UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 16-06437-MWF (AGRx) **Date: June 20, 2017**
Title: Alexandru Lefter -*v.*- Yirendai Ltd., et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER RE MOTION TO DISMISS [37]

Before the Court is Defendants Yirendai Ltd., Yihan Fang, Yu Cong, and Ning Tang's (collectively, "Yirendai") Motion to Dismiss Amended Class Action Complaint for Violation of the Federal Securities Laws (the "Motion"), filed March 28, 2017. (Docket No. 37). On April 27, 2017, Plaintiff and putative class representative Alexandru Lefter filed his Opposition. (Docket No. 41). On May 30, 2017, Yirendai replied. (Docket No. 44). The Court reviewed and considered the papers filed on the Motion, and held a hearing on **June 19, 2017**.

The Motion is **GRANTED.** Plaintiff fails to allege that Yirendai's public disclosures, broadly summarizing the likely impact of then-draft regulatory measures, were materially misleading to investors. Yirendai's disclosures were not overly optimistic, but simply discussed the challenges posed by the measures for the company's offline business in less detail than Plaintiff would have preferred. Nor can Plaintiff satisfactorily show either scienter or loss causation.

I. BACKGROUND

A. Requests for Judicial Notice

The parties request the Court take judicial notice of several documents. (*See* Yirendai's Request for Judicial Notice ("RJN") (Docket No. 38); Lead Plaintiff's Request for Judicial Notice (Docket No. 43)). None of the requests for judicial notice are opposed:

- Attached to the Declaration of Virginia F. Milstead ("Milstead Declaration") (Docket No. 38):
    - Exhibit 1: Excerpts of Yirendai's Form 20-F, filed with the Securities & Exchange Commission ("SEC") on April 27, 2016 for fiscal year 2015 (the "2015 Form 20-F");
    - Exhibit 2: Yirendai's Form 6-K, filed with the SEC November 16, 2016 (the "November Form 6-K");
    - Exhibit 3: Yirendai's Form 6-K, filed with the SEC March 16, 2017 (the "March Form 6-K");
    - Exhibit 4: An article published by *Bloomberg News* on August 24, 2016, titled "China Imposes Caps on P2P Loans to Curb Shadow-Banking Risks";
    - Exhibit 5: An article published by *Fortune.com* on August 24, 2016, titled "Here Are Some of China's New Rules on P2P Lending";
    - Exhibit 6: An article published by *Financial Times* on August 24, 2016, titled "China P2P Lending Regulations Target Hucksters and Risk-Takers";
    - Exhibit 7: A video published by *CNBC* on August 24, 2016, titled "China Has Issued Detailed New Rules Aimed at Curbing Fast-Growing Peer-to-Peer Lending, a Sector Considered Increasingly Dangerous to the Country's Financial Stability", available at http://live.cnbc.com/Event/World_Markets_Life_-_August_25/324489869.

- Attached to the Declaration of Robert V. Prongay ("Prongay Declaration") (Docket No. 42):
    - Exhibit A: An article published by *The Wall Street Journal* on August 24, 2016, titled "China Sets Ceilings on Peer-to-Peer Credit";
    - Exhibit B: An article published by *Xinhua News Agency* on August 24, 2016, titled "China Focus: China Tightens Controls on P2P Lending";
    - Exhibit C: Excerpts of Yirendai's Form 20-F, filed with the SEC on April 24, 2017 for fiscal year 2016 (the "2016 Form 20-F").
- Attached to the Supplemental Declaration of Virginia F. Milstead ("Milstead Supplemental Declaration") (Docket No. 44-1):
    - Supplemental Exhibit 1: The Final Interim Measures for the Administration of Business Activities of Peer-to-Peer Lending Information Intermediaries, enacted August 17, 2016 (the "Final Measures");
    - Supplemental Exhibit 2: The Draft Measures for the Interim Administrative Measures for the Business Activities of P2P Lending Information Intermediaries, promulgated on December 28, 2015 (the "Draft Measures");
    - Supplemental Exhibit 3: Different Excerpts from Yirendai's 2016 Form 20-F.

Exhibit 1 and Supplemental Exhibits 2–3 are explicitly referenced in the Complaint, and thus they are proper subjects of judicial notice under the incorporation by reference doctrine. *See Patel v. Parnes*, 253 F.R.D. 531, 545 (C.D. Cal. 2008)

("Courts may consider securities offering and corporate disclosure documents referenced in a complaint."); *In re Wet Seal, Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1157 (C.D. Cal. 2007) ("As well as SEC filings, the Court may also take judicial notice of other matters of public record such as press releases, analyst reports, news articles, and conference call transcripts in cases such as this, where they are relied upon by the complaint.").

"In addition, on a motion to dismiss securities fraud claims," where, as here, the parties do not dispute the authenticity of the relevant documents "'the court may consider the full text of the relevant documents to determine whether the plaintiffs have alleged material misrepresentations or omissions,' without converting the motion to a motion for summary judgment." *In re Wet Seal*, 518 F. Supp. 2d at 1158 (quoting *In re Infonet Servs. Corp. Secs. Litig.*, 310 F.Supp.2d 1106, 1113 (C.D. Cal. 2003)); *see also In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (superseded by statute on other grounds) (holding that the district court did not err in considering SEC filings in ruling on the motion to dismiss). Accordingly, the Court may properly take judicial notice of a second category of documents: SEC filings not explicitly incorporated by reference into the Complaint. These include Exhibits 2–3 and C, and Supplemental Exhibit 3. *See also, e.g.*, *In re New Century*, 588 F. Supp. 2d 1206, 1219 (C.D. Cal. 2008) ("It is well-established that courts may take judicial notice of SEC filings.") (citing *Dreiling v. Am. Express Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006)).

The remaining documents are news articles and videos. Yirendai contends that Exhibits 4–7 are proper subjects of judicial notice because they were referenced by the First Amended Complaint. (RJN 1–2). Not so, or at least not exactly; the Complaint generally references "coverage from the American media" after the passage of the Draft Measures on August 24, 2016, including coverage by "Bloomberg, Fortune, CNBC, Financial Times, etc." (First Amended Complaint (the "FAC") ¶ 62 (Docket No. 30)). The First Amended Complaint does not further elaborate on the contents of the coverage, nor does it discuss specific articles. "[T]he mere mention of the existence of a document is insufficient to incorporate the contents of a document."

Coto Settlement v. Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010). However, as Plaintiff points out, all of the news articles are "publications introduced to indicate what was in the public realm at the time" of the alleged fraud. *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010); *see also Opperman v. Path, Inc.*, No. CV 13-00453-JST, 2016 WL 4719263, at *3 (N.D. Cal. Sept. 8, 2016) (taking judicial notice of news articles). The Court thus takes judicial notice of Exhibits 4–7 and A–B.

B. Factual Background

On a motion to dismiss, the Court assumes the facts alleged in the complaint are true and construes any inferences arising from those facts in the light most favorable to the plaintiff. *See, e.g.*, *Schueneman v. Arena Pharm., Inc.*, 840 F.3d 698, 704 (9th Cir. 2016) (restating generally-accepted principle that "[o]rdinarily, when we review a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), we accept a plaintiff's allegations as true 'and construe them in the light most favorable' to the plaintiff" (quoting *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 989 (9th Cir. 2009)). The Court thus accepts the following facts as true:

Yirendai, a Cayman Islands corporation headquartered in Beijing, operates a peer-to-peer ("P2P") lending platform that connects borrowers and lenders outside the regular banking system in China. (FAC ¶ 20). The executive chairman of the board of directors is Defendant Ning Tang. (*Id.* ¶ 21). Tang is the founder of, and a 43.4% shareholder in, CreditEase, which itself is Yirendai's parent company and controlling shareholder. (*Id.*). Defendant Yihan Fang is Yirendai's Chief Executive Officer, and Defendant Yu Cong is Yirendai's Chief Financial Officer. (*Id.* ¶ 22–23).

Yirendai uses a computer algorithm to match lenders and borrowers, and collects fees on the transactions. (FAC ¶ 40). Yirendai sources its borrowers from both online and offline channels. (*Id.* ¶ 41). In 2015, a majority of its loans and about half of its borrowers originated offline. (*Id.* ¶ 42). According to the 2015 Form 20-F, many of these offline referrals come from CreditEase's on-the-ground sales network. (*Id.* ¶ 41).

In 2015, the Chinese government began to draft measures to regulate the rapidly growing P2P industry, in response to a widespread perception of fraud and other illicit activity within the industry. (FAC ¶¶ 26–32, 44). On December 28, 2015, the China Banking Regulatory Commission ("CBRC") publicly released the Draft Measures. (*Id.* ¶ 7). The draft measures included the following provision:

> Article 16: Except for risk management such as collecting credit information, verification, following up after loaning, managing of pledges and certain necessary operations expressly provided for under regulations regarding online loaning, online lending information intermediaries [*i.e.* P2P lending platforms like Yirendai] shall not conduct business at any physical locations which are not internet, landline, mobile phones and other electronic means.

(FAC ¶ 47). In Plaintiff's view, this regulation would prohibit Yirendai from engaging in any offline business, including acquiring customers via offline channels, with certain administrative exceptions not relevant here. (*Id.* ¶¶ 8, 48).

Plaintiff alleges, based on the statement of a former manager within Yirendai's operating entity, that in about March 2016, Yirendai began restructuring the business. (FAC ¶ 60). Yirendai took steps towards dissolving its offline business lines and moved the affected personnel over to the online business department. (*Id.*). The former employee believed the Draft Measures "were a factor" in the restructuring. (*Id.*).

On April 27, 2016, Yirendai filed its 2015 Form 20-F. The document included an extensive discussion of the Draft Measures and their potential impact on Yirendai. (FAC ¶ 50; 2015 Form 20-F at 3–6). The section was titled "The laws and regulations governing the peer-to-peer lending service industry in China are developing and evolving and subject to changes. If our practice is deemed to violate any [Chinese] laws or regulations, our business, financial conditions and results of operations would be materially and adversely affected." (2015 Form 20-F at 3). The section went on to discuss the Draft Measures, including new prohibitions, such as on businesses that P2P

companies would no longer be permitted to participate in, and additional requirements for conducting their businesses. (*Id.* at 4). Yirendai noted that among these additional requirements was a "limitation of offline business . . . ." (*Id.*). Yirendai then explained that, while it was "uncertain when the Draft Measures would be signed into law . . . [i]f the Draft Measures are enacted as proposed, we may have to adjust our operating practices." (*Id.* at 5). Yirendai noted that once the Draft Measures were passed, the company might be subject to penalties if it were found not to be in compliance with the regulations. (*Id.*).

Later, in a separate disclosure section, Yirendai discussed the importance of offline business generation to its business model, in a section titled "Any negative development in CreditEase's market position, brand recognition or financial condition may materially and adversely affect our marketing efforts and the strength of our brand." (*Id.* at 21). Yirendai disclosed that it:

> benefitted significantly and expect[ed] to continue to benefit significantly from [its] association with CreditEase in marketing [its] brand and [its] marketplace. ***Referrals from CreditEase's on-the-ground sales network currently accounts for a majority of our borrowers and loan volume.*** In 2013, 2014, and 2015, 54.2%, 48.1% and 49.5% of our borrowers were acquired through referrals from CreditEase, respectively, contributing 61.9%, 59.8% and 67.0% of the total amount of loans facilitated through our marketplace, respectively. If user referrals through CreditEase decrease or become less effective, the quality of the borrowers referred by CreditEase does not meet our borrower qualification standards, ***or if we are unable to continue to use CreditEase as a user acquisition channel for any reason***, our business and results of operations may be adversely affected.

(2016 Form 20-F at 21) (emphasis added). Plaintiff contends that these disclosures were "grossly inadequate" and fell "far short of informing investors that a major revenue stream for [Yirendai] — *i.e.*, a channel that accounted for about [] half of Yirendai's customer base and more than half of the loans facilitated — would be put in

jeopardy by the Draft Measures." (FAC ¶ 53). Despite Yirendai's apparent recognition of the threat the regulations' limitations on offline businesses posed to its business model, as evidenced by its restructuring, Yirendai focused most of its analysis in the 2016 Form 20-F on how the Draft Measures might affect other aspects of its business, like Yirendai's automated investing tool. (2016 Form 20-F at 5).

On August 24, 2016, the Draft Measures became law. (FAC ¶ 62). The Final Measures were nearly identical to the Draft Measures. (*Id.* ¶ 63). Article 16 of the Final Measures states:

> Online lending information intermediaries [*i.e.* P2P lending platforms like Yirendai] may only conduct risk management such as collecting credit information, verification, following up after loaning, managing of pledges and certain necessary operations expressly provided for under regulations regarding online loaning at physical locations which are not internet, landline, mobile phones, and other electronic means.

(FAC ¶ 63). The day the Final Measures were enacted, Yirendai's stock fell $6.92 per share, a 22% reduction in price from the previous day. (*Id.* ¶ 64).

Plaintiffs now allege that "[i]n light of the extensive disclosure about other provisions in the Draft Measures, it is clear that Yirendai made a conscious decision to gloss over Article 16 and pass it off as if it [were] an afterthought that [would] have no impact on [Yirendai's] business . . . . An ordinary investor in the [United States], with no understanding of the Chinese language and no knowledge of how to interpret Chinese law, would not have been able to understand the extent or materiality of Yirendai's omission." (FAC ¶ 56).

II. PLEADING STANDARD

"Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013).

In ruling on the Motion under Rule 12(b)(6), the Court follows *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). "To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The Court must disregard allegations that are legal conclusions, even when disguised as facts. *See id*. at 681 ("It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth."); *Eclectic Properties E., LLC v. Marcus & Millichap Co*., 751 F.3d 990, 996 (9th Cir. 2014). "Although 'a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof is improbable,' plaintiffs must include sufficient 'factual enhancement' to cross 'the line between possibility and plausibility.'" *Eclectic Properties*, 751 F.3d at 995 (quoting *Twombly*, 550 U.S. at 556–57) (internal citations omitted).

The Court must then determine whether, based on the allegations that remain and all reasonable inferences that may be drawn therefrom, the Complaint alleges a plausible claim for relief. *See Iqbal*, 556 U.S. at 679; *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 (9th Cir. 2011). "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, No. 13-56644, 2016 WL 5389307, at *2 (9th Cir. Sept. 27, 2016) (as amended) (quoting *Iqbal*, 556 U.S. at 679). Where the facts as pleaded in the Complaint indicate that there are two alternative explanations, only one of which would result in liability, "plaintiffs cannot offer allegations that are merely consistent with their favored explanation but are also consistent with the alternative explanation. Something more is needed, such as facts tending to exclude the possibility that the alternative explanation is true, in order to render plaintiffs' allegations plausible." *Eclectic Properties*, 751 F.3d at 996–97; *see also Somers*, 729 F.3d at 960.

Allegations of fraud, including Plaintiffs' claims under the Exchange Act, must meet a higher pleading standard. Fed. R. Civ. P. 9(b) (requiring the pleading party to "state with particularity the circumstances constituting fraud or mistake"). It is well-

established that, "[a]t the pleading stage, a complaint alleging claims under Section 10(b) and Rule 10b–5 must not only meet the requirements of Rule 8, but must satisfy the heightened pleading requirements of both Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act ('PSLRA')." *In re Rigel Pharm., Inc. Sec. Litig.*, 697 F.3d 869, 876 (9th Cir. 2012). "Thus, a plaintiff must plead falsity with particularity: a plaintiff must 'specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.'" *Rubke v. Capitol Bancorp Ltd*, 551 F.3d 1156, 1164 (9th Cir. 2009) (quoting 15 U.S.C. § 78u–4(b)(1)). The PSLRA further requires plaintiffs to plead scienter with particularity: "a plaintiff must 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" *Id.* (quoting 15 U.S.C. § 78u–4(b)(2)).

III. DISCUSSION

The Exchange Act permits a person who has purchased or sold securities and who has been injured in those actions by a company's fraudulent practices to recoup his or her damages. *Loos v. Immersion Corp.*, 762 F.3d 880, 886–87 (9th Cir. 2014), *as amended* (Sept. 11, 2014). "There are six elements to a securities fraud claim under § 10(b) and Rule 10b–5: (1) a material misrepresentation or omission; (2) scienter (*i.e.*, a wrongful state of mind); (3) a connection between the misrepresentation and the purchase or sale of a security; (4) reliance upon the misrepresentation . . .; (5) economic loss; and (6) loss causation." *Id.* (citing *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 341–42 (2005)).

Here, Yirendai contends that Plaintiffs fail to plead adequately three of the six elements: (1) material misrepresentation (*i.e.* falsity); (2) scienter; and (3) loss causation. (Mot. at 2–4).

To plead falsity under the PSLRA, a complaint must "specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on

information and belief, the complaint shall state with particularity all facts on which that belief is formed." 15 U.S.C. § 78u-4(b)(1)(B)).

Yirendai contends that the First Amended Complaint fails to plead any facts to support its contention that Article 16 actually prohibits offline customer sourcing. (Opp. at 3). But even assuming that Article 16 would prohibit Yirendai's current practice of sourcing significant numbers of offline referrals from CreditEase, the First Amended Complaint still fails to allege that the 2016 Form 20-F included any material misrepresentation.

In *Brody v. Transitional Hospitals Corp.*, 280 F.3d 997 (9th Cir. 2002), the Ninth Circuit considered a similar theory to Plaintiff's. The plaintiffs argued that two press releases regarding an impending merger were materially misleading. *Id.* at 1006. The first press release was allegedly misleading because it provided information about the company's stock repurchase program, but not the impending takeover. *Id.* The second press release was allegedly misleading because it stated generally that the company "had received 'expressions of interest' from potential acquirers, when in fact it had received actual proposals from three different parties." *Id.* at 1007.

The Ninth Circuit acknowledged that "a statement that is literally true can be misleading and thus actionable under the securities laws." *Id.* at 1006. There is no rule, however, that "once a disclosure is made, there is a duty to make it complete and accurate." *Id.* The *Brody* court reasoned that an incomplete statement is not necessarily a misleading statement; moreover, a completeness rule would sweep too broadly, as "[n]o matter how detailed and accurate disclosure statements are, there are likely to be additional details that could have been disclosed but were not." *Id.*

Applying these principles, the Ninth Circuit determined that the two press releases relied on by the plaintiffs were not materially misleading because they did not "affirmatively create an impression of a state of affairs that differs in a material way from the one that actually exists." *Id.* Rather, although the press releases did not provide all of the information that the company possessed regarding the possible sale, they were entirely consistent with the true state of affairs, *i.e.* that the company had

received actual proposals as part of a takeover contest. *Id.* at 1007. The press releases gave plaintiffs sufficient notice of the possibility that the value of the company's shares would increase in the near future due to a takeover contest, and thus were not misleading. *Id.*

The same is true of Yirendai's disclosures. The 2016 Form 20-F alerted investors to forthcoming changes in the regulatory market, and specifically pointed investors to the publicly-available Draft Measures. (2016 Form 20-F at 3–6). The discussion included a specific, albeit brief, warning that any finalized measures could impose a limitation on offline business activities. (*Id.* at 4). Elsewhere, the filing included a discussion of the importance of Yirendai's offline business acquisition model, with statistics illustrating that a majority of borrowers and loans were acquired through CreditEase's "on-the-ground sales network." (*Id.* at 21). The 2016 Form 20-F warned that if Yirendai were to be "unable to continue to use CreditEase as a user acquisition channel ***for any reason***, [its] business and results of operations may be adversely and materially affected." (*Id.*).

Like the press releases in *Brody*, the facts disclosed in the 2016 Form 20-F were entirely consistent with the interpretation of Draft Measures Article 16 that Plaintiff advances, *i.e.* that half of Yirendai's business generation was threatened by Article 16. "To be actionable under the securities laws, an omission must . . . affirmatively create an impression of a state of affairs that differs in a material way from the one that actually exists." *Brody*, 280 F.3d at 1006. Yirendai's disclosures never created the impression that the Draft Measures did ***not*** put its business model at risk; they simply did not explain the risk in the manner or level of detail that Plaintiff would have preferred.

Nor is it clear that any additional, more detailed disclosure of the risks posed by the Draft Measures was required, given that the Draft Measures had been made publicly available by the Chinese government, and were explicitly referenced in the 2016 Form 20-F. *See, e.g.*, *Rubke*, 551 F.3d at 1162–63 (concluding the defendant had no obligation to disclose information that was publicly available because "[i]t is pointless and costly to compel firms to reprint information already in the public

domain" and may also be confusing to investors) (quoting *Wielgos v. Commonwealth Edison Co.*, 892 F.2d 509, 517 (7th Cir. 1989)); *In re Nimble Storage, Inc.*, No. CV-15- 05803-YGR, 2016 WL 7209826, at *9 n.10 (N.D. Cal. Dec. 9, 2016) (concluding that the defendants were not required to disclose product features and consumer preferences that were publicly available elsewhere); *Howard Gunty Profit Sharing v. Quantum Corp.*, No. 96-20711 SW, 1997 WL 514993, at *4 (N.D. Cal. Aug. 14, 1997) (same).

Plaintiff contends that Yirendai's statements were misleading because they evinced "efforts to bury" the Draft Measures' implications for Yirendai's business model. (Opp. at 9–11). Plaintiff cites to *In re Questcor Securities Litigation*, No. SA CV 12-01623-DMG, 2013 WL 5486762 (C.D. Cal. Oct. 1, 2013), in support. The district court in that action concluded that "boilerplate" disclosures about the likelihood that the insurance coverage at issue would decline were, taken in context, masked by the defendants' overly optimistic reassurances regarding the current level of coverage. *Id.* at *13. But here, the overall impression created by Yirendai's discussion of the Draft Measures was not one of optimism, but rather one of cautious concern. The disclosures neither expressly stated nor implied that the Draft Measures would not affect Yirendai's business, and indeed Yirendai discussed in detail elsewhere in the 2016 Form 20-F that its business model was vulnerable to interference with its offline operations. *In re Questcor* is inapposite.

Having concluded that the First Amended Complaint fails to allege any material misrepresentation, the Court necessarily cannot find that the allegations suffice to show scienter. Separately, the Court notes that Plaintiff's loss causation analysis is less than persuasive. It is unclear how, if the Draft Measures were already publicly available and Yirendai had already discussed them in its 2016 Form 20-F, public disclosure of Final Measures that were substantially the same as the Draft Measures would have suddenly alerted investors to the allegedly buried limitation on offline businesses. In *Loos*, the Ninth Circuit explained that to show loss causation "the plaintiff must plausibly allege that the defendant's fraud was '***revealed*** to the market and ***caused*** the resulting losses.'" 762 F.3d at 887 (emphasis added). Here, it does not appear that the

impact of the Draft Measures on Yirendai's business model was ***revealed*** by the promulgation of the Final Measures, nor is it at all clear that it was the publication of Article 16 of the Final Measures, and not some other aspect of those measures, that ***caused*** any resulting losses. *See Broudo*, 544 U.S. 342–43 (explaining that where other factors, such as "new industry-specific . . . facts, conditions, or other events" account for "some or all of" the lower price per share, loss causation is not established).

Finally, Plaintiffs' claim under § 20(a) of the Exchange Act requires an underlying § 10(b) violation. Because the allegations are insufficient to support a claim under § 10(b), the § 20(a) claim is also dismissed.

IV. CONCLUSION

For the foregoing reasons, the Motion is **GRANTED**.

Although the Court is uncertain what further factual allegations could rescue the claim, perhaps an amendment could cure the deficiencies raised above. Accordingly, Plaintiff shall have ***one*** opportunity to amend the First Amended Complaint. *See Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082, 1086 (9th Cir. 2014) ("A complaint should not be dismissed without leave to amend unless amendment would be futile."). There will be no Third Amended Complaint.

Plaintiff shall file his Second Amended Complaint, if any, on or before **July 10, 2017.** If Plaintiffs have made their best attempt (as seems likely), then the Court hopes they will so notify the Court by that same date, and the Court will enter judgment.

IT IS SO ORDERED.