

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ROBERT A. ROSE, ET AL.,)	
)	
PLAINTIFFS)	
)	
v.)	Civil No. 98-5-P-H
)	
DAVID E. SHAW, ET AL.,)	
)	
DEFENDANTS)	

**ORDER ON PLAINTIFFS' MOTION FOR LEAVE
TO FILE A SECOND AMENDED COMPLAINT**

Following my Order of March 31, 1999, dismissing their First Amended Complaint, the plaintiffs in this securities fraud class action, stockholders of IDEXX Laboratories, Inc., seek leave to file a second amended complaint. Because it would be futile to allow the proposed second amended complaint, the motion is **DENIED**.

I. MOTION FOR LEAVE TO AMEND

By order dated March 31, 1999, I dismissed the plaintiffs' First Amended Complaint for failure to state a claim upon which relief could be granted. The plaintiffs now move for leave to file a second amended complaint, claiming that they have changed their complaint in five ways: (1) adding context to support allegations that the defendants made materially false statements in press releases and Form 10-Qs regarding IDEXX operating results for the second quarter of 1996, the first half of 1996, the third quarter of 1996 and the first three quarters of 1996; (2) quantifying the effect of alleged accounting improprieties on reported IDEXX operating results; (3) adding new

allegations of materially false statements made in a 1995 Form 10-K; (4) providing “additional facts concerning the dramatic reversal in IDEXX’s operations”; and (5) “reorganiz[ing]” the complaint to address the court’s concern that the plaintiffs “had not precisely delineated the ‘reasons’ why each allegedly false statement was false.” Pls.’ Mem. in Support of Mot. to File Second Amend. Compl. at 2-3 & n.2. Because none of these changes would permit the plaintiffs to survive a motion to dismiss, the proposed amendment is futile.

A. Additional “Context”

The plaintiffs allege that ¶¶ 44 and 56 (dealing with press releases) and ¶¶ 45 and 57 (dealing with 10-Qs) give a fuller context that shows why allegedly false statements were false. In fact, however, each of these paragraphs depends on ¶ 46 to explain why allegedly false statements were false. See Pls.’ Proposed Second Am. Compl. at ¶¶ 46, 58. The real question, then, is whether the allegations in ¶ 46 are materially different from the allegations of falsity in the first amended complaint. They are not. The proposed ¶ 46 is not substantively different from ¶ 64 of the first amended complaint; the plaintiffs merely reorganized the subparagraphs. The first amended complaint was dismissed for lack of substance, not for poor organization; reorganization has not cured the original defect.

The plaintiffs also claim that, to the extent that the allegations of violations of generally accepted accounting principles (“GAAP”) in the First Amended Complaint were dismissed because Item 303 of Regulation S-K creates no duty to disclose, the defect is now cured. Specifically the plaintiffs claim that IDEXX made a false representation of a “trend” of increasing unit sales. Pls.’ Reply at 2. The proposed second amended complaint (like the First Amended Complaint) alleges that the 10-Qs falsely attributed positive financial results to “increased sales,” when in fact the

positive results were the product of GAAP violations; and that the 10-Qs falsely stated that their unaudited financial data were prepared in compliance with SEC rules and contained all adjustments necessary for a fair presentation of such data. This, the plaintiffs argue, is not merely an allegation of a failure to disclose; it is an allegation of affirmative false statements, in violation of the duty to speak truthfully whenever one actually speaks. All such claims are dismissed on the same grounds that the other claims of GAAP violations are dismissed: the plaintiffs still have not sufficiently quantified the impact of any irregularities in IDEXX's financial reporting.

B. Quantification of the Effect of GAAP Violations

In the First Amended Complaint, the plaintiffs claimed that the defendants had violated GAAP through the improper recognition of revenue from sales of various products. Relying on Gross v. Summa Four, Inc., 93 F.3d 987 (1st Cir. 1996), I dismissed these claims on the ground that the plaintiffs had not adequately quantified the impact that the alleged accounting improprieties had on reported operating results; rather, the plaintiffs had made a conclusory allegation that GAAP violations with respect to one product—a canine allergy test kit—resulted in a 5% overstatement of pretax income. In the proposed second amended complaint, the plaintiffs offer a table that purports to show how they arrived at the 5% figure. See Proposed Second Am. Compl. at ¶ 81. The entire table, however, is based on the assumption of an 80% profit on canine allergy test kit sales, see id. & nn.1 & 2, but there is no indication that this figure is anything other than an assumption. If the plaintiffs had any firmer basis for their allegations than this mere assumption, I am sure that they would have included it in their complaint. Their assumptions, however, will not support a cause of action.

The plaintiffs have sufficiently alleged, however, that none of the canine allergy test kit revenues should have been recognized. According to their own figures, the result was a 1.2%

overstatement of *gross revenue* for the first half of 1996 and a 0.8% overstatement for the first nine months of that year. The defendants claim that even a 5% overstatement of revenue is immaterial as a matter of law, see Defs.' Opp'n to Pls.' Mot. to Amend at 18 n.9 (citing In re Silicon Graphics, Inc. Sec. Litig., 970 F. Supp. 746, 765-66 (N.D. Cal. 1997), aff'd on other grounds, ___ F.3d ___, 1999 WL 446521 (9th Cir.)). The plaintiffs in their reply brief have not pointed to any authority nor offered any argument that a revenue overstatement in the neighborhood of 1% is material in this case.

In Silicon Graphics, the plaintiff claimed that the defendant knowingly misstated that revenues would meet analysts' expectations; those expectations were for revenue growth of 40-45%. In fact, revenues fell 5% short of expectations; nonetheless, the court held any misstatement to be immaterial as a matter of law. The test of materiality in the First Circuit is clear: a misrepresentation is immaterial as a matter of law unless a reasonable investor would view the misrepresentation as significantly altering the total mix of information available. See Gross, 93 F.3d at 992. In a fraud-on-the-market case, like this one, the hypothetical reasonable investor is the market as a whole. See Shaw v. Digital Equip. Corp., 82 F.3d 1194, 1218 (1st Cir. 1996). The little information that the proposed second amended complaint provides concerning revenue growth and analysts' projections suggests that projections and reported growth during the periods of the alleged overstatements were in the neighborhood of 40% (as they were in Silicon Graphics), see Pls.' Proposed Second Am. Compl. at ¶¶ 47 (noting analysts' expectations, as of August 1996, of 35-40% growth), 56 (noting that IDEXX reported a 43% increase in revenues for 3Q:96 as compared with 3Q:95), and the overstatement of revenue (approximately 1%) is significantly less than the shortfall at issue in Silicon Graphics. Even assuming that IDEXX overstated its revenues by 1%, the market would not have viewed a correct statement of revenues as significantly altering the total mix of information

available, where growth remained in the neighborhood of 40%. The overstatement of *revenues* as alleged by the plaintiffs in this case is immaterial as a matter of law.

C. Allegedly False Statements in the 1995 Form 10-K

The plaintiffs allege that various statements in IDEXX's 1995 Form 10-K were materially false; although the Form 10-K was filed before the class period begins, the parties apparently agree that IDEXX republished the 10-K during the class period by incorporating it by reference in a Form S-8, and by incorporating portions of the 10-K by reference in a Form 10-Q. The relevant allegations in the proposed second amended complaint can be found in ¶¶ 49-53 and 59 (¶ 48, cited by the plaintiffs in their memorandum, is a general introductory paragraph).

Paragraph 49: The plaintiffs allege that IDEXX's statement that it attempts to tailor its distribution methods to achieve efficiencies was materially false or misleading because IDEXX in fact engaged in channel stuffing, resulting in distribution inefficiencies. IDEXX argues that the plaintiffs have wrenched the statement in question from its context and that, read in context, the statement is not misleading.

I agree with IDEXX that the statement, read in context, generally describes the various distribution methods that IDEXX has at its disposal (independent distributors, regional direct sales forces in North America and Europe, and targeted direct sales forces for specified product types), and that the statement means nothing more than that IDEXX allocates its distribution among these various channels in the way that will be best for its business, basing its choice of distribution channel on certain identified factors. See Form 10-K, attached as Exh. A to Defs.' Opp'n to Pls.' Mot. to Amend, at 3-4, 12. The plaintiffs' allegations about channel stuffing do not suggest that IDEXX allocated product to distributors when IDEXX should have been distributing that product through a different channel; rather, the plaintiffs claim that IDEXX was forcing quantities of product on

distributors that it should not have been distributing at all. On the plaintiffs' own theory, the statement about tailoring distribution strategy is not materially false or misleading when read in context.

Paragraphs 50 & 53: The plaintiffs allege that the Form 10-K materially misrepresented certain features of IDEXX's business in international markets. Specifically, the plaintiffs claim that the Form 10-K falsely stated that IDEXX believed that there were significant opportunities for growth in international markets, see Form 10-K at 4, and, while disclosing certain future risks to IDEXX's business, did not disclose current adverse information about international business: namely, that IDEXX was experiencing intense competition in Europe in two product areas.

I agree with IDEXX that intense competition in two product lines in a given region is not necessarily inconsistent with the existence of opportunities for growth in that region. Nor have the plaintiffs pointed to any facts that give rise to a strong inference that IDEXX lacked any reasonable grounds for its stated belief that opportunities for growth existed. I also agree with IDEXX that it did in fact disclose that it was experiencing "intense" competition in all of its markets, Form 10-K at 14, and therefore the statements of risk are not materially misleading for failing to single out particular product lines or geographical regions for special mention.

Paragraph 51: The plaintiffs allege that the failure to disclose certain improprieties in the sale of canine allergy test kits amounts to actionable securities fraud. Specifically, they claim that the Form 10-K failed to disclose that the test kits generated an undisclosed percentage of false negatives; that the tests were sold prematurely, because they were still "under development"; and that the company accepted returns of the test kits in exchange for heartworm test kits, thereby "cannibalizing" sales of the heartworm kits. Proposed Second Am. Compl. at ¶¶ 36, 38, 51(c).

I agree with IDEXX that the Form 10-K on its face does not misrepresent the accuracy of the kits. The Form 10-K states that the kits are designed “to assist . . . in the diagnosis of canine allergies,” Form 10-K at 6, and so far as appears from the proposed amended complaint, the kits did not produce false positives. In short, it appears from the complaint that when the kits report that a dog has an allergy, that is true. Presumably, a true report of the existence of an allergy in a dog does assist in the diagnosis of the dog’s allergy. Without showing a reason to think otherwise, the complaint does not show an adequate reason to conclude that the statement in the 10-K is false.

The other allegations fail for the same reasons that the allegations of GAAP violations fail: the plaintiffs have not adequately quantified the impact of any alleged fraudulent failure to disclose. The allegation about premature sales is merely another way of saying that revenue from the allergy kit sales was improperly recognized. The allegation about cannibalization of heartworm kit sales is not quantified in any way that shows materiality: the only quantification offered is that a “substantial majority” of allergy kits were exchanged for heartworm kits by the third quarter of 1996. Proposed Second Am. Compl. at ¶ 38. We do not know how many (if any) of the customers who took exchanges otherwise would have bought heartworm kits from IDEXX, nor do we know what effect, if any, the exchanges had on operating results and therefore whether the market would have seen the exchanges as significantly altering the total mix of information available. Accordingly, there is no factual basis alleged for saying that the failure to disclose the exchanges was material.

Paragraphs 52 & 59: The plaintiffs allege that the disclosure of future risks in the Form 10-K was materially misleading because it omitted to mention currently existing adverse conditions of which the defendants were aware. Specifically, the plaintiffs claim that the defendants had a duty to disclose (a) IDEXX’s channel stuffing practices and various consequences of those practices (*e.g.*, bloated distributor inventories); (b) saturation of the U.S. market for IDEXX’s products; and (c) the

“hockey stick” pattern of sales typical for certain products in each quarter (*i.e.*, flat sales early, sharply rising sales late).

IDEXX argues that the plaintiffs have no factual basis for a strong inference of scienter when the statements were made. See Defs.’ Opp’n to Pls.’ Mot. to Amend at 12.¹ The plaintiffs make no attempt to meet this argument in their reply brief. According to the complaint, the Form S-8 was filed August 30, 1996, see Proposed Second Am. Compl. at ¶ 48, and the third quarter 10-Q was filed on November 12, 1996, see id. at ¶ 57(a). Except for the allegation about the “hockey stick” sales pattern, IDEXX is correct that the plaintiffs have not pled facts supporting a strong inference that the 10-K statements were false and that IDEXX knew of the falsity on or before November 12, 1996.

The facts that would support an inference of scienter can be found in ¶¶ 23-24 of the proposed second amended complaint. Many of those allegations refer to periods *after* the allegedly false statements were made. The only allegations that possibly could support an inference of scienter as of November 12, 1996 are:

- (i) the allegation that an IDEXX employee, Donalee Santoro, began making inquiries of distributors about their inventory levels in the “Fall of 1996”;
- (ii) the allegation that sometime in the “third to fourth quarter of 1996” hematology tube inventory at the distributors was thirty weeks;
- (iii) the allegation that unspecified members of IDEXX management discussed rising levels of distributor inventory at a retreat sometime in September 1996;

¹ While IDEXX frames its argument with reference to the loading allegations, I consider the basis for an inference of scienter on all of the allegedly actionable omissions to be fairly in issue.

- (iv) the allegation that sometime during the fourth quarter of 1996, IDEXX negotiated a sale of eleven million dollars' worth of product to a single distributor who did not want it.

Even assuming that the failure to disclose the facts in question rendered the discussion of future risks materially misleading, the facts above do not support a strong inference of fraudulent intent, as the Private Securities Litigation Reform Act (PSLRA), 15 U.S.C. § 78u-4, requires, because:

- (i) Assuming that Donalee Santoro began inquiring about distributor inventory levels at an unspecified time in the Fall of 1996, there is no basis to infer that this gave IDEXX knowledge of those inventory levels before November 12, 1996. So far as appears from the complaint, Ms. Santoro first reported an inventory “bulge” (\$6.8 million in “slides”) on November 17, 1996. See Proposed Second Am. Compl. at ¶ 24.
- (ii) Assuming that distributors' hematology tube inventory was thirty weeks, even as of August 30, 1996 (i.e. during the third quarter), there is no basis to infer that IDEXX knew this fact, much less that IDEXX knew such a level posed a threat to future operating results.
- (iii) Assuming that IDEXX management discussed rising distributor inventories in September 1996, there is no evidence that they knew such levels were rising in any way that posed a risk to future operating results.
- (iv) Assuming that a single distributor did not want eleven million dollars' worth of product that he nonetheless bought, there is no basis to infer either (a) that IDEXX knew that the distributor's objective conduct (making the purchase) did not reflect his subjective preferences, or (b) that this single distributor's preferences represented a risk of a material change in IDEXX's future operating results.

As for the “hockey stick” sales pattern, the plaintiffs' theory cannot be maintained, even though IDEXX presumably knew of its own historical sales patterns. In essence, the plaintiffs are

arguing that the disclosure of risks that IDEXX chose to make in the Form 10-K was materially misleading because it did not disclose that quarterly sales of some products followed a hockey stick pattern.² The plaintiffs have not alleged that IDEXX fell short of projections in any given quarter because its end-of-quarter sales were uncharacteristically flat. The Form 10-K did disclose that “substantially all of [the Company’s] product revenue in each quarter results from orders received in that quarter, which makes the Company’s financial performance more susceptible to an unexpected downturn in business and more unpredictable. In addition, the Company’s expense levels are based in part on expectations of future revenue levels, and a shortfall in expected revenue could therefore result in a disproportionate decrease in the Company’s net income.” Form 10-K at 22. In short, the Form 10-K revealed that IDEXX’s quarterly results were unusually susceptible to variations in demand from quarter to quarter, revealed that IDEXX typically made expenditures in anticipation of sales that ultimately might not materialize, and revealed the disproportionate impact that unexpectedly low future revenues could have on operating results. I see no reason to conclude that IDEXX’s risk disclosure was materially misleading merely because it omitted to mention that, within any given quarter, IDEXX was likely to sell more products late in the quarter than it did early in the quarter.

² The hockey stick pattern is potentially significant in two ways. First, if the sharply rising sales late in the quarter are the product of GAAP violations (*i.e.*, improperly recognized “sales”) rather than the product of actually closed transactions, the hockey stick pattern might give rise to an inference of scienter in showing that the purpose of the GAAP violations was to create a false impression that IDEXX was meeting analysts’ quarterly expectations. Since the allegations of GAAP violations do not state a claim, however, the hockey stick pattern is not relevant in this regard. Second, the sales pattern is significant because the concentration of quarterly revenues in a short time frame makes the company’s operating results especially vulnerable to very brief downturns in the business climate if they occur at just the wrong time. For example, operating expenditures made early in the quarter in pursuit of and in anticipation of sales later in the quarter would not be recaptured if late quarter sales unexpectedly fell flat.

Because none of the allegedly misleading statements is actionable for the reasons stated above, I do not reach IDEXX's argument that it is protected against all of these claims by the "bespeaks caution" doctrine, or the safe harbor provisions of the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-5.

D. Additional Facts About IDEXX's Reversal

The plaintiffs state that they have added allegations in paragraph 72 concerning IDEXX's "dramatic" reversal. The mere fact that a business suffers a reversal—however dramatic—does not give rise to a cause of action for securities fraud. The allegations that the plaintiffs have added perhaps make a more dramatic portrayal of IDEXX's reversal than was offered in the First Amended Complaint, but they do nothing to state a claim upon which relief can be granted.

If the plaintiffs mean for me to infer—on the basis of statements that IDEXX made on April 16, 1998—that IDEXX fraudulently failed to disclose trouble during the class period that concludes more than a year earlier, I reject the invitation. Cf. In re Number Nine Visual Tech. Corp. Sec. Litig., ___ F. Supp. 2d ___, 1999 WL 362789 at * 14 (D. Mass.) (rejecting a claim that a computer chip maker's adverse disclosures eight months after the release of its prospectus permitted the inference that the trouble was known and fraudulently not disclosed at the time of the prospectus).

E. Reorganization of the Complaint

Whatever defects of organization the plaintiffs feel plagued their First Amended Complaint, such defects did not distract my consideration of it. I understood the substance of the allegations that the plaintiffs made in that complaint and dismissed those allegations because they failed to state a claim upon which relief can be granted, given the standards that apply in this area of the law. My original Order clearly stated that I was not interested in seeing from the plaintiffs a mere restated complaint; the same observation applies to reorganization of the complaint.

II. RECONSIDERATION OF THE DISMISSAL OF THE FIRST AMENDED COMPLAINT

The plaintiffs implicitly have asked me to reconsider my ruling dismissing the portions of their complaint that allege GAAP violations. The plaintiffs acknowledge that, apart from the revenue and income overstatements based on the improper accounting for canine allergy kit sales, they cannot quantify any of the overstatements of financial performance attributable to GAAP violations. Nonetheless, they argue, such quantification is not required, and dismissal of the complaint, without affording them an opportunity for discovery, violates Cooperman v. Individual, Inc., 171 F.3d 43 (1st Cir. 1999), a decision handed down within the week before I ruled.

In Cooperman, six individual plaintiffs who purchased shares in an IPO sued the issuer under the Securities Act for omitting material facts from a registration statement and prospectus. The plaintiffs alleged that at the time of the IPO the issuer's board of directors was in conflict over the proper strategic direction for the corporation. The plaintiffs had undisputed evidence that Yosi Amram, the corporation's founder, president and CEO, departed the company four months after the IPO, because of the board-level conflict. Mr. Amram's departure caused a sudden devaluation of the corporation's shares. Although the court of appeals affirmed dismissal of the complaint because there was no duty to disclose, see id. at 52, it ruled under the "minimal" pleading requirements of Rule 12(b)(6), id. at 47, that, because such conflicts do not arise overnight, the evidence of the conflict four months after the IPO was sufficient to support an inference that the conflict existed at the time of the IPO, see id. at 48-49.

I am not persuaded to change my earlier ruling. Cooperman is distinguishable, and Gross controls this case. As the Cooperman court stressed at least twice, the complaint in Cooperman did

not sound in fraud and therefore the heightened pleading requirements of Rule 9(b), which I have applied here, were not applicable. See id. at 47 n.6, 48 n.8. As I read Cooperman, it does nothing to relax Gross's requirement that a plaintiff plead with particularity the materiality of a GAAP violation. Cf. Shaw, 82 F.3d at 1225 (“We have no intention here of diluting the stringent mandate of Rule 9(b).”). Indeed, the First Circuit has held that mere information and belief will not satisfy Rule 9(b), even as it has recognized the Shaw/Cooperman principle that a plaintiff without benefit of discovery cannot be expected to plead fraud with “complete insight.” Maldonado v. Dominguez, 137 F.3d 1, 9-10 (1st Cir. 1998).

Gross is more squarely on point than either Shaw or Cooperman, because the issue in Gross was precisely the issue before me here: namely, the degree of particularity required under Rule 9(b) to plead adequately the materiality of an alleged GAAP violation. The claim here, as in Gross, is not simply that IDEXX violated GAAP, but that the violations of GAAP fraudulently inflated IDEXX's reports of financial results. Gross held quite squarely, however, that such allegations of inflated reports of results do not satisfy Rule 9(b) unless the plaintiff alleges “particulars” in support of the claim of inflated results; specifically, the plaintiff must allege “the amount of the putative overstatement or the net effect it had on the [defendant's] earnings.” Gross, 93 F.3d at 996. Nothing in Gross suggested that its rule depended on the incidental fact that the plaintiff had been afforded some discovery, and the First Circuit has never used the discovery posture of a case to relax Rule 9(b)'s requirement that the materiality of a misrepresentation be pled with particularity.³

³ I also observe that Cooperman apparently involved suit by six individual plaintiffs; it was not a securities class action, and therefore, the PSLRA did not apply. See 15 U.S.C. § 78u-4(a)(1) (stating that the PSLRA applies to class actions). Shaw also did not involve the PSLRA, which does not apply to actions commenced before December 22, 1995; the action in Shaw was filed in April 1994, see Shaw, 82 F.3d at 1201. The question whether the Cooperman/Shaw principle is displaced by the PSLRA is extremely close.

On the one hand, Cooperman stated that pleading requirements must be viewed in light of the
(Continued next page)

Finally, I reject the plaintiffs' other argument for reconsideration. The plaintiffs claim that my prior order violates Cooperman (and Shaw) by requiring that the plaintiffs identify the specific speaker of allegedly false oral statements. For the reasons stated in my prior order, the ruling based on Suna v. Bailey Corp., 107 F.3d 64, 68 (1st Cir. 1997) will stand. Nothing in my prior reasoning is inconsistent with Cooperman or Shaw.

III. MANDATORY RULE 11 FINDINGS

There will be no further leave to amend in this case, and therefore this order constitutes the final adjudication of this matter. Accordingly, I enter the following findings, pursuant to the PSLRA, 15 U.S.C. § 78u-4(c)(1). There is no evidence in the record to find that the plaintiffs, the defendants or any of their attorneys—to the best of their knowledge, information and belief, formed after an inquiry reasonable under the circumstances—presented any complaint, pleading or dispositive motion for any improper purpose under Fed. R. Civ. P. 11(b)(1); presented any unwarranted claim,

discovery posture, *despite* “the strong public policy [embodied in the PSLRA] against allowing discovery in securities cases filed without a substantial factual basis.” Cooperman, 171 F.3d at 48. Moreover, at least as far as the requirements for pleading state of mind go, the First Circuit has said that the PSLRA requirements are no different from the pre-PSLRA law in the circuit. See Maldonado, 137 F.3d at 9 n.5.

On the other hand, one might argue that the First Circuit—at least in securities class actions—is not free to disregard or override the public policy choice made in the PSLRA. The statute *requires* a stay of discovery while any motion to dismiss is pending, unless a party on motion persuades the court that particularized discovery is necessary (for example to prevent undue prejudice). See 15 U.S.C. § 78u-4(b)(3)(B). In other words, to the extent that the PSLRA embodies heightened pleading requirements, it does so despite the fact that the plaintiff presumptively will have had little or no discovery. Congress appears to have made a policy choice: the need to curtail abusive securities litigation presumptively outweighs the need to ensure that provable claims survive a motion to dismiss. To the extent that a plaintiff needs discovery to survive a motion to dismiss, therefore, the plaintiff must show the court the particularized discovery the plaintiff needs, but the court arguably is not free to relax the pleading requirements for a plaintiff in light of the plaintiff's limited access to information.

The plaintiffs in this case have never moved for any particularized discovery. Indeed the parties stipulated early on that IDEXX should simply preserve the integrity of certain data, see Stipulation and Proposed Scheduling Order at ¶ 9; this is some indication that the plaintiffs were content with the stay of discovery required under the PSLRA.

defense or legal contention under Fed. R. Civ. P. 11(b)(2); presented factual contentions without evidentiary support or reasonable belief that such contentions were likely to have evidentiary support after discovery, as proscribed under Fed. R. Civ. P. 11(b)(3); or made any unwarranted denials of factual contentions under Fed. R. Civ. P. 11(b)(4).

For the foregoing reasons, the plaintiffs' motion for leave to file a second amended complaint is **DENIED**.

SO ORDERED.

DATED THIS 21ST DAY OF JULY, 1999.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE