

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CEMENT MASONS & PLASTERERS)	Case No. 11-01016 SC
JOINT PENSION TRUST,)	
individually and on behalf of)	ORDER GRANTING MOTION TO
all others similarly situated,)	<u>DISMISS</u>
)	
Plaintiffs,)	
)	
v.)	
)	
EQUINIX, INC., STEPHEN M.)	
SMITH, and KEITH TAYLOR,)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION

Plaintiffs Cement Masons & Plasterers Joint Pension Trust ("Cement Masons") and the International Brotherhood of Electrical Workers Local 697 Pension Fund ("IBEW") (collectively, "Plaintiffs") bring this putative securities class action against Equinix, Inc. ("Equinix"), and Equinix's CEO, Stephen M. Smith ("Smith"), and CFO, Keith D. Taylor ("Taylor") (collectively, "Defendants"). Plaintiffs assert that the price of Equinix stock was artificially inflated between July 29, 2010 and October 5, 2010 ("the Class Period") due to allegedly false and misleading statements made by Defendants, and that Equinix's stock price

1 plummeted over 33 percent when the falsity of these statements was
2 revealed.

3 Plaintiffs' First Amended Complaint ("FAC") focused on
4 Defendants' statements concerning financial forecasts, Equinix's
5 pricing strategy, and the integration of the sales force of Switch
6 and Data, an Equinix competitor acquired by the company earlier in
7 2010. On March 2, 2012, the Court dismissed the FAC with leave to
8 amend, finding, among other things, that Defendants' financial
9 forecasts were non-actionable forward-looking statements. ECF No.
10 40 ("Mar. 2 Order").¹ Plaintiffs then filed a Second Amended
11 Complaint ("SAC"), the operative complaint in this action, on May
12 2, 2012. ECF No. 44 ("SAC"). Unlike the FAC, the SAC does not
13 target Defendants' financial forecasts. However, it does include
14 new allegations concerning Equinix's pricing strategy and the
15 integration of the Switch and Data sales force. The SAC also
16 includes new factual allegations from confidential witnesses
17 ("CWs") who allegedly have inside information concerning Equinix's
18 operations during the class period.

19 Now before the Court is Defendants' Motion to Dismiss the SAC.
20 ECF No. 47 ("MTD"). The Motion is fully briefed. ECF Nos. 50
21 ("Opp'n"), 52 ("Reply").² Pursuant to Civil Local Rule 7-1(b), the
22 Court finds the motion suitable for determination without oral
23 argument. For the reasons set forth below, the Motion is GRANTED.

24 ///

25 _____
26 ¹ Cement Workers & Plasterers Joint Pension Trust v. Equinix Inc.,
2012 WL 11154, 2012 U.S. Dist. LEXIS 28094 (N.D. Cal. Mar. 2,
2012).

27 ² At the Court's request, the parties also submitted supplemental
28 briefing on the issue of loss causation. ECF Nos. 57 ("Defs.'
Supp. Br."), 58 ("Pls.' Supp. Br.").

1 **II. BACKGROUND**

2 **A. Factual Background**

3 The following facts are primarily taken from Plaintiffs' SAC,
4 the operative pleading in this action. Equinix is a public
5 corporation that provides carrier-neutral data centers and internet
6 exchanges. SAC ¶ 2. The Company connects businesses with partners
7 and customers around the world through a global platform of high-
8 performance data centers called International Business Exchanges
9 ("IBXs"). Id. IBX data centers enable customers to safeguard
10 their infrastructure, house their assets and applications closer to
11 users, and collaborate with partners and customers. Id. Equinix
12 generates substantially all of its revenue through three offerings
13 available to customers at its ninety-two IBX data centers:
14 collocation services, interconnection services, managed IT
15 services. Id. ¶ 4. These services provide customers with shared,
16 equipped facilities for their computer and data systems. See id.
17 ¶¶ 5-7.

18 Equinix acquired Switch and Data, one of its competitors, in
19 April 2010. Id. ¶ 10. In a May 7, 2010 conference call with
20 investors, Smith said of the acquisition: "Our overriding goal [is]
21 to drive an aggressive integration schedule to move towards a one
22 company model, with full annualized synergies to be realized no
23 later than mid-2011." Id. ¶ 75. On July 28, 2010, the day before
24 the commencement of the class period, Equinix issued a press
25 release announcing its 2Q10 financial results. Id. ¶ 101. The
26 release stated: "The integration of Switch and Data is ahead of
27 schedule, and our expansions are providing us much needed capacity
28

1 in many of our key markets, which positions us well for future
2 growth." Id.

3 Also on July 28, 2010, Equinix held a conference call with
4 investors. Id. ¶ 102. During that conference call, Smith and
5 Taylor further commented on the Switch and Data integration:

6
7 [Smith:] Overall[,] the integration is going very
8 well We are on track to achieve the 10 million
9 cost synergies previously outlined and have moved
10 aggressively towards this goal Shifting gears
11 to revenue synergies, we've established a strong
12 foundation driving revenue across the integrated
13 platform. . . . The sales organizations have been
14 completely integrated with full cost synergies already
15 achieved in the sales function. So we now have sales
16 teams focused on revenue synergies by driving bookings
17 and grow key accounts.

18 [Taylor:] We've got the sales forces cross selling into
19 both assets. They're all part of one team today, the
20 organization is completely finished in sales, so the
21 structure all the way up to the sales leader in North
22 America has been in place for weeks now. Id.

23 Id. (emphasis added).

24 Plaintiffs also point to allegedly false and misleading
25 statements concerning the Switch and Data integration made on
26 September 1 and 15, 2010. The September 1 statement comes from an
27 RBC Capital report: "We recently met with Equinix CFO Keith
28 Taylor. Our discussion touched on the following topics: M&A: The
Company appears to have the Switch & Data integration process in
hand and ahead of schedule." Id. ¶ 135. On September 15, Taylor
made a presentation at an investors' conference, stating: "[T]he
pipeline's as healthy as it's ever been. Our close rates are good.
. . . And we're cross-selling within the Switch and Data asset and
the Equinix asset." Id. ¶ 141.

1 Plaintiffs allege that these statements regarding the
2 integration of Switch and Data's sales force were false and
3 misleading. In support, they point to statements made by Smith on
4 a conference call with investors on October 5, 2010, the last day
5 of the class period:

6 [R]evenues from our Swtich and Data assets were lower
7 than expected through the third quarter. . . . We are
8 five months into our integration plan, and we've been
9 able to achieve cost synergy targets, resulting in a 7-
10 point improvement to the Switch and Data adjusted
11 EBITDA^[3] margins. We're also starting to see the
12 pipeline for these locations strengthen and convert into
13 bookings, with several notable wins in the third quarter.
14 We still have work to do to realign the combined sales
15 organizations, but our expectations are that we will see
16 improvement in the utilization of the former Switch and
17 Data assets as we exit 2010.

18 Id. ¶ 148.

19 Next, Plaintiffs point to a number of statements from their
20 CWs, all former Equinix employees who had worked for Switch and
21 Data before it was acquired. CW3, a former Equinix senior
22 marketing manager, states that Equinix shifted accounts away from
23 former Switch and Data representatives and gave them to Equinix
24 representatives, without consideration of which sales
25 representative was most likely to win the deal. Id. ¶ 129. CW3
26 also states that, in response to this strategy, former Switch and
27 Data representatives concealed their pipelines of potential deals
28 from Equinix management. Id. ¶ 130. CW2, a former Equinix sales
representative, and CW4, a former Equinix product manager, echoed
CW3, stating that accounts were given to longstanding Equinix sales

³ Adjusted EBITDA is defined as income or loss from operations plus
depreciation, amortization, accretion, stock-based compensation
expense, restructuring charges, acquisition costs, and gains on
asset sales.

1 representatives, even though former Switch and Data sales
2 representatives were far more knowledgeable about how to sell space
3 in former Switch and Data sales centers. Id. ¶ 130. According to
4 CW1, Equinix's former director of channel marketing, former Switch
5 and Data sales representatives told her that their efforts to
6 assist longstanding Equinix sales representatives were rejected.
7 Id. ¶ 133. CW1 also alleges that she entered these remarks in
8 weekly cross-selling reports -- reports which allegedly reflected
9 that Equinix missed sales opportunities that would have resulted in
10 millions of dollars of additional revenues. Id.

11 Plaintiffs also allege that Defendants made false and
12 misleading statements concerning the stability of their pricing.
13 Specifically, Plaintiffs allege that Defendants falsely stated that
14 Equinix's pricing remained firm and misled investors who expressed
15 concern that a more competitive landscape would force Equinix to
16 offer more discounts. Id. ¶¶ 103, 106. Plaintiffs primarily focus
17 on statements made during the July 28 conference call. During that
18 call, Taylor stated: "Overall North America pricing remains firm
19 across both the organic and the Switch and Data footprint." Id. ¶
20 102. Also on that call, Smith stated:

21 And so in certain markets we're going to get some pricing
22 pressure on certain deals. If it's a strategic deal and
23 it's a magnet deal for us, we'll get more aggressive. If
24 it's not, we're going to let it go and whether it's a
25 a competitive retail or a wholesale business, so be it.
26 We're maintaining the discipline on the floors and
27 ceilings we have on our pricing and the sales force is
28 staying very, very disciplined on price.

26 Id. ¶ 105. Smith later added: "So, yes there's pricing pressure
27 there and yes we lots of times walk with it if it's a strategic
28

1 customer we might get a little more aggressive. Are we thinking
2 about figuring out how to get into that space today, no, we don't
3 really need to." Id. ¶ 106.

4 Again, Plaintiffs also point to statements made by Defendants
5 on September 1 and 15, 2010. The September 1 RBC Capital report
6 states: "Overall, we believe pricing remains largely stable across
7 most markets/datacenters, and note that list pricing in some
8 product areas has increased this year Meanwhile, wholesale
9 operators' increasing presence in smaller deals does not appear to
10 be affecting Equinix'[s] overall pricing" Id. ¶ 135. On
11 September 15, Taylor stated: "Look, we can win on price if we want
12 to win on price. I think you've heard us say periodically we're
13 not going to trade price for volume." Id. ¶ 141. Plaintiffs also
14 point to Taylor's statements at a conference on September 22, 2010:
15 "[T]his is sort of a consistent message you've heard from us
16 previously, that pricing is stable, it's firm." Id. ¶ 142.

17 Plaintiffs allege that later statements made by Defendants in
18 October 2010 show that pricing was not stable during the class
19 period. Specifically, Plaintiffs point to statements made by Smith
20 in a conference call with investors on October 5, 2010:

21
22 During the second and third quarters, there were certain
23 discounts and credit memos issued to a number of
24 strategic customers in exchange for longer-term
25 contracts. As we've discussed in the past, we have been
incenting our salesforce to extend the contract terms of
market customers, though this can result in a price
concession for some.

26 Id. ¶ 143. Smith made similar statements in response to analysts'
27 questions on the call: "We historically have said we will not trade
28 volume for price. But these are strategic magnets. There are

1 magnets that will go after, and we will adjust. In this case, it's
2 just over 10 percent is the effect of the adjustment on their
3 existing pricing." Id. ¶ 153.

4 Plaintiffs allege that the account of CW5, a former Equinix
5 regional director, also shows that Equinix's class-period
6 statements concerning pricing stability were false and misleading.
7 According to CW5, prior to and during the Class Period, Equinix
8 sales representatives were empowered to offer customers discounts
9 of up to 10 percent without any supervisory approval. Id. ¶ 125.
10 CW5 also reports that she was responsible for reviewing and
11 "regularly approved" discounts of between 10 and 30 percent. Id. ¶
12 124. Further, CW5 reports that "it was not uncommon" for discounts
13 to rise above 30 percent with the approval of Equinix's finance
14 director. Id. ¶ 125. Finally, CW5 reports that Equinix discounted
15 installation charges prior to and during the class period. Id. ¶
16 126. Plaintiffs do not allege the size or frequency of these
17 discounts.

18 On October 5, 2010, Equinix also stated that it would miss its
19 July 28, 2010 revenue projections for 3Q10 and FY10 by 1.2 to 2.2
20 percent. Mar. 2 Order at 4. Investors reacted negatively to the
21 October 5 announcements. Id. at 5. Equinix's stock price fell
22 from \$106.09 on October 5 to \$70.34 the next day, a one-day loss of
23 over 33 percent of shareholder equity. Id.

24 **B. Procedural History**

25 Cement Masons, which had purchased Equinix stock during the
26 Class Period, filed the instant action in federal court on March 4,
27 2011. ECF No. 1 ("Compl."). IBEW, another Equinix stockholder
28 that is represented by the same counsel as Cement Masons, was

1 appointed as lead plaintiff on August 8, 2011. ECF No. 23 ("Aug.
2 8, 2011 Order"). The FAC was filed about six weeks later,
3 asserting causes of action for (1) violations of Section 10(b) of
4 the Securities Exchange Act of 1934 ("the Exchange Act") and of
5 United States Securities and Exchange Commission ("SEC") Rule 10b-
6 5; and (2) violations of Section 20(a) of the Exchange Act. Mar. 2
7 Order at 6. The crux of the FAC was that Defendants made a number
8 of false and misleading statements concerning: (1) Equinix's
9 financial forecasts for 3Q10 and FY10; (2) Equinix's pricing
10 strategy; (3) the integration of Switch and Data's sales force; and
11 (4) Equinix's ability to provide accurate financial forecasts. Id.
12 The FAC did not include any of the CW allegations set forth above.

13 On March 4, 2012, the Court granted Defendants' motion to
14 dismiss the FAC, but granted Plaintiffs leave to amend their
15 complaint. Id. at 19. The Court found that Equinix's financial
16 forecasts were not actionable because they fell under the safe
17 harbor for forward looking statements set out in the Private
18 Securities Litigation Reform Act ("PSLRA"). Id. at 13. The Court
19 also found that Plaintiffs failed to adequately plead the falsity
20 of Defendants' statements concerning Equinix's pricing strategy and
21 the integration of the Switch and Data sales force. Id. at 15.
22 Specifically, the Court held that "Defendants maintained a
23 consistent position on pricing throughout the class period" and
24 that Defendants' "October 5 statements do not constitute an
25 admission that the Switch and Data sales force was not completely
26 integrated or that the integrated sales force was not in place as
27 of July 28." Id.

28

1 Plaintiffs filed their SAC on May 2, 2012. Like the FAC, the
2 SAC asserts causes of action for violations of Sections 10(b) and
3 20(a) of the Exchange act and SEC Rule 10b-5 and alleges that
4 Defendants made false and misleading statements concerning the
5 integration of Switch and Data and Equinix's pricing strategy.
6 However, Plaintiffs no longer allege that the July 28, 2010
7 financial forecasts for 3Q10 and FY10 were actionably false. SAC ¶
8 10 n.2. On June 15, 2012, Defendants moved to dismiss the SAC.
9

10 **III. LEGAL STANDARD**

11 **A. Motion to Dismiss**

12 A motion to dismiss under Federal Rule of Civil Procedure
13 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
14 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based
15 on the lack of a cognizable legal theory or the absence of
16 sufficient facts alleged under a cognizable legal theory."
17 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
18 1988). "When there are well-pleaded factual allegations, a court
19 should assume their veracity and then determine whether they
20 plausibly give rise to an entitlement to relief." Ashcroft v.
21 Iqbal, 129 S. Ct. 1937, 1950 (2009). However, "the tenet that a
22 court must accept as true all of the allegations contained in a
23 complaint is inapplicable to legal conclusions. Threadbare
24 recitals of the elements of a cause of action, supported by mere
25 conclusory statements, do not suffice." Id. (citing Bell Atl.
26 Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The court's review is
27 generally "limited to the complaint, materials incorporated into
28 the complaint by reference, and matters of which the court may take

1 judicial notice." Metzler Inv. GMBH v. Corinthian Colls., Inc.,
2 540 F.3d 1049, 1061 (9th Cir. 2008) (citing Tellabs, Inc. v. Makor
3 Issues & Rights, Ltd., 551 U.S. 308, 322 (2007)).

4 **B. Section 10(b)**

5 Section 10(b) of the Exchange Act makes it unlawful "[t]o use
6 or employ, in connection with the purchase or sale of any security
7 registered on a national securities exchange . . . any manipulative
8 or deceptive device or contrivance in contravention of such rules
9 and regulations as the [SEC] may prescribe" 15 U.S.C. §
10 78j(b). One such rule prescribed by the SEC is Rule 10b-5, which
11 states that "[i]t shall be unlawful for any person . . . [t]o
12 engage in any act, practice, or course of business which operates
13 or would operate as a fraud or deceit upon any person, in
14 connection with the purchase or sale of any security." 17 C.F.R. §
15 240.10b-5(c). Plaintiffs must plead five elements to establish a
16 violation of Rule 10b-5. Specifically, Plaintiffs must demonstrate
17 "(1) a material misrepresentation or omission of fact, (2)
18 scienter, (3) a connection with the purchase or sale of a security,
19 (4) transaction and loss causation, and (5) economic loss." In re
20 Daou Sys., 411 F.3d 1006, 1014 (9th Cir. 2005).

21 Plaintiffs must also meet the heightened pleading standards of
22 Federal Rule of Civil Procedure 9(b) and the PSLRA, 15 U.S.C. §
23 78u-4. The PSLRA requires plaintiffs to "specify each statement
24 alleged to have been misleading [and] the reason or reasons why the
25 statement is misleading." 15 U.S.C. § 78u-4(b)(1). Additionally,
26 the complaint must "state with particularity facts giving rise to a
27 strong inference that the defendant acted with the required state
28 of mind." Id. § 78u-4(b)(2). The "required state of mind" for

1 establishing securities fraud is the knowing, intentional, or
2 deliberately reckless disclosure of false or misleading statements.
3 See Daou, 411 F.3d at 1014-15. "The stricter standard for pleading
4 scienter naturally results in a stricter standard for pleading
5 falsity, because falsity and scienter in private securities fraud
6 cases are generally strongly inferred from the same set of facts,
7 and the two requirements may be combined into a unitary inquiry
8 under the PSLRA." Id. at 1015 (internal quotation marks omitted).

9
10 **IV. DISCUSSION**

11 **A. Plaintiffs' Section 10(b) Claim**

12 1. PSLRA Safe Harbor

13 Defendants first argue that the challenged July 28 statements
14 concerning the Switch and Data integration and Equinix's pricing
15 are insulated by the PLSRA safe harbor. MTD at 11. The PSLRA
16 provides a safe harbor for "forward-looking statements," 15 U.S.C.
17 § 78u-5(c), which includes "a statement containing a projection of
18 revenues, income (including income loss), [and] earnings (including
19 earnings loss) per share," id. § 78u-5(i)(1)(A), as well as "any
20 statement of the assumptions underlying or relating to" such
21 financial projections, id. § 78u-5(i)(1)(D). Defendants reason
22 that the challenged July 28 statements constitute assumptions
23 underlying or relating financial projections since they were made
24 in connection with Equinix's revenue and profitability forecasts.
25 MTD at 11. Plaintiffs respond that descriptions of the present are
26 not forward looking and are therefore ineligible for the safe
27 harbor. Opp'n at 24 (citing Berson v. Applied Signal Tech., Inc.,
28 527 F.3d 982, 990 (9th Cir. 2008)).

1 The Court agrees with Plaintiffs. The challenged July 28
2 statements are not forward looking; they are descriptions of the
3 present. See, e.g., SAC ¶¶ 102 ("The sales organizations have been
4 completely integrated"), 105 ("We're maintaining the
5 discipline on the floors and ceilings we have on our pricing . . .
6 ."). These statements do not fall under the safe harbor merely
7 because they were made on the same call that Equinix released its
8 financial projections for 3Q10 and FY10. To the extent that these
9 statements could be construed as assumptions underlying or relating
10 to Equinix's financial projections, they are not only that. For
11 example, when Defendants told investors that they were not trading
12 price for volume, they were saying both that they were currently
13 maintaining discipline on price and that they had reason to believe
14 their pricing strategy would yield certain revenues in the future.
15 See Makor Issues & Rights, Ltd. v. Tellabs Inc., 513 F.3d 702, 705
16 (7th Cir. 2008) ("The element of prediction in saying that sales
17 are 'still going strong' does not entitle [defendant] to a safe
18 harbor with regard to the statement's representation concerning
19 current sales.").

20 Accordingly, the Court rejects Defendants' argument that the
21 July 28 statements are not actionable under the PSLRA safe harbor.

22 2. Statements Regarding Sales Force Integration

23 Defendants also argue that Plaintiffs have to failed to
24 adequately allege the falsity and scienter of the statements
25 regarding Equinix's sales force integration. MTD at 12-17. As
26 Defendants point out, the Ninth Circuit's decision in Ronconi v.
27 Larkin, 253 F.3d 423 (9th Cir. 2001), is instructive. In that
28 case, the plaintiffs targeted the defendants' statements that the

1 consolidation of an acquired company's sales force had been
2 completed in January 1996. Ronconi, 253 F.3d at 431. The
3 plaintiffs contended that these statements were false because the
4 consolidation of the sales forces was plagued with problems,
5 resulting in inefficiencies and lack of revenue growth. Id. at
6 432. The plaintiffs pointed in particular to the following
7 statement by the defendants from April 1996: "revenue growth rates
8 . . . were significantly impacted by the termination of the
9 company's independent . . . distributor network at the end of the
10 second quarter, and the transition to a newly integrated sales
11 force." Id. at 431. The Ninth Circuit found that the plaintiffs
12 had failed to adequately allege falsity, reasoning: "The [April
13 1996] statement arguably implies that the consolidation of
14 marketing had not worked out as well and as rapidly as hoped. The
15 statement does not support an inference that company insiders knew
16 or with deliberate recklessness disregarded that the problems would
17 be so substantial." Id.

18 Likewise, here, Plaintiffs have merely pled that Defendants
19 were initially optimistic about the integration of the Switch and
20 Data sales force, but later discovered that the integration did not
21 proceed as smoothly as they had hoped. On the July 28 conference
22 call, Smith stated: "The sales organizations have been completely
23 integrated with full cost synergies already achieved in the sales
24 function. So we now have sales teams focused on revenue synergies
25 by driving bookings and grow key accounts." SAC ¶ 102. On October
26 5, Smith remained positive about the cost synergies from the sales
27 force integration: "[W]e've been able to achieve cost synergy
28 targets, resulting in a 7-point improvement to the Switch and Data

1 adjusted EBITDA margins. SAC ¶ 148. However, he was less
2 optimistic about revenue synergies: "[R]evenues from our Switch and
3 Data assets were lower than expected through the third quarter. . .
4 ." Id. The Court finds that the October 5 statements do not show
5 that the July 28 statements were false. Rather, the October
6 statements merely show that Equinix was unable to achieve the
7 revenue synergies that Equinix sales teams had been focused on in
8 July.

9 Nor do the CW allegations establish the falsity of Defendants'
10 statements concerning the integration of Switch and Data. Assuming
11 that the CW's accounts are reliable, they merely show that Equinix
12 favored their longstanding sales representatives over former Switch
13 and Data sales representatives and that this practice ultimately
14 hurt Equinix's integration and cross-selling efforts. Nothing
15 about this is inconsistent with Defendants' representations that
16 the sales force was integrated, that all of the sales
17 representatives were part of one team, that Equinix had recognized
18 "cost synergies," that Defendants expected to achieve revenue
19 synergies in 3Q10 and beyond, or that the sales force was cross
20 selling Equinix and Switch and Data products.

21 To the extent that Plaintiffs are alleging that Defendants
22 knew or should have known that their integration efforts would
23 encounter the problems identified by the CWs, they have failed to
24 adequately plead scienter. According to CW3, former Switch and
25 Data representatives "concealed their pipelines of potential deals
26 from Equinix management." SAC ¶ 130. Thus, Defendants could not
27 have immediately discovered the practice and Plaintiffs do not
28 plead when it came to light.

1 CW1 states that she and her team issued weekly reports to
2 management that reflected that former Switch and Data's efforts to
3 assist long standing Equinix sales representatives were rejected
4 and that Equinix missed sales opportunities that would have
5 resulted in millions of dollars of additional revenues. This is
6 also insufficient to raise a strong inference of scienter. As an
7 initial matter, it is not clear that Defendants ever saw these
8 weekly reports. Even if they did, Plaintiffs have not pled the
9 specific contents of the reports, how they allegedly characterized
10 the problem, or when they were released. Further, CW1's statement
11 that Equinix missed millions of dollars of sales opportunities
12 lacks the necessary context. Presumably, Equinix did not convert
13 every potential opportunity into a sale and it is not clear from
14 CW1's account whether Equinix missed more sales opportunities than
15 usual during the class period.

16 For these reasons, the Court finds that Plaintiffs have not
17 met the heightened pleading standards of the PSLRA with respect to
18 their sales force integration allegations.

19 3. Statements Regarding Pricing

20 The Court also finds that Plaintiffs have failed to adequately
21 allege the falsity of Defendants' statements concerning pricing.
22 In dismissing Plaintiffs' FAC, the Court held that Plaintiffs'
23 allegations showed that "Defendants maintained a consistent
24 position on pricing throughout the class period." Mar. 2 Order at
25 19. The same is true with respect to Plaintiffs' SAC. Once again,
26 Plaintiffs allege that, during the July 28 conference call, Smith
27 stated: "And so in certain markets we're going to get some pricing
28 pressure on certain deals. If it's a strategic deal and it's a

1 magnet deal for us, we'll get more aggressive." SAC ¶ 105.
2 Defendants' later public statements are consistent with their
3 earlier position that they would "get more aggressive" on price for
4 magnet customers. On October 5, Smith stated that "[d]uring the
5 second and third quarters, there were certain discounts and credit
6 memos issued to a number of strategic customers in exchange for
7 longer-term contracts." Id. ¶ 148. Smith later indicated that
8 these discounts were "just over 10 percent." Id. ¶ 153.

9 Plaintiffs argue that securities analysts tied Equinix's stock
10 price decline directly to the magnitude of discounts provided to
11 customers. Pls.' Supp. Br. at 4-5. Specifically, they point to
12 the following analyst statements: "The downgrade can primarily be
13 credited to greater-than-expected customer losses in North America
14 and price discounting to secure long-term contract renewals," id. ¶
15 177; "[Equinix] needed to cut prices by more than expected," id. ¶
16 168; "the magnitude of the discounts on large deals surprised us,"
17 id. ¶ 174; "pricing pressures . . . spooked investors," id. ¶ 175.
18 However, these statements merely indicate that investors and
19 analysts expected one thing and got another. Defendants warned
20 that they may offer discounts to attract magnet customers, and it
21 appears that those discounts were larger and more widespread than
22 investors expected. Defendants cannot be held liable for thwarting
23 investor expectations.⁴

24 Plaintiffs also argue that CW5's account, which was not
25 included in the FAC, further details the reason why Defendants'

26
27 ⁴ Likewise, RBC Capital's statements concerning Equinix's pricing
28 and integration efforts, as described at paragraph 135 of the SAC,
cannot be attributed to Defendants and, thus, do not support
Plaintiffs' allegations of fraud.

1 earlier pricing statements were false. Opp'n at 9. CW5, a former
2 Equinix Regional Director, states that Equinix sales
3 representatives were authorized to offer 10 percent discounts
4 without approval, that she regularly approved discounts of 10 to 30
5 percent, and that it was not uncommon for discounts to rise above
6 30 percent with the approval of higher management. SAC ¶¶ 124-25.
7 The SAC indicates that these discounts were never revealed to the
8 market. See id. ¶ 19 n. 4. ("Plaintiffs now allege that Equinix
9 not only admitted providing discounts to 'a number of customers,'
10 but that the discounts actually provided were both wider and of far
11 wider magnitude than Equinix admitted on October 5, 2010.").

12 The Court finds that Plaintiffs have failed to adequately
13 allege loss causation with respect to CW5's statements. To state a
14 claim under Section 10(b) of the Exchange Act, a plaintiff must
15 plead facts demonstrating loss causation, i.e., "a causal
16 connection between the material misrepresentation and the loss."
17 Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 342 (2005). To
18 adequately plead loss causation, a plaintiff must allege, among
19 other things, a fraudulent statement that inflated the stock price
20 and a corrective disclosure that later revealed that the earlier
21 fraudulent statement was false and caused the stock price to drop.
22 See Metzler, 540 F.3d at 1062. In this case, Plaintiffs have
23 failed to allege a corrective disclosure. Specifically, there is
24 no indication that the widespread discounting described by CW5 was
25 ever disclosed to the market. The only public disclosures alleged
26 by Plaintiffs occurred on October 5, and those disclosures merely
27 revealed that Equinix had offered 10 percent discounts to certain
28 "magnet customers." See, e.g., ¶¶ 148, 153. Because the

1 widespread discounting described by CW5 was never revealed to the
2 market, it could not have caused Equinix's stock price to drop on
3 October 6 or otherwise caused Plaintiffs' alleged loss.

4 Accordingly, the Court finds that Plaintiffs have failed to
5 adequately allege falsity and loss causation with respect to
6 Defendants' statements concerning pricing. As Plaintiffs have also
7 failed to adequately plead falsity and scienter with respect to
8 Defendants' statements concerning the Switch and Data integration,
9 Plaintiffs' Section 10(b) claims are DISMISSED.

10 **B. Plaintiffs' Section 20(a) Claim**

11 Absent an underlying violation of the Exchange Act, there can
12 be no control person liability under Section 20(a). Paracor Fin.,
13 Inc. v. Gen. Elec. Capital Corp., 96 F.3d 1151, 1161 (9th Cir.
14 1996). Because Plaintiffs have not pled a violation of Section
15 10(b), their control person claim is also DISMISSED. See Shurkin
16 v. Golden State Vinters, Inc., 471 F. Supp. 2d 998, 1027 (N.D. Cal.
17 2006), aff'd 303 Fed. Appx. 431 (9th Cir. 2008).

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court GRANTS Defendants
3 Equinix, Inc., Stephen M. Smith, and Keith Taylor's Motion to
4 Dismiss. Plaintiffs Cement Masons & Plasterers Joint Pension Trust
5 and the International Brotherhood of Electrical Workers Local 697
6 Pension Fund's Second Amended Complaint is DISMISSED WITH LEAVE TO
7 AMEND. Plaintiffs may file an amended complaint within thirty (30)
8 days of this Order. Failure to do so will result in dismissal of
9 this action with prejudice.

10
11 IT IS SO ORDERED.

12
13 Dated: December 5, 2012



14 UNITED STATES DISTRICT JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28