(b) applies to securities actions brought under section 10(b) and Rule 10b-5. Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1439 (9th Cir. 1987). Additionally, there are strict pleading requirements for private actions filed under the federal securities laws. See Private Securities Litigation Reform Act (“Reform Act”), 15 U.S.C. § 78u. The Reform Act requires that claims for securities fraud specify each false or misleading statement and why each statement is false or misleading. 15 U.S.C. § 78u-4(b)(1). Additionally, as to each act or omission, plaintiff must set forth the particular facts that give rise to a strong inference that defendant acted with the required state of mind. 15 U.S.C. § 78u-4(b)(2).

III. ANALYSIS

A plaintiff bringing suit under section 10(b) and Rule 10b-5 “must prove that the defendant (1) made misstatements of material fact; (2) with scienter; (3) in connection with the purchase or sale of securities; (4) upon which plaintiffs relied; and (5) that plaintiffs’ reliance was the proximate cause of their injury.” Kline v. First Western Government Securities, Inc., 24 F.3d 480, 487 (3rd Cir. 1994). Furthermore, to state a claim for securities fraud, a plaintiff must plead with particularity the circumstances of the fraud, including statements made and an explanation as to why or how such statements are false or misleading. Fed. R. Civ. Proc. 9(b); In re GlenFed, Inc. Sec. Litig., 42 F.3d 1541, 1548 (9th Cir. 1994)(en banc).
A. Alleged Statements or Omissions

Plaintiffs allege that "defendants concealed the fact that in or prior to January 1997, defendants caused Red Brick to shift emphasis and critical resources from sales to customer service." AC ¶ 38. They further allege that defendants "fixed upon a scheme to misrepresent the Company's results for its December 1996 quarter" and that defendants "materially mischaracterized Red Brick's fourth quarter 1996 results." AC ¶¶ 39, 42.

Plaintiffs then allege that defendant Erickson stated on January 15, 1997 that the fourth quarter of 1996 was "the best sales quarter in company history." AC ¶ 44. Plaintiffs contend that the statement was false because defendants omitted that they had engaged in certain accounting improprieties for the fourth quarter of 1996. AC ¶ 44. Plaintiffs contend that it was materially misleading to "extol the alleged consistency of our business" because sales were declining in the first quarter of 1997 and Red Brick had run out of customers. AC ¶¶ 45, 46. Thus, plaintiffs contend that because of (1) concealing that they had engaged in accounting improprieties in the fourth quarter of 1996, i.e. "pulling in" revenues, failing to record expenses already incurred and establishing inadequate reserves, and (2) failing to disclose declining sales for the first quarter of 1997, defendants have violated section 10(b).

Defendants assert that the above referenced allegations fail to state a claim under section 10(b) because there is no particularized factual support for the allegations as required under the Reform Act. Defendants contend that plaintiffs have failed to identify any transaction for which the accounting treatment was improper or any facts that defendants misstated the results for the fourth quarter of 1997, respectively.

'Because the court finds that plaintiffs have not adequately pled specific facts showing that the alleged statements or omissions were false, it does not reach the issue of scienter under the Reform Act at this time. Where plaintiffs have not adequately pled falsity, it is unnecessary to determine whether they have adequately pled scienter. Polk v. Fritz, No. 962712 MHP (N.D. Cal. Mar. 5, 1998).

The court notes, however, that plaintiffs have filed a counter-motion to strike certain documents of which defendants' have requested judicial notice. The court denies plaintiffs' motion to strike as the documents of which defendants request judicial notice are the proper subject of judicial notice. Plaintiffs have also requested judicial notice of documents and defendants have opposed the request for judicial notice on the ground that plaintiffs have inappropriately submitted further argument on the scienter issue in their request. The defendants do not oppose the taking of judicial notice of the documents themselves. Defendants also note that in their counter-motion to strike, plaintiffs make additional argument on the scienter issue. The court agrees. Plaintiffs may not circumvent the rules regarding page limits by filing additional documents containing argument that should have been included in their brief. Accordingly, the court will take judicial notice of the documents themselves but will not consider the additional argument submitted by plaintiffs in either the counter-motion to strike or the request for judicial notice.
quarter of 1996. Defendants' Memorandum of Points and Authorities in Support of Motion to
Dismiss ("Def. Mot."), p. 10. Defendants further contend that defendants had no duty to disclose

Failure to follow GAAP is not, in and of itself, sufficient to establish a violation of section
10(b). See In re Software Toolworks Inc. Sec. Litig., 50 F.3d 615, 627-28 (9th Cir. 1994). Further,
plaintiffs must do more than conclusively plead that defendants violated GAAP. See Acito v.
IMCERA Group, Inc., 47 F.3d 47, 51 (2d Cir. 1995). Plaintiffs have not done so here. Plaintiffs
allege three accounting violations, all in conclusory fashion without supporting facts.

Plaintiffs allege that defendants improperly “pulled in” revenues in the fourth quarter of 1996.
AC ¶ 43, 44, 62. Plaintiffs fail to plead any facts showing that any sales were booked before they
were completed. Plaintiffs also plead that defendants improperly delayed recording expenses that
should have been recorded in the fourth quarter of 1996. AC ¶¶ 44, 67, 69. The “fact” on which
plaintiffs rely to support this allegation is that expenses increased for the first quarter of 1997 and that
the percentage of cost to revenue increased. AC ¶ 67. Finally, plaintiffs, again relying on speculative
statistics as their purported “facts,” plead that defendants inadequately reserved for doubtful accounts
receivable in the fourth quarter of 1996. AC ¶ 60. Plaintiffs contend that because the reserve amount
increased percentage-wise in the first quarter of 1997 defendants must have underreserved for the
fourth quarter of 1996. AC ¶ 60. Plaintiffs fail to point to any fact showing that any specific
receivable was doubtful.

Plaintiffs rely on the pre-Reform Act case of Cooper v. Picket, 137 F.3d 616 (9th Cir. 1997),
to support the adequacy of their allegations asserting that they do not need to point to any specific
transactions. Plaintiffs’ Memorandum of Points and Authorities in Opposition to Motion ("Pls.
Mem."), pp. 6-7. While plaintiffs do not have to point to every alleged improper transaction, they
must point to some facts that show defendants engaged in improper accounting practices.
Conclusory allegations that include accounting “buzzwords” are not sufficient. See Zeid v. Kimberly,
973 F. Supp. 910, 922-23 (N.D. Cal. 1997) (general, unsupported estimates of improper sales does
not meet particularity requirements); In re Oak Technology Sec. Litig., No. 96-20552 SW, 1997 WL
448168 (N.D. Cal. 1997) (although plaintiffs need not specify dollar amounts “they must identify
particular transactions" where revenues were improperly recorded). Similarly, reliance on statistics, which are easily manipulated and could be indicative of many things, is clearly insufficient to support allegations of fraud. *Stack v. Lobo*, No. 95-20049 SW 1995 WL 241448 (N.D. Cal. 1995) (plaintiffs' reliance on "conclusory accusations, and statistics regarding revenues and receivables which may be indicative of numerous factors aside from accounting fraud" not enough as "an increase in the ratio of receivables to revenue, without more, does not warrant an inference of fraud.").

Even the pre-Reform Act *Cooper* case, on which plaintiffs heavily rely, contained allegations more specific than those alleged by plaintiffs in this case related to improper revenue recognition. *Cooper*, 137 F.3d at 626 (complaint alleges that in order to falsify revenue defendant shipped excessive product, promised customers that they would not have to pay for product until they resold it and shipped merchandise that had not been ordered).

Defendants further argue that the alleged failure to disclose the first quarter 1997 declining sales is not actionable because they had no duty to make such a disclosure. *See Verifone*, 11 F.3d at 869. The *Verifone* court held that the failure to disclose future sales and revenue forecasts was not actionable; however, further held that where an issuer speaks on a particular topic the issuer cannot omit specific facts which would render the statements misleading. *Id.* The allegations in this complaint plead more than mere failure to disclose forecasts. Plaintiffs allege that the positive statements made regarding the first quarter of 1997 were misleading based on the falsity of the financial results of the fourth quarter of 1996. Thus, under *Verifone*, assuming plaintiffs can adequately state a claim for the accounting improprieties, their allegations regarding declining sales would suffice to state a claim. Because plaintiffs' declining sales allegations are directly tied to their accounting allegations, at this point plaintiffs' allegations do not state a claim.

The court finds that plaintiffs' complaint, as currently pled, is insufficient to state a claim for securities fraud under the Reform Act.¹

¹Plaintiffs allegations also fail because they do not come close to satisfying the heightened pleading standard required for allegations based on information and belief. Under the heading "Basis of Allegations," paragraph 85 of the Amended Complaint states that "plaintiffs have alleged the foregoing based upon the investigation of counsel" and that plaintiffs "believe that after reasonable opportunity for discovery, substantial evidentiary support will likely exist for the allegations set forth herein." Plaintiffs (continued...)
B. Liability of Individual Defendants Shoch, Henn and Fernandez

The complaint does not allege that Shoch, Henn or Fernandez made any statements or omitted any facts. Plaintiffs attempt to hold these “non-speaking defendants” liable under the group pleading doctrine by claiming that they are liable for group published information even though they specifically did not make any statement or omit to state any material fact. Defendants assert that the group pleading doctrine no longer exists following enactment of the Reform Act which requires that plaintiffs specify their claims against each defendant. 15 U.S.C. § 78u-4(b)(2). However, while Rule 9(b) and the Reform Act require that plaintiffs attribute fraudulent statements to a particular defendant, where the statements are contained in published documents such as financial reports “it is reasonable to assume that these statements are the collective actions of the officers.” See Oak Technology, 1997 WL 448168 *14.

To state a claim using the group-pleading doctrine “plaintiffs must plead with particularity defendants’ participation in the day-to-day control of the corporation and their participation in the preparation of the allegedly false statements.” Oak Technology, 1997 WL 448168 *11; Head v. Netmanage, Inc., No. C 97-4385 CRB, slip op. at 2 (N.D. Cal. Feb. 24, 1998). Despite plaintiffs’ assertions to the contrary, they have failed to make any such allegations.

Plaintiffs allege that Shoch was a director and member of the Audit Committee and owned approximately twenty-one percent of the stock. AC ¶ 14(c). Plaintiffs allege that Fernandez was a

(...continued)

are required to specify each statement or omission alleged to have been misleading, the reason or reasons why the statement or omission is misleading and why the statement was false when made. 15 U.S.C. §78u-4(b)(1)(B). Paragraph 85 shows that plaintiffs blatantly have failed to do this. Despite plaintiffs’ argument to the contrary, a complaint based upon “investigation of counsel” is the same as a complaint based upon “information and belief.” In re Silicon Graphics Sec. Litig., 970 F. Supp. 746, 763 (N.D. Cal. 1997). Accordingly, plaintiffs must “state with particularity all facts on which that belief is formed.” 15 U.S.C. § 78u-4(B)(1)(b). Plaintiffs attempt to do this by stating in one paragraph that their counsel reviewed various “SEC filings, securities analysts’ reports and advisories about the Company, press releases issued by the Company, media reports about the Company, and discussions with consultants.” AC ¶ 85. Paragraph 85 of the Amended Complaint fails to provide the required facts underlying the plaintiffs’ allegations. Silicon Graphics, 970 F. Supp. at 764; see also In re Health Mgmt. Syst. Inc. Sec. Litig., 1998 WL 283286 *3 (S.D.N.Y. June 1, 1998).

Further, the purpose of the Reform Act was to ensure that plaintiffs have evidence of fraud before filing a complaint. H.R. Conf. Rep. No. 104-369, 104th Cong., 1st Sess. at 32 (1995). Accordingly, plaintiffs are not permitted to pin their hopes of supporting their allegations on future discovery. Medekar v. United States Dist. Court, 99 F.3d 325, 328 (9th Cir. 1996) (“Congress clearly intended that complaints in these securities actions should stand or fall based on the actual knowledge of the plaintiffs rather than information produced by the defendants after the action has been filed.”)(emphasis added).
Senior Vice-President. AC ¶ 14(d). Plaintiffs allege that Henn was Vice-President and although he resigned before the class period remained on in a "transitional role." AC ¶ 14(e). Plaintiffs further allege that "by reason of their executive management positions," stock ownership and ability to make public statements about the Company, these defendants were "controlling persons." AC ¶ 16. Plaintiffs further allege that each defendant except Shoch "was personally involved in" monitoring reserve levels and expenses. AC ¶ 17. Plaintiffs further allege that these defendants "by virtue of their positions" controlled the dissemination of information and were privy to non-public information which enabled them to participate in the fraud. AC ¶¶ 24-25, 83.

These allegations do not establish liability for group published statements. Defendants do not plead any specific information regarding these defendants' duties or participation in any day-to-day activities or the preparation of any group published document. General allegations that defendants were privy to inside information are insufficient to establish liability for misstatements. Oak Technology, 1997 WL 448168 *11. Plaintiffs must plead with particularity the facts showing that Shoch, Henn and Fernandez participated in the day-to-day operations of the company.5

IV. ORDER

Based on the foregoing, the court grants defendants' motion to dismiss the amended complaint with leave to amend in accordance with Federal Rule of Civil Procedure 9(b) and the Reform Act. Plaintiffs are given twenty days from the date of this order to amend their complaint.

IT IS SO ORDERED.

Dated: 4/30/99

MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE

5Because plaintiffs have not adequately pled a claim under section 10(b) they have also failed to plead a claim under section 20(a). Thus, the court does not reach the 20(a) allegations at this time.