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5  
6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA

8 ) Case No. 2.23-CV-0376-TLN-DB  
The Original Sixteen to One )  
9 Mine, Inc. a California )  
Corporation, Michael Miller, ) **PLAINTIFFS' OPPOSITION TO MOTION**  
10 Hugh Dan O'Neill III, Robert ) **TO DISMISS**  
Besso, Jonathan Ferrell, Tom )  
11 Woodfin, Keith Robertson, )  
 ) **DATE: August 24, 2023**  
12 ) **TIME: 2:00 p.m.**  
Plaintiffs, ) **COURTROOM: 2**  
 )  
13 vs. ) **Hon Troy L. Nunley**  
 )  
14 Quartzview, Inc. a California )  
Corporation, Roger Haas, Simon )  
15 P. Westbrook, Douglas Lockie, )  
Douglas W. Charlton, and Charles )  
16 Crompton Jr., Does 1 through )  
100, inclusive. )  
17  
Defendants.

18  
19 **Introduction and The Facts**

20 Plaintiffs are the Original Sixteen to One Mine, Inc,  
21 (hereinafter "OSTO") and certain of its shareholders, directors,  
22 and officers (most of whom are "Elders" within the meaning of  
23

1 Calif. Welf. & Inst. Code § 15610.27), (Complaint, pp 3:3-18)<sup>1</sup> .

2 Defendants are Quartzview, Inc. and certain of its  
3 shareholders, directors, officers, and unknown Defendants named  
4 Does 1 through 100, (pp 3:19-24, 4: 1-22).

5 OSTO is the oldest operating gold mine in the United States.  
6 OSTO is publicly traded, with holders of its securities resident  
7 in over 30 states and several foreign countries (pp 2:18-26, 3: 1-  
8 1).

9 In 2011 Quartzview and OSTO negotiated an agreement to allow  
10 Quartzview to utilize the workings of OSTO to develop "deep  
11 sensing technology" for the purpose of locating gold deposits. The  
12 agreement contained numerous production requirements as well as a  
13 comprehensive non-disclosure agreement (pp 5:3-24,6:1-3).

14 Quartzview began its development and used its access to the  
15 workings of the mine, the mine employees, records, financial  
16 condition, strategic planning, and other confidential information  
17 of the OSTO. Regardless of Quartzview's activity, no gold was  
18 ever located, (6:4-24). Defendants then conspired and agreed to  
19 embark upon a series of manipulative practices calculated to  
20 depress the value of OSTO stock, sow distrust in the management of  
21

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22  
23 <sup>1</sup> Unless otherwise specified all references are to Plaintiffs' Original  
Complaint.

1 OSTO and ultimately gain control of OSTO and proceeded to act in  
2 accordance with that agreement (6:22-24, 7: 1-16). Those  
3 manipulative practices include the following:

4       A. Creating a report authored by Defendant Charlton  
5 purportedly for the internal use of Quartzview watermarked  
6 "confidential" containing false, misleading, and manipulative  
7 statements. Clearly calculated to influence control of OSTO.  
8 Regardless of the notation of confidentiality, Defendants and each  
9 of them gave the document to stockholders of OSTO for the purpose  
10 of gaining control.

11       B. Suborning a former employee of OSTO by promising  
12 employment once Defendants gained control to falsify a report of a  
13 release of waste oil to the Sierra County Sheriff which ultimately  
14 was dismissed for lack of proof.

15       C. Another former employee (and associate of the first) was  
16 again promised compensation when Quartzview gained control of the  
17 corporation of he reported that he had participated in the oil  
18 disposal. The former employee did so and as a result, the Sheriff  
19 of Sierra County filed a criminal complaint which was ultimately  
20 dismissed for lack of evidence. This complaint was then published  
21 by the Defendants to the shareholders of OSTO.

22       D. Defendant Haas filed a report with the Nevada County  
23 Sheriff that explosives had been stolen from the explosive

1 magazine of OSTO. This was false and no action was taken,  
2 nonetheless, Defendants published this statement to the general  
3 public and to stockholders of OSTO to again disparage  
4 management and in furtherance of the plan to obtain control of  
5 OSTO.

6 D. Defendants represented to the California Central Valley  
7 Regional Water Quality Control Board that the OSTO surface  
8 property contained toxic solid waste and Defendants owned  
9 the water rights. This was false and untrue and The Regional Water  
10 Quality Control Board took no action on this report. Again,  
11 knowing of the falsity of the representation Defendants published  
12 this statement to the general public and to the stockholders of  
13 OSTO in an effort to gain control.

14 E. Defendants represented to the United States Dept. of Labor  
15 Mine Safety and Health Administration that OSTO was being operated  
16 in a hazardous manner. Specifically, some of the employees of the  
17 mine used drugs and carried firearms. No citation was issued by  
18 the Dept. of Labor Mine Safety and Health Administration, but  
19 nonetheless Defendants used this incident to manipulate the stock  
20 and stockholders in OSTO to gain control.

21 F. Defendant Haas contacted the State of California Insurance  
22 Fund and reported that OSTO had misrepresented its employee census  
23 and engaged in fraudulent conduct. The California Insurance Fund

1 investigated the charge and found it to be untrue. Nonetheless,  
2 Defendants represented to the general public and to the  
3 stockholders of OSTO that it was true in Defendant's effort to  
4 manipulate the price of the stock of OSTO, reduce confidence in  
5 the management of OSTO and gain control of OSTO.

6 G. Defendants suborned employees of OSTO and engaged them to  
7 secrete surveillance cameras and vehicle location devices in the  
8 workings of OSTO and in its vehicles in an effort to manufacture  
9 proof of unsafe working conditions or practices and the theft of  
10 valuable ore.

11 H. Defendant Haas demanded a list of the owners of the  
12 securities of OSTO and their addresses and obtained an order from  
13 the Superior Court of Sierra County requiring that the management  
14 of OSTO provide that information to him for his personal use and  
15 not for the use by Quartzview. Regardless of the order of the  
16 Court and the provisions of California Corporations Code § 1600(c)  
17 Defendant Haas provided such confidential information to  
18 Quartzview and others. (pp. 7:17-24, 8: 1-25, 9: 1-25, 10: 1-25

19 The acts of the Defendants have had their intended effect and  
20 depressed the value of the securities of OSTO held by Plaintiffs  
21 and other stockholders from ten dollars (US) per share to less  
22 than one dollar (US) per share on or about March 1, 2022 (pp. 11:  
23 6-18). Plaintiffs and other shareholders have been damaged in the

1 diminution of fair market value of the shares through the  
2 manipulative actions of Defendants and prejudgment interest (pp  
3 16:10-12).

4 Defendants made a tender offer for the Plaintiffs' stock in  
5 OSTO, the offer which contained numerous misleading facts was  
6 accepted, and Defendants claimed ownership of the stock and voted  
7 for a new Board and management, however, Defendants did not pay  
8 for the stock in OSTO that they claimed (pp 11:13-25, Ex "C",  
9 12:1-25, 13:1-25, 14: 1-25.).

#### 10 Argument

11 1. Defendants' argument that the complaint must be dismissed due  
12 to the failure to plead detailed facts, particularly "scienter"  
13 pursuant to FRCP 9(b) fails.

14 Defendants assert that the Plaintiffs' complaint must be measured  
15 against the pleading standards of Rule 9(b). The defendants'  
16 arguments fail for a number of reasons.

17 First, a claim for relief based upon § 14(e) of the  
18 Securities Exchange Act of 1934 may be based upon a theory of  
19 negligence, not fraud, and accordingly, the allegations are to be  
20 tested by Fed R. Civ. P. 8(a). Varjabedian v. Emulex Corp., (2018)  
21 888 F.3d 399, 2018 U.S. App. LEXIS 10000,10018: "ultimately,  
22 because the text of the first clause of Section 14(e) is devoid of  
23 any suggestion that scienter is required, we conclude that the

1 first clause of Section 14(e) requires a showing of only  
2 negligence, not scienter.”

3 A Fed. R. Civ. P. 12(b)(6) motion tests the adequacy of the  
4 complaint's allegations. Fed. R. Civ. P. 12(b)(6). Except where a  
5 heightened pleading standard applies, a motion to dismiss under  
6 Rule 12(b)(6) is analyzed using the pleading standard of Fed. R.  
7 Civ. P. 8(a), Glazer Cap. Mgmt., L.P. v. Forescout Techs., Inc.,  
8 (2023) 63 Fed.4th 747, 755. The Plaintiffs' case before the Court  
9 is not a proposed class action and accordingly, the requirements  
10 of the Private Securities Litigation Reform Act are not applicable  
11 here.

12 15 U.S Code § 78J(b) provides:

13 It shall be unlawful for any person, directly or  
14 indirectly, by the use of any means or instrumentality  
15 of interstate commerce or of the mails, or of any  
16 facility of any national securities exchange- .... To  
17 use or employ, in connection with the purchase or sale  
18 of any security registered on a national securities  
19 exchange or any security not so registered, or any  
20 securities-based swap agreement any manipulative or  
21 deceptive device or contrivance in contravention of such  
22 rules and regulations as the Commission may prescribe as  
23 necessary or appropriate in the public interest or for  
24 the protection of investors.

25 The charging allegations of the complaint are the foundation  
26 of both the claim made pursuant to 15 U.S Code § 78E and 15 U.S  
27 Code § 78J(b). As shown (supra) as applied to 15 U.S Code § 78E

1 those allegations support a claim for negligence. The allegations  
2 are clearly a "manipulative or deceptive device or contrivance".

3 Defendants argue that the Plaintiffs' complaint is deficient  
4 for not pleading the allegations of fraud with specificity. The  
5 factual allegations specified in the complaint are all clearly  
6 understood as an ongoing pattern of activity in pursuit of the  
7 agreement to gain control of OSTO through manipulative devices,  
8 Ernst & Ernst v. Hochfelder (1978)425 U.S. 185, Davoli v. Costco  
9 Wholesale Corp., (2021) 854 Fed. Appx. 116.

10 To the extent that Scienter needs to be demonstrated in the  
11 allegations of the Complaint, the allegations plead support the  
12 inference that Defendants acted (at a minimum) with deliberate  
13 recklessness, and accordingly with the intent required, Alphabet  
14 Secs. Litig., R.I. v. Alphabet, Inc., (2021) 1 Fed.4th 687, 693,  
15 Davoli v. Costco Wholesale Corp., (2021) 854 Fed. Appx. 116, 117  
16 (fn.1) (holding "willful blindness", as a species of deliberate  
17 recklessness).

18 Defendants also argue that the Complaint does not demonstrate  
19 the culpability of Defendants other than Haas and Quartzview or  
20 with particularity other facts surrounding the manipulative acts  
21 alleged. The facts of the Complaint allege that Defendant Douglas  
22 W. Charlton was the author of the "confidential" report that was  
23 delivered to the shareholders of OSTO, in addition, he and all

1 other individual Defendants are officers and/or directors of  
2 Quartzview, Inc. as such Defendant Douglas W. Charlton and the  
3 other officers and directors of Quartzview are liable for the  
4 manipulative practices allege as Control Persons, In re Silicon  
5 Graphics Sec. Litig., (1997)970 F. Supp. 746, 1997 U.S. Dist.  
6 LEXIS 7551. Further, the pleading standards that Defendants rely  
7 upon are relaxed when the factual information is within  
8 Defendant's exclusive knowledge or control, E & E Co. v. Kam Hing  
9 Enterprises, (2011) 429 F. App'x 632, 633, Moore v. Kayport  
10 Package Express, (1989) 885 F.2d 531, 540. The facts that are more  
11 particularly in the knowledge of the Defendants, as well as the  
12 interrelationship between the Defendants and other Control  
13 Persons, will be developed during discovery.

14 Finally, Defendants argue that Plaintiffs have not alleged  
15 loss causation with particularity. But as the Ninth Circuit has  
16 held "We have explained that loss causation does not require a  
17 showing "that a misrepresentation was the sole reason for the  
18 investment's decline in value." In re Daou Systems, Inc., 411 F.3d  
19 1006, 1025 (9th Cir. 2005). Rather, "as long as the  
20 misrepresentation is one substantial cause of the investment's  
21 decline in value, other contributing forces will not bar recovery  
22 under the loss causation requirement." In re BofI Holding, Inc.  
23 Securities Litigation, 977 F.3d 781 at 790. Plaintiffs have

1 alleged that the acts of the Defendants have depressed the value  
2 of the shares of OSTO from ten dollars a share to less than one  
3 dollar a share, (indeed, in the Defendants tender offer Defendants  
4 represented to Plaintiffs and to other stockholders of OSTO that  
5 the recently reported price was twenty cents per share). That is  
6 clearly an allegation of damages and a financial loss caused by  
7 the Defendants actions.

8 2. Defendants' objection to Plaintiffs' Breach of Contract Claim  
9 is misplaced and without foundation.

10 Defendants argue that the Claim for Breach of Contract fails  
11 because no other Defendants other than Defendants Haas and  
12 Quartzview have anything to do with the accepted Tender Offer.  
13 Since Defendants Haas and Quartzview are the moving parties here,  
14 they seem to be arguing that other Defendants who have already  
15 appeared and answered the Complaint, (Request for Judicial Notice,  
16 Answer of Defendants Simon P. Westbrook, Douglas W. Charlton, and  
17 Charles Crompton Jr.).

18 Additionally, being without standing to move for the  
19 dismissal of other parties who are already before the Court by way  
20 of their answers, the law does not support the Defendants'  
21 position. Fed. Rule of Civ. Proc. 19 governs the joinder of  
22 parties, the determination thereof is within the discretion of the  
23 Court, Ford Plantation, L.L.C. v. Black, (2000) 205 F.R.D. 698,

1 2000. Plaintiffs have alleged the existence of a tender offer to  
2 buy their stock at a price artificially reduced by the  
3 manipulation of the Defendants. The offer in its terms is simple,  
4 "We are prepared to purchase your shares for 20 cents a share...."  
5 (Complaint Ex C). The offer is not limited exclusively to  
6 Quartzview but to the collective "We" including the Board of  
7 Directors. Plaintiffs actually accepted the offer to the  
8 collective "We" who did not pay. Fed. Rule of Civ. Proc. 19  
9 provides in part "(1) A person who is subject to service of  
10 process and whose joinder will not deprive the court of subject-  
11 matter jurisdiction must be joined as a party if: (A) in that  
12 person's absence, the court cannot accord complete relief among  
13 existing parties..." Here the factual information is within  
14 Defendant's exclusive knowledge or control, E & E Co. v. Kam Hing  
15 Enterprises, (2011) 429 F. App'x 632, 633, Moore v. Kayport  
16 Package Express, (1989) 885 F.2d 531, 540. The Defendants and only  
17 the Defendants know who the "We" are; the complaint is well plead  
18 under Fed. Rule of Civ. Proc. 8(a).

19 3. Plaintiffs' allegations of Rescission state a Claim for  
20 Relief.

21 It is clear that the Plaintiffs have stated a Claim for  
22 Breach of Contract, one of the remedies for Breach of Contract is  
23

1 for the Party to rescind the contract, York v. Am. Sav. Network,  
2 Inc., (2017) U.S. Dist. LEXIS 129131.

3 4. Defendants' objections to Plaintiffs' Prayer and Claims for  
4 Punitive damages fail.

5 Defendants object to Plaintiffs' prayer, an element that is  
6 not raised by Fed. Rule of Civ. Proc. 12b (6), but by Fed. Rule  
7 of Civ. Proc. Rule 12 f Additionally, it is not supported by State  
8 Law. The Controlling California Statute is Calif. Civ. Code §  
9 3294 which provides "(a) In an action for the breach of an  
10 obligation not arising from contract, where it is proven by clear  
11 and convincing evidence that the defendant has been guilty of  
12 oppression, fraud, or malice, the plaintiff, in addition to the  
13 actual damages, may recover damages for the sake of example and by  
14 way of punishing the defendant." ...." (2) "Oppression" means  
15 despicable conduct that subjects a person to cruel and unjust  
16 hardship in conscious disregard of that person's rights.", and  
17 see, College Hospital Inc. v. Superior Court (1994) 8 Cal.4<sup>th</sup> 704,  
18 721, "The basic elements of such claims are set forth in Civil  
19 Code section 3294. As previously stated, there must be proof of  
20 "oppression, fraud, or malice." (Id., subd. (a).) Moreover, the  
21 punishable acts which fall into these categories are strictly  
22 defined. Each involves "intentional," "willful," or "conscious"  
23 wrongdoing of a "despicable" or "injur[ious]" nature. "The malice

1 in fact, referred to by NGC as animus malus, may be proved under  
2 section 3294 either expressly (by direct evidence probative on the  
3 existence of hatred or ill will) or by implication (by indirect  
4 evidence from which the jury may draw inferences).” Bertero v.  
5 National General Corp., (1974) 13 Cal. 3d 43, 66.

6 Defendants’ argument in addition to being misplaced seems to  
7 be directed to non-issues in part. Defendants seem to argue that  
8 Plaintiffs have not plead facts constituting a right to punitive  
9 damages in their various claims six (Elder Financial Abuse), seven  
10 (Calif. Penal. Code § 484), and eight (Unfair Competition (Calif.  
11 Bus. & Prof Code. §17200)). None of these claims require an  
12 allegation of facts giving rise to a claim for punitive damages  
13 pursuant to Calif. Civ. Code § 3294.

#### 14 Conclusion

15 Plaintiffs have met their burden of pleading pursuant to the  
16 asserted claims, bearing in mind that the theories alleged are  
17 more particularly within the knowledge of the Defendants. The  
18 ongoing course of the agreement of the Defendants to commit acts  
19 amounting to a manipulation of the securities of OSTO (extending  
20 for six years had their intended effect of driving down the market  
21 value of the stock which Defendants then made a tender offer for  
22 to gain control of the company. Once they had commitments to  
23 purchase what (to them) amounted to a controlling interest and

1 conveniently forgot to pay for that stock. They held a  
2 shareholders meeting that did not comply with the Corporate Bylaws  
3 and replaced the existing Board of Directors and Management with  
4 members of the "We" that made the tender offer.

5 The motion should be denied and Defendants held to answer the  
6 Complaint. In the event that the Court is disposed to grant the  
7 motion or any part thereof, Plaintiff request leave to amend.

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DATED:7/7/2023

/s/ John Vodonick, Ph.D.

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John Vodonick

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Attorney for Plaintiffs

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