UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No.	**2:21-cv-07405-MCS-PLA**	Date	January 31, 2024
Title	***In re The Honest Company, Inc. Securities Litigation***		

Present: The Honorable Mark C. Scarsi, United States District Judge

Stephen Montes Kerr	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: (IN CHAMBERS) ORDER ON MOTION TO DISMISS (ECF NO. 169-1)

Defendants Catterton Management Company L.L.C., L Catterton VIII, L.P., L Catterton VIII Offshore, L.P., Catterton Managing Partner VIII, L.L.C., C8 Management, L.L.C., and THC Shared Abacus, LP (collectively, "Catterton" or "Defendants"), filed a motion to dismiss Lead Plaintiff Kathie Ng's Amended Consolidated Class Action Complaint ("AC"). (Mot., ECF No. 169-1.) Lead Plaintiff opposed the motion, (Opp'n, ECF No. 177), and Defendants replied, (Reply, ECF No. 178). The Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

I. BACKGROUND

The first of the complaints in this consolidated action was filed in September 2021 against defendants that did not include Catterton. (Compl., ECF No. 1.) Lead Plaintiff filed a consolidated complaint on February 21, 2022 naming the same defendants. (CC, ECF No. 59; *compare* Compl. ¶¶ 14–36, *with* CC ¶¶ 15–38.) On May 1, 2023, the Court certified a class, (Order Re: Mot. for Class Cert., ECF No. 127), and through August 24, 2023, the administrator informed class members in writing of their claims against the non-Catterton defendants, (Sullivan Decl. ¶¶ 7–8, ECF No. 166). Notwithstanding, the Court granted Lead Plaintiff leave to amend her

consolidated complaint to add the Catterton entities as defendants. (Order 2, ECF No. 151; AC, ECF No. 141.) Lead Plaintiff filed the amended complaint alleging all defendants violated Section 11 of the Securities Act of 1933 (the "Act") and separately alleging the previously named individual defendants and Catterton violated Section 15 of the Act.[1] (AC ¶¶ 142–59.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) allows an attack on the pleadings for "failure to state a claim upon which relief can be granted." "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

The determination of whether a complaint satisfies the plausibility standard is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Generally, a court must accept the factual allegations in the pleadings as true and view them in the light most favorable to the plaintiff. *Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017); *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). But a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

[1] Lead Plaintiff asserts Count II against all previously named individual defendants and the "Catterton Defendants" which consists of Catterton and two of the individual defendants–Dahnke and Pramanik. (AC ¶ 47.) While Catterton was added as a defendant for the first time in the AC, Dahnke and Pramanik have been defendants in this case since its inception. At all relevant times, Pramanik was a partner at Catterton, Dahnke was a co-CEO of Catterton, and both served as members of Honest's board of directors. (AC ¶¶ 20, 23, 45.) Dahnke and Pramanik are separately represented by counsel and are not moving parties in this motion.

III. DISCUSSION

A. Request for Judicial Notice

In support of their motion to dismiss, Defendants filed an unopposed request that the Court take judicial notice of the April 26, 2021 Form S-1 Registration Statement for the Honest Company ("Honest") and the August 14, 2023 hearing transcript. (RJN, ECF No. 170; Linhardt Decl. Exs. A–B, ECF No. 169-2.) Because the Court need not rely on the documents subject to the request to decide the motion, the Court declines to take judicial notice. *See Japanese Vill., LLC v. Fed. Transit. Admin*., 843 F.3d 445, 454 (9th Cir. 2016).

B. Statute of Limitations

Defendants move to dismiss the claims against them on the grounds that they are time-barred. (Mot. 5–9.) Defendants move to dismiss Lead Plaintiff's Section 15 claim for insufficient allegations of their control over Honest. (*Id.* at 10–11.) The Court need only address the first argument to resolve the motion.

Lead Plaintiff avers her claims against Catterton are timely because the statute of limitations did not begin to run until May 2023, when Lead Plaintiff discovered the facts that established Catterton's Section 15 violation, (Opp'n 9–11), and regardless of whether the statute of limitations has run, the amended complaint is timely because it relates back to the consolidated complaint,[2] (*id.* at 13–16).

The Court may rule on Defendants' statute of limitations challenge on a motion to dismiss. *See In re YogaWorks, Inc. Sec. Litig.*, No. CV 18-10696-CJC (SKx), 2020 WL 2549290, at *2–5 (C.D. Cal. Apr. 23, 2020). Claims under Section 15 and Section 11 of the Act must be brought "within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made

[2] Defendants imply that the Court should analyze whether the amended complaint relates back to the original complaint by Cody Dixon, the first-to-file plaintiff, rather than the consolidated complaint. (*See* Reply 4–5, 5 n.1.) Lead Plaintiff implies the opposite. (*See* Opp'n 14–15.) Neither side offers authority or argument to support its assertions. Because the Court can adjudicate the timeliness issue on other grounds, it declines to decide which pleading should anchor the relation-back inquiry. However, the Court invites the parties to explore this issue in subsequent briefing if appropriate.

by the exercise of reasonable diligence." 15 U.S.C. § 77m ("Section 13"). The statute of limitations period beings to run "when the litigant first knows or with due diligence should know facts that will form the basis for an action." *Merck & Co. v. Reynolds*, 559 U.S. 633, 646 (2010) (emphasis removed). "This means that the statute of limitations begins when the plaintiff did or should have actually discovered that the defendant made an untrue statement or omission." *In re YogaWorks, Inc. Sec. Litig.*, 2020 WL 2549290, at *2 (internal quotation marks omitted). "A plaintiff should have actually discovered misstatements when a reasonably diligent plaintiff would have sufficient information about that fact to adequately plead it in a complaint with sufficient detail and particularity to survive a 12(b)(6) motion to dismiss." *Id.* (cleaned up).

Lead Plaintiff argues that she did not discover, and was not able to discover, that the Catterton entities controlled Honest and therefore were proper defendants until receiving discovery in May 2023. (Opp'n 15.) Catterton argues Lead Plaintiff "had notice of Catterton's potential control liability issue in this case for far longer than one year" because Lead Plaintiff already had notice of the activities of Catterton-affiliated Honest directors named in prior pleadings, Scott Dahnke and Avik Pramanik, that undergird their theory of control liability against Catterton. (Mot. 6.) Therefore, Catterton argues, Lead Plaintiff discovered the activity that forms the basis of her claims in September 2021, when the individual defendants were first named and the Section 13 statute of limitations has run. (*Id.* at 5–6.)

Lead Plaintiff pleaded generally that Catterton, Dahnke, and Pramanik "exercised substantial dominion over the Offering," "played a substantial role in the review of Honest's financials which were included in the Offering Documents and/or factored into [Honest's] forecasts," directly participated in Honest's marketing strategy for the Offering, and "directly managed Honest's business and other affairs leading up to the IPO." (AC ¶¶ 49–53.) While Lead Plaintiff asserts that she only learned of the level of Catterton's control over Honest through the May 2023 documents, Plaintiff avoids identifying in her pleading what facts underlie the control liability theory against Dahnke and Pramanik and what facts support the theory against Catterton. Although Lead Plaintiff submits that any further detail that could be pleaded would need to be sealed, (Opp'n 12), she bears the burden of pleading plausibly why her claims are timely, irrespective of the likelihood of a sealing issue, *see In re Nat'l Mortg. Equity Corp. Mortg. Pool Certificates Sec. Litig.*, 636 F. Supp. 1138, 1166 (C.D. Cal. 1986) ("It is plaintiffs' burden affirmatively to plead facts showing compliance with § 13's limitations period[]."); *see also Nat'l Credit Union Admin. Bd. v. RBS Sec., Inc.*, No. CV 11-5887-GW

(JEMx), 2011 WL 13253436, at *11 (C.D. Cal. Dec. 19, 2011). Lead Plaintiff pleaded no facts that allow the Court to infer that she did not learn the salient facts from which she discovered Catterton's control liability until May 2023, let alone that she could not have discovered the facts earlier with the exercise of reasonable diligence.

Therefore, Lead Plaintiff has not pleaded facts from which the Court may infer her claims against Catterton are timely.

C. Relation Back

Yet Lead Plaintiff's claims may be timely if the amendment relates back to the filing date of an earlier pleading under Federal Rule of Civil Procedure 15(c). *G.F. Co. v. Pan Ocean Shipping Co.*, 23 F.3d 1498, 1501 (9th Cir. 1994). Rule 15(c)(1)(C) sets forth the requirements for relation back of amendments that add a party. First, the claims asserted against the newly added defendant must arise "out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." Fed. R. Civ. P. 15(c)(1)(B). Second, the new defendant must have received notice of the original action "within the period provided by Rule 4(m) for serving the summons and complaint." Fed. R. Civ. P. 15(c)(1)(C)(i). Third, the new defendant must have known, or should have known, within the Rule 4(m) period that "but for a mistake concerning the proper party's identity," it would have been named in the original complaint. Fed. R. Civ. P. 15(c)(1)(C)(ii); *see also Wilkins-Jones v. County of Alameda*, No. C-08-1485 EMC, 2012 WL 3116025, at *12 (N.D. Cal. July 31, 2012). Lead Plaintiff argues that, regardless of whether the statute of limitations has run, the amended complaint relates back to the consolidated complaint and was thus timely as against Catterton. (Opp'n 13–16.)

Lead Plaintiff's argument falters on the third relation-back element. Lead Plaintiff has not shown her failure to name Catterton in the original or consolidated complaint was a mistake. For purposes of Rule 15, a mistake is "[a]n error, misconception, or misunderstanding . . . ." *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 548 (2010). A plaintiff who has knowledge of a party's existence at the time of filing the operative complaint may nonetheless be mistaken under Rule 15 because the plaintiff harbors a misunderstanding as to that party's role in the "conduct, transaction, or occurrence" giving rise to the claim. *Id.* at 549. Lead Plaintiff also has not shown that Defendants knew, or should have known, that they should have been named as parties in the original complaint but for her mistake.

"Rule 15(c)(1)(C)(ii) asks what the prospective *defendant* knew or should have known" during the period for serving the summons and complaint. *Id*.

Lead Plaintiff avers she could not have ascertained Catterton's relationship with Honest until she received discovery in May 2023 because Honest's 2021 Offering Documents provided "only vague descriptions of Catterton's relationship to Honest and role in the IPO." (Opp'n 15.) Defendants assert there was no mistake; instead, "Plaintiffs changed their minds" about naming them only after "a failed mediation effort, and a subsequent search for another deep pocket defendant." (Reply 4–5.) Further, Lead Plaintiff asserts for the first time in her opposition brief that Catterton should have known it was a proper party to be included in the original complaint but for Lead Plaintiff's mistake. (Opp'n 14.) However, Lead Plaintiff offers no facts to support her theory and, in a conclusory manner, argues that "Catterton was aware of their participation in the IPO" and that "two of [Catterton's] high-level employees were named as Defendants by virtue of their positions on Honest's board." (*Id.* at 15.) Therefore, she alleges, Catterton should have known it was a proper defendant. Why awareness of the suit might impute awareness of Plaintiff's mistake in naming parties is underventilated on this record.

Regardless, Lead Plaintiff fails to provide the Court with, let alone plead, any facts to show she made a mistake in failing to name the Catterton entities or that the Catterton entities knew or should have known they would have been named but for her mistake.

Therefore, the Court cannot determine the amended complaint relates back to an earlier pleading. Defendants' motion to dismiss Lead Plaintiff's claims for untimeliness is **GRANTED**.

D. Leave to Amend

As a general rule, leave to amend a dismissed complaint should be freely granted unless it is clear the complaint could not be saved by any amendment. Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co*., 519 F.3d 1025, 1031 (9th Cir. 2008). "This policy is to be applied with extreme liberality." *Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1102 (9th Cir. 2018) (internal quotation marks omitted). Courts commonly deny leave to amend untimely claims. *See, e.g.*, *Platt Elec. Supply, Inc. v. EOFF Elec., Inc.*, 522 F.3d 1049, 1060 (9th Cir. 2008). However, Lead Plaintiff suggests she can plead additional facts that may save her claims against Catterton, either by showing the statute of limitations does not bar her claims or by

showing her claims relate back to those in the original or consolidated complaint, thus indicating further amendment would not be futile. (Opp'n 12.) Accordingly, the Court grants Lead Plaintiff leave to amend. *See Wilkins-Jones*, 2012 WL 3116025, at *7 (noting that "once the Court grants leave to amend, relation back under 15(c) is mandatory if the party satisfies its criteria"). Further failure to demonstrate Lead Plaintiff's claims are timely may render subsequent amendment futile. *See Haithcock v. Veal*, No. 06cv0100-J (JMA), 2009 WL 3157480, at *4 (S.D. Cal. Sept. 24, 2009).

IV. CONCLUSION

Defendants' motion to dismiss is granted to the extent Defendants challenge Lead Plaintiff's claims as untimely. Lead Plaintiff's amended complaint is dismissed with leave to amend. Lead Plaintiff shall file an amended complaint within 14 days of this Order, provided she can amend without violating Federal Rule of Civil Procedure 11(b). Failure to timely amend will waive the right to do so. Leave to add new claims or parties must be sought in a properly noticed motion. Lead Plaintiff shall include as an exhibit "a 'redline' version of the amended pleading showing all additions and deletions of material." (Initial Standing Order § 10(a), ECF No. 9.)

IT IS SO ORDERED.