Case No. 2:25-cv-03188-JVS-JDE
Masimo Corporation v. Joe E. Kiani et al

TENTATIVE Order Regarding Motions to Dismiss [118, 121]

While the case was pending in the Southern District of New York, Defendants Roderick Wong, Naveen Yalamanchi, RTW Investments, LP, RTW Investments GP, LLC, RTW Master Fund, Ltd., RTW Offshore Fund One, Ltd., RTW Onshore Fund One, LP, RTW Innovation Master Fund, Ltd., RTW Innovation Offshore Fund, Ltd., RTW Innovation Onshore Fund, LP, and RTW Fund Group GP, LLC (collectively, "RTW Defendants") filed a motion to dismiss Plaintiff Masimo Corporation's ("Masimo") First Amended Complaint or, in the alternative, transfer the case to the Central District of California. (Mot., Dkt. No. 118.) Masimo filed an omnibus opposition. (Opp'n, Dkt. No. 134.) RTW Defendants replied. (Reply, Dkt. No. 135.)

For the following reasons, the Court **DENIES** RTW's motion to dismiss, and denies the motion to transfer as moot. (Mot., Dkt. No. 118.)

Defendant Joe E. Kiani ("Kiani") filed a similar motion to dismiss (Dkt. No. 121), but Masimo voluntarily dismissed Kiani under Rule 41(a). (Notice, Dkt. No. 194.) Accordingly, Kiani's motion to dismiss is **MOOT**. (Dkt. No. 121.)

I. BACKGROUND

The following facts are taken from the First Amended Complaint ("FAC"). (First Amended Complaint, Dkt. No. 100.)

A. Factual Background

1. Relevant Parties

Masimo is a medical technology company, incorporated in Delaware and headquartered in Irvine, CA. (FAC ¶ 17.) Politan Capital Management ("Politan"), a hedge fund, is one of Masimo's largest shareholders. (Id. ¶ 31.)

Joe E. Kiani ("Kiani") Kiani is the founder of Masimo, where he was the

CEO from 1989 to 2024. (Id. ¶¶ 18, 30.) The RTW Defendants are Masimo investors who have a "deep relationship" with Kiani. (Id. ¶¶ 19–29, 34.)

2. Proxy Contest and Empty Voting

Masimo alleges that shareholders lost confidence in Kiani's leadership. (Id. ¶ 30.) At the June 2023 annual meeting, Politan gained two of the five board seats, defeating Kiani's slate. (Id. ¶ 31.) The following year, in March 2024, Politan nominated two other candidates to run against Kiani and his nominee, who were to be elected at the July 25, 2024, annual meeting ("July Annual Meeting"). (Id. ¶ 32.)

Masimo alleges that to save his seat in the 2024 proxy contest, Kiani "colluded" with RTW Defendants. (Id. ¶¶ 1, 34.) More specifically. Masimo claims that because RTW Defendants originally had only a 2.8% stake in Masimo, they engaged in an "empty voting" scheme in order to artificially inflate RTW Defendants' voting power. (Id. ¶ 39.) RTW Defendants increased their shares to 9.9% by June 13, 2024 ("June Record Date"), and with Kiani's 9.1%, held together 19% of Masimo's securities. (Id. ¶¶ 41–46, 50.) Masimo alleges that RTW Defendants "took on no additional economic risk" when their position spiked by approximately three million shares prior to the June Record Date because they were short selling—they borrowed shares from BlackRock and "sold short an equivalent number of shares to offset any economic risk that came from increasing its long position." (Id. ¶¶ 4, 54–58.)

Masimo claims that presumably from around April 3, 2024 up to the July Annual Meeting, Kiani colluded with RTW Defendants to execute their empty voting scheme. (Id. ¶¶ 47–48, 52.) By doing so, they effectively formed an undisclosed Section 13(d) group and became a statutory insider, violating Regulation Fair Disclosure ("FD") and Section 16 of the Securities Exchange Act. (Id. ¶¶ 45–46, 53, 93–96, 104–111.) For instance, Kiani was allegedly in constant communication with RTW Defendants, providing them with confidential information, such as the record date before the information was publicly available, or sending a photo of a whiteboard listing the voting totals for shareholders. (Id. ¶¶ 47–49, 59–64.) Masimo avers that RTW Defendants could not have tripled their shares between May 23 and June 13, 2024, had they not known about the record date. (Id. ¶ 50.) Masimo further alleges that Kiani and RTW Defendants

operate as a group to this day. (Id. ¶ 97.)

On July 1, 2024, both Kiani and RTW Defendants voted early in Kiani's favor. (Id. ¶¶ 68–69.) Empty voting occurred because between the Record Date and June 30, 2024, RTW Defendants covered their short position by buying stocks at a lower price than their selling price, and disposing of 4.3 million shares to bring down their position back to 2.8%. (Id. ¶¶ 65–67.)

After empty voting, RTW Defendants contacted Glass, Lewis & Co. ("Glass Lewis"), a leading independent proxy advisory firm that issues voting recommendations to shareholders, representing that they had 9.9% of Masimo's shares and supported Kiani's nominees. (Id. ¶¶ 6, 79–80.) However, on July 13, 2024, Glass Lewis issued a report that recommended against Kiani's nominees. The report noted the inconsistency between RTW's representation and its public filings, which showed they were a 2.8% shareholder, and that "[i]f additional materials corroborating Politan's concerns subsequently emerge, . . . [Glass Lewis] would view such circumstances as a highly inappropriate manipulation of the shareholder franchise and a severe indictment of Masimo's credibility and corporate governance." (Id. ¶¶ 80–83.) Institutional Shareholder Services ("ISS"), another proxy advisory firm, concurred with Glass Lewis' recommendation in favor of Politan's nominees. (Id. ¶ 82.)

After two leading proxy advisor firms recommended against Kiani's nominees, Kiani called a Board meeting on July 15, 2024, resetting the record date from June 13, 2024, to August 12, 2024, and moved the July Annual Meeting from July 25, 2024, to September 19, 2024 ("September Annual Meeting"). (Id. ¶ 84.) Again, Kiani and RTW Defendants allegedly engaged in a similar empty voting scheme that they had executed in July, and voted in favor of Kiani's slate on the same day. (Id. ¶¶ 85–92.) However, RTW Defendants allegedly revoked their votes, then re-voted for Kiani on September 17, 2024. (Id. ¶ 89.)

After Politan discovered evidence of empty voting, the General Counsel informed Politan that the Board would convene to discuss Politan's letter raising concerns regarding Kiani and RTW Defendants. (Id. ¶¶ 70–72.) However, according to Masimo, there was no genuine investigation into Kiani's involvement, including any review of his corporate email account, telephone records, or off-channel messaging applications. (Id. ¶ 77.)

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The Court is also well aware of the proxy fight that ensued between Kiani-controlled Masimo and Politan in the days leading up to the September Annual Meeting. In July 2024, Masimo filed an action against Politan and Politan's directors for their misstatements in proxy materials and violating fiduciary duties. (See First Amended Complaint, Masimo Corporation v. Politan Capital Management et al, Case No. 8:24-cv-01568-JVS-JDE.) In a sealed order, the Court denied Masimo's motion for a preliminary injunction enjoining Politan from voting any proxies solicited under Section 14(a) or Rule 14a-9 until corrective disclosures were made. (Order, Dkt. No. 201.) Politan issued a press release disclosing the contents of the Court's order before the release of a public version on the docket in order to influence the shareholder vote, violating the Court's order. (Order, Dkt. No. 219.) The Court held Politan and one of its principals, Quentin Koffey,[2] in contempt and imposed a monetary sanction of $1. (Id.; Order, Dkt. No. 292.) The Court is aware that by winning the proxy contest, Politan is now essentially on both sides of the two separate actions.

4. Post Proxy Contest

On September 19, 2024, Politan's nominees were elected, and Kiani immediately tendered his resignation. (Mot. at 13.) By September 30, 2024, RTW Defendants again disposed of heir shares. (FAC ¶ 90.)

On October 25, 2024, Masimo filed this action, seeking Kiani and RTW Defendants' compliance with Section 13(d) of the Securities Exchange Act and RTW's disgorgement of their short-swing profits pursuant to Section 16(b) of the Securities Exchange Act. (Id. ¶ 13.)

After Masimo initiated this action, RTW Defendants sought to inspect Masimo's books and records as filing this lawsuit "call[ed] into question whether . . . . directors are fulfilling their fiduciaries duties." (Declaration of Warren Koshofer ("Koshofer Decl."), Dkt. No. 120 ¶ 13, Ex. L.) According to Kiani and

[2]The Court later withdrew the contempt citation for Koffey on procedural grounds.

RTW Defendants, this lawsuit belies Masimo's true intention to avoid paying Kiani more than $450 million severance package.[3] (Mot. at 2.) Contrarily, Masimo alleges that the demand was "deficient on its face." (FAC ¶¶ 98–99.) Masimo denied RTW Defendant's demand and refused to produce any documents. (Id. ¶ 98.)

B. Procedural Background

Masimo filed this action in the Southern District of New York on October 25, 2024 against Kiani and RTW Defendants. (Complaint, Dkt. No. 1.) Masimo filed its FAC on December 30, 2024. (FAC.) Kiani and RTW Defendants filed their motions to dismiss in January 2025. Both motions seek to dismiss the complaint under Rule 12(b)(6), *forum non conveniens*, or in the alternative, transfer the venue to the Central District of California. (Kiani Mot. at 22; RTW Mot. at 36.) The case was subsequently transferred to this Court on April 15, 2025. On August 4, 2025, Masimo voluntarily dismissed Kiani under Rule 41(a). (Notice, Dkt. No. 194.)

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a Rule 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Most succinctly stated, a pleading must set forth allegations that have "factual

[3]The parties are pending litigation regarding the enforceability of Kiani's golden parachute provision in the Delaware Court of Chancery and California Superior Court. (FAC ¶ 99.)

content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. Courts must "accept as true all well-pleaded allegations of material fact, and construe them in the light most favorable to the non-moving party." Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010) (citation omitted). Courts also "are not bound to accept as true a legal conclusion couched as a factual allegation." Id. (quoting Twombly, 550 U.S. at 555). "In keeping with these principles[,] a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 679.

Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

III. DISCUSSION

The FAC brings two claims: (1) Violation of Exchange Act Section 13(d) for failure to file Schedule 13D, and (2) Violation of Exchange Act Section 16(b) for failure to disgorge short-swing profits. (See FAC.) Masimo also dismissed the Section 13(d) claim. (Stipulation, Dkt. No. 195.) As such, the Court only takes up RTW Defendants' motion as to the Section 16(b) claim in the FAC.

A. Violation of Exchange Act Section 16(b) against RTW Defendants

Section 16(b) of the Securities and Exchange Act of 1934 "imposes a strict prophylactic rule with respect to insider, short-swing trading." Foremost-McKesson, Inc. v. Provident Sec. Co., 423 U.S. 232, 251 (1976). It requires disgorgement of short-swing profits earned within six months by a beneficial owner of more than ten percent, "without proof of actual abuse of insider information, and without proof of intent to profit on the basis of such information." 15 U.S.C. § 78p (b); Kern Cnty. Land Co. v. Occidental Petroleum Corp., 411 U.S. 582, 595 (1973). Thus, to successfully bring an insider-trading Section 16(b) claim, Masimo must plead (1) a purchase and (2) a sale of securities (3) by a beneficial owner who owns more than ten percent of any one class of the

issuer's securities (4) within a six-month period. Simmonds v. Credit Suisse Sec. (USA) LLC, 638 F.3d 1072, 1087 (9th Cir. 2011); 15 U.S.C. § 78p(a), (b).

The Exchange Act does not define the term "beneficial owner" in Section 16(b). However, the SEC later clarified that a beneficial owner, for the purposes of Section 16(d), means "any person who is deemed a beneficial owner pursuant to section 13(d) of the Act and the rules thereunder." 17 C.F.R. § 240.16a-1; see Morales, 249 F.3d 115, 122.

Accordingly, Masimo must allege that RTW Defendants are beneficial owners. Moreover, since RTW Defendants held only 9.9% at its highest and Kiani owned 9.1%, Masimo must also allege that they collectively owned more than ten percent to trigger Section 16(b). (Mot. at 18.)

1. Beneficial Owners as a Group under Section 16(b)

To address whether RTW Defendants are "beneficial owners," the Court looks to the definition of beneficial ownership under Section 13(d). Morales v. Quintel Ent., Inc., 249 F.3d 115, 122–24 (2d Cir. 2001). In its promulgation of Rule 13d-5, the SEC defined that beneficial ownership by a group as

> [w]hen two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of sections 13(d) and (g) of the [Exchange] Act, as of the date of such agreement, of all equity securities of that issuer beneficially owned by any such persons.

17 C.F.R. § 240.13d–5(b)(1). "The touchstone of a group within the meaning of Section 13(d) is that the members combined in furtherance of a common objective"—a common objective of either acquiring, holding, voting, or disposing of securities. Wellman v. Dickinson, 682 F.2d 355, 363 (2d Cir. 1982); Dreiling, 578 F.3d at 1002 (citing Morales, 249 F.3d at 124). "The agreement may be formal or informal and may be proved by direct or circumstantial evidence."

Morales, 249 F.3d at 124 (citations omitted). The concerted action "need not be expressly memorialized in writing." Wellman, 628 F.2d at 363.

RTW Defendants contend that the FAC provides no more than conclusory allegations that Kiani and RTW Defendants formed a "group" for the purposes of Section 13(d). (Mot. at 17–24.) The Court disagrees. The Court notes that there is no controlling precedent in the Ninth Circuit regarding what constitutes a group under the relevant statute. Nevertheless, Masimo makes sufficient allegations of "circumstantial evidence" in the FAC to defeat a motion to dismiss. Morales, 249 F.3d at 124.

Masimo presents three categories of conduct that demonstrate RTW Defendants' concerted action to affect the corporate election. First, Masimo claims that Kiani and RTW Defendants had an existing relationship "that goes far beyond RTW's investment with Masimo." (FAC ¶ 34.) For instance, Kiani's family trust of approximately $6.7 million as of June 30, 2024, is in RTW Innovation Onshore Fund, one of the RTW Defendants. (Id.) Furthermore, Kiani has a close personal relationship with Naveen Yalamanchi ("Yalamanchi"), the partner and portfolio manager at RTW, and Roderick Wong, RTW's founder and management partner. (Id. ¶¶ 36–37.) Personal or business relationships, on their own, do not establish the existence of a group. Nano Dimension Ltd. v. Murchinson Ltd., 681 F. Supp. 3d 168, 182 (S.D.N.Y. 2023), aff'd, 102 F.4th 136 (2d Cir. 2024); Forward Indus., Inc. v. Wise, 2014 WL 6901137, at *3 (S.D.N.Y. Sept. 23, 2014). However, there is more than mere personal relationships between Kiani and RTW Defendants. For instance, on March 31, 2024, Kiani emailed a draft of a confidential press release about Politan's nominations for the Board election, saying "Please don't trade on anything until this is out. . . ." (FAC ¶¶ 43–44.) Yalamanchi allegedly responded with "extensive comments" to the draft, which were incorporated into the final announcement. (Id.) Although emails regarding the press release are insufficient to form a group, such interaction taken in furtherance of each other's business interests indicates that Kiani and RTW's principal have more than a "mere relationship." Transcon Lines v. A. G. Becker Inc., 470 F. Supp. 356, 375 (S.D.N.Y. 1979) (citation omitted).

Second, Masimo claims that Kiani and RTW Defendants were in continuous contact in the period leading up to the July Annual Meeting. Masimo provides a list of the seventeen telephone calls and text messages, not including emails, that

Masimo is aware of between Kiani, Wong, and Yalamanchi. (FAC ¶¶ 43–48.) From June 1 to July 11, 2024, Kiani and Yalamanchi communicated, on average, once every four days. (Id. ¶ 48.) The numerous correspondences, particularly around June 13, the first record date, to July 15, the date the Board convened to move the record date and the annual meeting, do not indicate that there were only "sporadic communications" between Kiani and RTW Defendants. Cf. meVC Draper Fisher Jurvetson Fund I, Inc. v. Millennium Partners, L.P., 260 F. Supp. 2d 616, 632 (S.D.N.Y. 2003) (finding that a "sporadic" record of communications between companies, six messages between executives with large gaps in between, does not support the existence of a group). Contrary to meVC, where the court found that communications following a major public event are not suspicious, here, the communications occurred prior to the relevant dates. See id. While RTW Defendants claim that some lasted less than a minute and most were messages scheduling calls (Mot. at 21), they suggest there may have been more calls between the relevant dates.

RTW Defendants respond that the SEC's amendments to beneficial ownership reporting also do not support a finding of a group.

> In our view, a discussion whether held in private, such as a meeting between two parties, or in a public forum, such as a conference that involves an independent and free exchange of ideas and views among shareholders, alone and without more, would not be sufficient to satisfy the "act as a . . . group" standard in sections 13(d)(3) and 13(g)(3).

Modernization of Beneficial Ownership Reporting, 88 FR 76896-01 (Nov. 7, 2023).[4] Yet, there is more than a simple "exchange of ideas" as shareholders here. Id. The photograph of a whiteboard listing the shareholding percentage of the major shareholders sent to Yalamanchi is particularly revealing. (See FAC ¶¶ 59–64.) The photo contains confidential information about vote totals, showing

[4] Masimo argues that Defendants improperly rely on SEC's guidance since the Supreme Court's overturning of the Chevron deference. (Opp'n at 31.) While agency interpretations are more scrupulously examined by courts in the wake of Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), they may still guide courts in coming to a determination.

that Kiani was aware that RTW held 10% and BlackRock had 9%, whereas the most recent Schedule 13F report indicated that each held 2.8% and 16%, respectively. (Id.) At minimum, the photograph suggests that Kiani was confident that RTW had 9.9% and would have its support. At most, it is a strong indicia of a common goal to execute an empty voting scheme, which was essential to Kiani's victory. RTW Defendants aver that the photo cannot be evidence of collusion because they already possessed their voting power before Kiani sent the photo, which was after the record date. (Mot. at 22–23.) However, the Court notes that this argument is less persuasive given that the Kiani-controlled Board moved the record date two weeks later. Since this Court construes Masimo's allegations "in the light most favorable to the non-moving party," Daniels-Hall, 629 F.3d at 998, it finds the record lends credence to an existence of a group.

Third, allegations of RTW Defendants' empty voting scheme also support a shared objective among Kiani and RTW Defendants to win the election for board seats. For instance, after the record date, RTW Defendants decreased their shares from 9.9% back to 2.8% by June 30, 2024. (FAC ¶ 65.) They did so again for the rescheduled record date, increasing their position to 9.9% and back down to 2.2% after the August 12 record date. (Id. ¶ 85.) In addition to the empty voting scheme and offsetting their short position not to take on economic risk, Kiani moved the record and annual date after two proxy advisory firms issued a report indicating support for Politan's nominees. (Id. ¶ 83.) Further, RTW Defendants and Kiani allegedly voted their shares on the same day, on two separate occasions—on July 1, before the first annual meeting, and August 21, before the rescheduled annual meeting. (Id. ¶¶ 68, 86–88.)

RTW Defendants contend that there are "compelling financial reasons" for voting in favor of Kiani. (Mot. at 20.) They claimed to have voted for Kiani because if Politan were to take over, it would trigger the "poison pill": Kiani's $450 million severance package and potential loss of an exclusive licensing agreement. (Id.) Even so, its legitimate reasons for voting in favor does not invalidate the allegations that they acted as a group. Rather, the economic rationale for voting in favor of Kiani indicates that Kiani and RTW Defendants had a "common objective" of acquiring, holding, and voting securities in order to keep Kiani on the Board. Wellman, 682 F.2d at 363 (2d Cir. 1982); Dreiling, 578 F.3d at 1002.

RTW Defendants further contend that Masimo's own proxy filings between July and September 2024 disprove allegations of a group. (Mot. at 23–24.) The filings indicate that Masimo twice investigated RTW Defendants' relationship with Kiani. (Id.; Koshofer Decl. Ex. H.) However, Masimo responds that these statements were made when the Board was still controlled by Kiani, and thus, it later "disavow[ed] them." (FAC ¶¶ 75–78.) Moreover, the investigations were allegedly superficial and lacking any review of Kiani's email account, phone records or messaging apps. (Id.)

No single communication or RTW Defendants' actions are sufficient to show they acted as a group. Nevertheless, the totality of the "circumstantial evidence"—RTW Defendants' pre-existing relationship with Kiani, various communications particularly around July Record Date to the rescheduled annual meeting, and Defendants' pattern of voting—allows the Court to draw the reasonable inference of an informal agreement among Kiani and RTW Defendants to acquire shares in order to keep Kiani on the Board. Wellman, 628 F.2d at 363. Accordingly, the Court finds RTW Defendants and Kiani formed a group, and were beneficial owners of more than ten percent of Masimo's stock for the purposes of Section 16(b).

2. Applicability of Rule 9(b) Requirement

RTW Defendants also argue that the FAC includes impermissible group pleading and lacks the particularity required by Rule 9(b). (Mot. at 24–28.) As an initial matter, "'[c]ourts in this circuit have held that a complaint fails to state a claim and must be dismissed if it does not indicate which individual defendant or defendants are responsible for which alleged wrongful act.'" Polsky v. Rammani, 2018 WL 6133406, at *4 (C.D. Cal. Mar. 26, 2018) (citing Ahmadi v. Nationstar Mortgage, LLC, 2016 WL 7495826 (C.D. Cal. Mar. 31, 2016)). This is because "the underlying requirement [of Federal Rule of Civil Procedure 8] is that a pleading give fair notice of the claim being asserted and the grounds upon which it rests." In re Sagent Technology, Inc., Derivative Litigation, 278 F. Supp. 2d 1079, 1094 (N.D. Cal. 2003) (citing Conley v. Gibson, 355 U.S. 41, 47–48,(1957)). Thus, "a complaint that repeatedly refers to defendants collectively, without differentiation, is more likely to run afoul of the plausibility standard of Iqbal and Twombly." Slack v. International Union of Operating Engineers, 2014 WL 4090383, at *16 (N.D. Cal. Aug. 19, 2014) (citing In re American Apparel, Inc.

Shareholder Derivative Litigation, 2012 WL 9506072, at *41 (C.D. Cal. July 31, 2012)).

However, group pleading may be permissible "so long as group pleading is limited to defendants who are similarly situated." Bassam v. Bank of America, 2015 WL 4127745, at *7 (C.D. Cal. July 8, 2015) (citing In re American Apparel, 2012 WL 9506072, at *41). Although RTW Defendants claim that Masimo fails to allege specific conduct against each RTW Defendant (Mot. at 25), the RTW Defendants are "similarly situated" such that the allegations against one of the RTW Defendants can be imputed to every other RTW Defendant. Bassam, 2015 WL 4127745, at *7. Thus, the Court finds group pleading proper in this context.

The second issue is whether the heightened pleading standard in Rule 9(b) applies to claims for violation of Section 13(d). RTW Defendants contend that the heightened pleading standard should apply because Masimo's FAC is sound in fraud. (Mot. at 16.) A claim that does not require a showing of fraud may still apply the Rule 9(b) pleading standard if the claim is "grounded in" or "sound in" fraud or mistake. Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103 (9th Cir. 2003). While courts have yet to determine whether Rule 9(b) applies to Section 13(d) claims[5], the Ninth Circuit applied a heightened pleading standard to complaints alleging "a unified course of fraudulent conduct and rely[ing] *entirely* on that course of conduct as the basis of a claim." Vess, 317 F.3d, at 1103 (emphasis added).

Here, it is not entirely evident that the FAC relies solely in fraud. The FAC indeed includes words such as "scheme," "secretly colluded," and "secretly manipulate," which are often associated with fraud claims. (FAC ¶ 1.) It also alleges that RTW Defendants have misled shareholders by failing to disclose their true voting power. (Id. ¶¶ 38–41.) Though the FAC may run fairly close to being sound in fraud, the crux of the complaint remains the Defendants' failure to disclose their block acquisitions under Section 13(d) disclosure requirements. This conclusion is further supported by the broad statutory language and the legislative intent of the statute. Section 13(d) requires an existence of a group,

[5]Defendants rely on Nano Dimension to argue that Rule 9(b) applies. The case is distinguishable in that the claims were subject to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which requires a heightened pleading standard. 681 F. Supp. 3d at 179; 15 U.S.C. §§ 78u-4(b)(1). Masimo's claims are not subject to the PSLRA.

nothing more. The broad language reflects congressional intent to "alert the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control" and "prevent evasion of the disclosure requirement." Morales, 249 F.3d at 122–23. And despite amendments regarding Section 13(d), neither the SEC nor Congress has provided any further guidance on the requisite level for pleading 13(d) claims, not brought as a plaintiff class action. See, e.g., Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §§ 78a et seq. (heightening the pleading requirements for "each private action arising under this chapter that is brought as a plaintiff class action").

Even if the Court were to apply Rule 9(b), the Court finds that Masimo has sufficiently pleaded RTW Defendants' activities to meet the heightened pleading standard. A fraud claim must be accompanied by "the who, what, when, where, and how" of the fraudulent conduct charged. Vess, 317 F.3d at 1106 (quoting Cooper, 137 F.3d at 627). "A pleading is sufficient under rule 9(b) if it identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations." Moore v. Kayport Package Express, Inc., 885 F.2d 531, 540 (9th Cir. 1989). Statements of the time, place, and nature of the alleged fraudulent activities are sufficient, but mere conclusory allegations of fraud are not. Id. Furthermore, though allegations based on information and belief are usually insufficient, in circumstances of corporate fraud, this rule may be relaxed as to matters within the opposing party's knowledge. Id.

Here, allegations regarding the claim that RTW Defendants acted as a group with Kiani are accompanied by who, what, when, where, and how. See Vess, 317 F.3d at 1106; (FAC). RTW Defendants do not argue that the FAC lacks such information or what more it can provide regarding the circumstances of fraud. In fact, FAC identifies sufficient circumstances surrounding the proxy fight for RTW Defendants to find "logical discrepancies" in the allegations. (Reply at 17.) Furthermore, though RTW Defendants repeatedly claim that the FAC "lacks facts supporting its claim[s]," (Reply at 17), they rely on the wrong standard. In a motion to dismiss, the Court accepts "all well-pleaded" allegations as true, and construes such allegations "in the light most favorable to the non-moving party." Daniels-Hall, 629 F.3d at 998 (citation omitted). "Facts" are better left for a motion for summary judgment.

Because the Court found that RTW Defendants formed a group with Kiani (see supra Section III.A.1.), and the FAC alleges that Defendants made purchases and sales within a six-month period between May 24 and September 18, 2024, all elements of Section 16(b) are properly pled in the FAC. (FAC ¶¶ 107–109.) Accordingly, the motion is denied as to the Section 16(b) claim.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the motion. The parties shall further abide by this district's local rules for future filings.

IT IS SO ORDERED.