UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE ICON PLC SECURITIES LITIGATION	Case No. 2:25-cv-00763-HG CLASS ACTION **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO ICON AND THE EXECUTIVE DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1
FACTUAL ALLEGATIONS 5
A. Defendants Resort to Fraud 5
1. Defendants' Admitted Financial Misstatements 5
a. Holding Reporting Periods Open 5
b. Fake Invoices to Pull Forward Revenue 6
c. Manipulation of Project Costs 7
d. Draft, Unsigned Change Orders 8
e. ICON's Restatement 8
2. Defendants Lied about ICON's RFPs 9
3. Defendants Lied about ICON's Large Pharma Customers 10
4. ICON's Inflated Business Wins and Book-to-Bill Ratio 11
B. Cutler and Brennan Make Lucrative Insider Sales 12
ARGUMENT 12
I. THE SAC ESTABLISHES A STRONG INFERENCE OF SCIENTER 12
A. Motive and Opportunity 13
B. Conscious Misbehavior or Recklessness 17
1. The Financial Misstatements 18
a. The FE Accounts Establish Conscious Misbehavior or Recklessness 20
b. Additional Evidence of Scienter 23
2. The Remaining Misstatements 27
a. The FE Allegations Establish Recklessness 27
b. Additional Evidence of Scienter 30
C. ICON's Corporate Scienter Is Imputed from Cutler, Brennan, and Sheehan 32
II. PLAINTIFFS PLEAD LOSS CAUSATION 33
III. THE SAC IS NOT A "PUZZLE PLEADING" 37
IV. THE SAC PLEADS MATERIAL MISSTATEMENTS 38
A. Financial Misstatements 38
B. Misstatements about ICON's Purportedly Increasing RFPs 38

1. The RFP Statements Are Not Puffery....38
2. The RFP Statements Are Materially False....39
3. The RFP Statements Are Materially Misleading....41
C. Misstatements about ICON's Large Pharma Customers....43
1. The Large Pharma Customer Statements Are Not Puffery....43
2. Plaintiffs Plead Material Falsity....44
a. Defendants' Duty to Disclose the Customer Losses....44
b. Defendants Omitted Specific, Highly Material Facts....46
D. Misstatements about ICON's Business Wins and Inflated Book-to-Bill Ratio....49
CONCLUSION....50

TABLE OF AUTHORITIES

Page(s)

Cases

In re Akorn, Inc. Sec. Litig.,
240 F. Supp. 3d 802 (N.D. Ill. 2017) 19

Alaska Elec. Pension Fund v. Asar,
768 F. App'x 175 (5th Cir. 2019) 24

In re Alcatel Sec. Litig.,
382 F. Supp. 2d 513 (S.D.N.Y. 2005) 37

In re Ambac Fin. Grp., Inc. Sec. Litig.,
693 F. Supp. 2d 241 (S.D.N.Y. 2010) 33

In re AppHarvest Sec. Litig.,
684 F. Supp. 3d 201 (S.D.N.Y. 2023) 35

In re Avon Prods., Inc. Sec. Litig.,
2009 WL 848017 (S.D.N.Y. Feb. 23, 2009) 16

In re Avon Sec. Litig.,
2019 WL 6115349 (S.D.N.Y. Nov. 18, 2019) 20, 31

Basic Inc. v. Levinson,
485 U.S. 224 (1988) 46

In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.,
763 F. Supp. 2d 423 (S.D.N.Y. 2011) 26

Bos. Ret. Sys. v. Alexion Pharms., Inc.,
556 F. Supp. 3d 100 (D. Conn. 2021) 24

In re CarLotz, Inc. Sec. Litig.,
2024 WL 1348749 (S.D.N.Y. Mar. 29, 2024) 23-24

Carpenters Pension Tr. Fund for N. Cal. v. Allstate Corp.,
2018 WL 1071442 (N.D. Ill. Feb. 27, 2018) 15

Chicago Bridge & Iron Co. N.V. Sec. Litig.,
2018 WL 2382600 (S.D.N.Y. May 24, 2018) 20, 28

In re Chicago Bridge & Iron Co. N.V. Sec. Litig.,
2019 WL 5287980 (S.D.N.Y. Oct. 18, 2019) 34-35

In re Citigroup Inc. Sec. Litig.,
753 F. Supp. 2d 206 (S.D.N.Y. 2010).....22

City of Warren Police & Fire Ret. Sys. v. World Wrestling Entm't Inc.,
477 F. Supp. 3d 123 (S.D.N.Y. 2020).....36

In re Danimer Sci., Inc. Sec. Litig.,
2023 WL 6385642 (E.D.N.Y. Sept. 30, 2023) 20

In re Diamond Foods, Inc., Sec. Litig.,
2012 WL 6000923 (N.D. Cal. Nov. 30, 2012) 19

Dura Pharms., Inc. v. Broudo,
544 U.S. 336 (2005).....33, 34

Eden Alpha CI LLP v. Polished.com Inc.,
763 F. Supp. 3d 270 (E.D.N.Y. 2025) 20, 21

Emps.' Ret. Sys. of the City of Baton Rouge & Par. of E. Baton Rouge v. MacroGenics, Inc.,
61 F.4th 369 (4th Cir. 2023) 39

Emps.' Ret. Sys. of Gov't of the Virgin Islands v. Blanford,
794 F.3d 297 (2d Cir. 2015)..... 17-18, 29

In re Express Scripts Holdings Co. Sec. Litig.,
773 F. App'x 9 (2d Cir. 2019) 45

In re Fairway Grp. Holding Corp. Sec. Litig.,
2015 WL 249508 (S.D.N.Y. Jan. 20, 2015) 21

Feasby v. Industri-Matematik Int'l Corp.,
2000 WL 977673 (S.D.N.Y. July 17, 2000).....16

Foley v. Transocean Ltd.,
861 F. Supp. 2d 197 (S.D.N.Y. 2012).....24

Fresno Cnty. Emps' Ret. Ass'n v. comScore, Inc.,
268 F. Supp. 3d 526 (S.D.N.Y. 2017)..... *passim*

*Freudenberg v. E*Trade Fin. Corp.*,
712 F. Supp. 2d 171 (S.D.N.Y. 2010)..... 21-22, 23, 28, 35

Ganino v. Citizens Utilities Co.,
228 F.3d 154 (2d Cir. 2000).....39, 49

Gimpel v. The Hain Celestial Grp., Inc.,
156 F.4th 121 (2d Cir. 2025) ..... *passim*

In re Grab Holdings Ltd. Sec. Litig.,
2024 WL 1076277 (S.D.N.Y. Mar. 12, 2024) 42

Hall v. The Children's Place Retail Stores, Inc.,
580 F. Supp. 2d 212 (S.D.N.Y. 2008) 18

Haw. Structural Ironworkers Pension Tr. Fund v. AMC Ent. Holdings, Inc.,
422 F. Supp. 3d 821 (S.D.N.Y. 2019) 34

In re Henry Schein, Inc. Sec. Litig.,
2019 WL 8638851 (E.D.N.Y. Sep. 27, 2019) 15

In re Hertz Glob. Holdings Inc.,
905 F.3d 106 (3d Cir. 2018) 24

Higginbotham v. Baxter Int'l Inc.,
495 F.3d 753 (7th Cir. 2007) 26

Hutchins v. NBTY, Inc.,
2012 WL 1078823 (E.D.N.Y. Mar. 30, 2012) 15, 46

In re Initial Pub. Offering Sec. Litig.,
241 F. Supp. 2d 281 (S.D.N.Y. 2008) 15

In re Insys Therapeutics, Inc. Sec. Litig.,
2018 WL 2943746 (S.D.N.Y. June 12, 2018) 25-26

IWA Forest Indus. Pension Plan v. Textron Inc.,
14 F.4th 141 (2d Cir. 2021) 30-31

Jackson v. Abernathy,
960 F.3d 94 (2d Cir. 2020) 33

Janbay v. Canadian Solar, Inc.,
2012 WL 1080306 (S.D.N.Y. Mar. 30, 2012) 36

Jastram v. NextEra Energy, Inc.,
161 F.4th 693, 710 n.10 (11th Cir. 2025) 34

Kalnit v. Eichler,
264 F.3d 131 (2d Cir. 2001) 17

Kusnier v. Virgin Galactic Holdings, Inc.,
639 F. Supp. 3d 350 (E.D.N.Y. 2022) 4, 37

Lentell v. Merrill Lynch & Co.,
396 F.3d 161 (2d Cir. 2005) 35, 36

Litwin v. Blackstone Grp., L.P.,
634 F.3d 706 (2d Cir. 2011).....45

In re Lululemon Sec. Litig.,
14 F. Supp. 3d 553 (S.D.N.Y. 2014).....16

Malin v XL Capital Ltd.,
499 F. Supp. 2d 117 (D. Conn. 2007).....22

In re Marsh & Mclennan Cos., Inc. Sec. Litig.,
501 F. Supp. 2d 452 (S.D.N.Y. 2006).....32

Metzler Asset Mgmt. GmbH v. Kingsley,
305 F. Supp. 3d 181 (D. Mass. 2018).....47

Meyer v. JinkoSolar Hold. Co.,
761 F.3d 245 (2d Cir. 2014).....38, 41, 44

Moshell v. Sasol Ltd.,
481 F. Supp. 3d 280 (S.D.N.Y. 2020).....22

New Orleans Emps. Ret. Sys. v. Celestica, Inc.,
455 F. Appx. 10 (2d Cir. 2011).....28, 39-40

In re Nortel Networks Corp. Sec. Litig.,
238 F. Supp. 2d 613, 631 (S.D.N.Y. 2003).....29

Novak v. Kasaks,
216 F.3d 300 (2d Cir. 2000).....13, 38, 43, 47

Okla. Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc.,
367 F. Supp. 3d 16 (S.D.N.Y. 2019).....31

Petersen v. Stem, Inc.,
2024 WL 4602710 (N.D. Cal. Aug. 30, 2024).....37

Plumbers & Pipefitters Nat. Pension Fund v. Orthofix Int'l N.V.,
89 F. Supp. 3d 602 (S.D.N.Y. 2015).....20, 27

Pyramid Holdings, Inc. v. Inverness Med. Innovations, Inc.,
638 F. Supp. 2d 120 (D. Mass. 2009).....47

Roth v. Jennings,
489 F.3d 499 (2d Cir. 2007).....12

San Antonio Fire and Police Pension Fund v. Dentsply Sirona Inc.,
732 F. Supp. 3d 300 (S.D.N.Y. 2024)..... *passim*

Schoenhaut v. Am. Sensors, Inc.,
986 F. Supp. 785 (S.D.N.Y. 1997).....45

In re Scholastic Corp. Sec. Litig.,
252 F.3d 63 (2d Cir. 2001).....13, 25, 28, 29

SEC v. Softpoint, Inc.,
958 F. Supp. 846 (S.D.N.Y. 1997).....19

Set Cap. LLC v. Credit Suisse Grp. AG,
996 F.3d 64 (2d Cir. 2021).....35, 38, 45-46

Shenwick v. Twitter, Inc.,
282 F. Supp. 3d 1115 (N.D. Cal. 2017).....40, 41

Sherman v. Abengoa, S.A.,
156 F.4th 152 (2d Cir. 2025).....48-49

In re Signet Jewelers Ltd. Sec. Litig.,
2018 WL 6167889 (S.D.N.Y. Nov. 26, 2018).....34, 47

Silvercreek Mgmt., Inc. v. Citigroup, Inc.,
248 F. Supp. 3d 428 (S.D.N.Y. 2017).....33

In re Smith Barney Transfer Agent Litig.,
884 F. Supp. 2d 152 (S.D.N.Y. 2012).....33

In re SolarEdge Techs., Inc. Sec. Litig.,
2024 WL 4979296 (S.D.N.Y. Dec. 4, 2024).....22, 23, 33

Stevelman v. Alias Research Inc.,
174 F.3d 79 (2d Cir. 1999).....17

In re Synchrony Fin. Sec. Litig.,
2022 WL 427499 (D. Conn. Feb. 11, 2022).....32

In re Synchrony Fin. Sec. Litig.,
988 F.3d 157 (2d Cir. 2021)..... *passim*

In re Take–Two Interactive Sec. Litig.,
551 F. Supp. 2d 247 (S.D.N.Y. 2008).....15

Tellabs, Inc. v. Makor Issues & Rts., Ltd.,
551 U.S. 308 (2007)..... *passim*

In re Tempur Sealy Int'l, Inc. Sec. Litig.,
2019 WL 1368787 (S.D.N.Y. Mar. 26, 2019).....45

In re Tenaris S.A. Sec. Litig.,
493 F. Supp. 3d 143 (E.D.N.Y. 2020) 34, 35-36

In re Time Warner Inc. Sec. Litig.,
9 F.3d 259 (2d Cir. 1993) 45

In re Travelzoo Inc. Sec. Litig.,
2013 WL 1287342 (S.D.N.Y. Mar. 29, 2013) 15

Turner v. MagicJack VocalTec, Ltd.,
2014 WL 406917 (S.D.N.Y. Feb. 3, 2014) 15

In re Turquoise Hill Res. Ltd. Sec. Litig.,
2014 WL 7176187 (S.D.N.Y. Dec. 16, 2014) 25

U.S. v. AECOM,
19 F.4th 85 (2d Cir. 2021) 12, 27, 42, 49

Van Dongen v. CNinsure Inc.,
951 F. Supp. 2d 457 (S.D.N.Y. 2013) 17

In re Veeco Instruments, Inc. Sec. Litig.,
235 F.R.D. 220 (S.D.N.Y. 2006) 18

In re Virtu Fin., Inc. Sec. Litig.,
770 F. Supp. 3d 482 (E.D.N.Y. 2025) 31, 38, 43, 44

In re Vivendi Universal, S.A.,
381 F. Supp. 2d 158 (S.D.N.Y. 2003) 30

In re Vivendi Universal, S.A. Sec. Litig.,
838 F.3d 223 (2d Cir. 2016) 33, 34, 38

Wallace v. IntraLinks,
2013 WL 1907685 (S.D.N.Y. May 8, 2013) 45

Wenger v. Lumisys, Inc.,
2 F. Supp. 2d 1231 (N.D. Cal. 1998) 37

Woolgar v. Kingstone Co., Inc.,
477 F. Supp. 3d 193 (S.D.N.Y. 2020) 15, 20

Zornberg v. NAPCO Sec. Techs., Inc.,
778 F. Supp. 3d 516 (E.D.N.Y. 2025) 13, 14, 15

Zucco Partners, LLC v. Digimarc Corp.,
552 F.3d 981 (9th Cir. 2009) 47

PRELIMINARY STATEMENT

Defendants' motion to dismiss the Second Amended Complaint ("SAC") (Dkt. 70) should be denied.[1] Defendants misled investors about core aspects of ICON's business—and ***admittedly*** issued materially false financial statements in violation of GAAP—while CEO Cutler and CFO Brennan profited from their fraud with nearly $30 million in insider sales at inflated prices. When the fraud collapsed, ICON's share price fell, and the Company was forced to restate its financial statements due to "misstatements" and admit "material weaknesses" in its internal controls.

Specifically, Defendants violated GAAP to create the illusion of growth and cover up ICON's mounting customer losses and declining metrics. For example, Cutler publicly stated that ICON's customer Requests for Proposals ("RFPs")—a closely-tracked indicator of demand—had increased by "high single digits." ¶481. Cutler knew that was false: he personally sent and received quarterly internal emails stating that ICON's RFPs were ***declining*** across the board. ¶¶145-47.

Cutler also knew about significant cuts by ICON's largest customers that erased up to ***$500 million***—or 21%—of the Company's profits. ¶¶210-17. At a February 2024 internal town hall meeting, Cutler ***admitted*** that ICON had lost its contract with Pfizer—ICON's single largest customer—and missed its revenue and new business targets. ¶¶237-40. Publicly, however, Defendants insisted that ICON saw "very stable and very strong demand" (April 25, 2024), retained "all of the alliances we had before" (May 30, 2024) and had seen "[n]o material changes" to the business (Sept. 10, 2024). ¶¶495, 501, 504. None of these things were true.

In parallel, Defendants prematurely recognized revenue through systemic GAAP violations, such as issuing fake invoices (marked with asterisks) and omitting project costs to

[1] "¶" refers to paragraphs in the SAC. "Br." refers to the Memorandum of Law in Support of ICON PLC and the Executive Defendants' Motion to Dismiss the Second Amended Complaint (Dkt. 90). Emphasis is added and citations are omitted unless otherwise noted.

prematurely recognize revenue and inflate margins. ¶¶289-447. Tellingly, Defendants do not dispute that this manipulation occurred. Moreover, Defendants cannot dispute the material impact of their fraudulent accounting, despite their efforts to downplay its magnitude. In the resulting restatement, ICON admitted "***material errors***," including admitted revenue overstatements of $65.3 million in 2023 and $92.7 million in 2024 and overstatements of net income by 10.5% in 2023 and 7.1% in 2024. ¶¶410-14. Critically, Defendants' GAAP violations allowed ICON to beat earnings guidance for six consecutive quarters in 2023 and the first half of 2024. ¶¶418-20. Absent the manipulation, ICON missed consensus expectations ***every quarter during that period***. *Id.*

The SAC's specific allegations readily satisfy the PSLRA's and Rule 9(b)'s requirements.

First, Plaintiffs allege a strong inference of scienter on two independent grounds: (1) motive and opportunity, and (2) conscious or reckless disregard for the truth of Defendants' statements. Cutler's and Brennan's large, highly unusual insider sales establish their motive to commit fraud. As the fraud peaked, Cutler and Brennan sold 22.7% and 98.6% of their shares to reap $29.6 million in profits. ¶¶607-23. ***All*** of these insider sales occurred while ICON reported materially false financial results. ¶¶56, 615. Defendants do not dispute that these sales are unusual and suspicious under at least five of seven factors used to assess insider sales.

While motive alone suffices, Plaintiffs also plead that Defendants knew facts contradicting their public statements, including facts recounted by 16 former employees ("FEs") who had direct contact with the Individual Defendants. Defendants' GAAP violations flowed from the top down. Cutler, Brennan and Defendant Sheehan—ICON's former SVP of Finance, who reported directly to Brennan—issued aggressive directives to recognize revenue prematurely. These included Brennan's orders to hold periods open, Sheehan's instructions to issue premature fake invoices, and monthly "revenue sweeps," including an August 2024 demand to recognize $100 million ***in***

one business day. ¶¶279, 693-707. Belying any notion of good faith, ICON's finance leadership quashed dissent—including overruling 40 U.S.-based analysts who objected to the GAAP violations—and hid the scheme from ICON's auditors. ¶¶723-27. ICON later admitted that its "tone from management" was a material control weakness, and Sheehan was terminated. Notably, Defendants ***do not dispute*** Sheehan's scienter, which (with the other Individual Defendants' scienter) is imputed to ICON. Their assertion that Sheehan "had no role in making the challenged statements" is wrong. Sheehan made and disseminated misstatements by signing ICON's false registration statement that included the false financial statements. ¶¶570, 604.

As to Defendants' other misstatements, FE-7 saw Cutler send and receive quarterly emails stating that ICON's RFPs had declined (¶¶145-47), yet Cutler publicly claimed RFPs had increased by "high single digits." ¶¶479, 481, 486. FE-2 and FE-3 saw Cutler authorize Pfizer's $50 million budget cut and admit internally that ICON had lost Pfizer's business (¶¶217, 237), after which Cutler publicly denied "any further concerns" and declared "[n]othing has changed." ¶¶487, 495.

Defendants cannot overcome these facts. Indeed, they offer no plausible competing inference—much less any more compelling than the inference of fraudulent intent. Defendants' GAAP violations that flipped earnings "misses" to "beats" for six consecutive quarters were far from innocent mistakes. And because Defendants personally directed the manipulation of ICON's financial statements, they cannot plausibly claim that it occurred without their knowledge, especially since ICON explicitly tied the material errors to the "tone from management." Further, Defendants' suggestion that they needed an internal investigation to uncover their own accounting fraud is backwards. ICON only investigated ***after*** Brennan and Cutler resigned—and only after Plaintiffs' prior complaint (Dkt. 47) alleged pervasive GAAP violations, forcing their hand.

Second, Defendants' partial challenge to loss causation fails. The facts Defendants

concealed from investors—including ICON's consistently declining RFPs and material business losses from its largest customers—drove a string of negative financial disclosures, immediately followed by substantial stock drops. ¶¶752-76. Courts in the Second Circuit regularly permit such "earnings reports to serve as loss-causing events at the pleading stage." *San Antonio Fire and Police Pension Fund v. Dentsply Sirona Inc.*, 732 F. Supp. 3d 300, 324 (S.D.N.Y. 2024).

Third, the SAC is not a "puzzle pleading." Plaintiffs properly "identified specific statements . . . and followed each by a list of reasons why" each statement is false and misleading. *Kusnier v. Virgin Galactic Holdings, Inc.*, 639 F. Supp. 3d 350, 368 (E.D.N.Y. 2022).

Finally, Plaintiffs allege actionable misstatements with particularity. Specifically:

Financial Misstatements. Defendants concede material falsity; ICON restated its financials and admitted "material errors" and "material weaknesses" in controls. ¶¶533-98.

RFP Misstatements. The quarterly emails advising Cutler that ICON's RFPs were declining in 2023 establish falsity and scienter. ¶¶145-47. Defendants merely complain that FE-7 (who saw the emails) did not specify the precise decline—but ***any*** decline squarely contradicts Defendants' repeated statements that RFPs had increased. *E.g.*, ¶¶476-79, 481-82, 485-86.

Large Pharma Misstatements. Three of ICON's largest customers made substantial cuts, directly contradicting Defendants' statements, including Cutler's false statement that "[n]othing has changed." ¶495. Defendants also told material half-truths by concealing that three of ICON's largest customer relationships, comprising 18% of ICON's revenue (¶215), had collapsed.

Book-to-Bill Ratio and Business Win Misstatements. Defendants inflated these metrics by booking awards at larger amounts than sponsors had approved—at Cutler's personal direction—and recording "wins" without signed contracts. ¶¶170-87. At Cutler's direction, ICON further inflated these metrics by keeping nearly $3 billion in canceled "awards" in its backlog for

over two years, long after customers told ICON that no revenue was forthcoming. ¶¶188-92.

Defendants' motion should be denied, and discovery should finally move forward.

FACTUAL ALLEGATIONS

ICON is a contract research organization ("CRO") that supports clinical trials for drug and biotech companies. During the Class Period, ICON offered two operating models: (1) Full-Service Outsourcing ("FSO" or "full-service"), where ICON conducted full trials; and (2) Functional Service Provision ("FSP"), where ICON only managed discrete portions of trials. ¶¶90-92.

A. Defendants Resort to Fraud

As ICON's biotech and COVID-related revenue dried up, Defendants were highly motivated to portray ICON's business as robust and growing. Thus, during the Class Period, Defendants lied about ICON's performance and issued false financial statements. ¶¶475-598.

1. Defendants' Admitted Financial Misstatements

To obscure ICON's declining business, Defendants prematurely recognized revenue in violation of GAAP. ¶¶289-401. As detailed below, ICON has ***admitted*** the false recognition of ***$158 million*** in revenue during the Class Period. ¶¶410-14.

Defendants try to downplay these errors as impacting 1% of revenue—but never mention that ICON admitted "***material accounting errors***," including "improper adjustments," that led to "***misstatements***." ¶¶410-13. Material falsity is undisputed as to ICON's 2023 and 2024 financial statements and Defendants' statements of GAAP compliance and "effective" controls. ¶¶533-98.

Defendants also do not dispute the variety of manipulative practices, in violation of GAAP, that led to ICON's admittedly false financial statements. Specifically:

a. Holding Reporting Periods Open

In a classic GAAP violation, ICON regularly held monthly and quarterly reporting periods open, typically by 10 to 14 days, to increase its billing and cash numbers. ¶¶297-310 (FE-4, FE-

16, FE-17, FE-18). This practice—overseen by Brennan's direct report in Ireland, Defendant Sheehan—added $100 to $200 million to quarterly billing and cash. ¶¶305-06, 310 (FE-4).

Further, Sheehan directed ICON executive James Edkins to hold periods open until "revenue gaps" could be filled and provided a list of studies targeted for additional revenue recognition. ¶310 (FE-17). These gaps—up to $5 million per month on ICON's European portfolio alone—were repeatedly filled through "creative accounting." ¶431. Similarly, Sheehan and his direct report O'Grady directed ICON's U.S. financial team to hold periods open every month from late 2023 through July 2024. ¶¶309-10, 654(vii) (FE-18).

b. Fake Invoices to Pull Forward Revenue

ICON "deliberately" created "fake" invoices for future work not yet performed, typically at Sheehan's direction. ¶¶311-27 (FE-4, FE-16, FE-17, FE-18, FE-22, FE-23). The fake invoices—which were marked with an asterisk because they were "known to be fake"—allowed ICON to get "invoices on the books" and recognize revenue it had not actually earned. *Id.*

FE-17 explained that ICON manually updated its Rev tracking system to reflect prematurely-billed revenue, amounting to a "cash accounting" method that was contrary to the ASC 606 revenue recognition methodology ICON supposedly followed. ¶318. FE-22 described premature and double-billing to ICON's customers, including $40-60 million to Eli Lilly alone, prompting customer complaints. ¶¶322-24. Brennan knew about ICON's flagrant overbilling because he specifically discussed it on a "governance" call with Eli Lilly that FE-22 attended. *Id.*

FE-20 and FE-16 corroborated these accounts. FE-20 noted that ICON employees routinely overstated their hours by 10-15% over project budgets, leading to premature revenue recognition. ¶¶380-83. FE-16 stated that Sheehan (through Edkins) directed him to approve 100% of revenue on a clinical trial for MAPI Pharma that was only 88-90% complete. ¶¶384-85. FE-16 refused to approve, yet Rev continued to reflect the revenue from the remaining 10-12% of the study. ¶385.

c. Manipulation of Project Costs

Defendants used a range of devices to understate costs and, in turn, inflate profit margins.

Omitting Project Costs to "Hold the Margins." When project costs exceeded ICON's budget, the overruns eroded its margins. ¶¶332-35. To "hold the margins," ICON simply omitted the overruns using a "cost not loaded" process in its financial reporting software. ¶¶331-54. This broadly applied practice inflated study margins by up to ***20%*** and led to premature revenue recognition by overstating ICON's percentage of completion, such that ICON purportedly reached "100%" completion well before studies were complete. ¶¶339-54 (FE-5, FE-6).

Negative Management Reserves. ICON also inflated margins via "negative management reserves," which artificially reduced forecasted project costs based on purported savings with no factual basis. ¶¶355-68 (FE-16, FE-18, FE-19). Sheehan's direct report, O'Grady, instructed FE-18 to apply negative management reserves; in FE-18's portfolio alone, ICON booked over $10 million in negative management reserves in the first half of 2024. ¶¶357-60. FE-18 understood that the directives were coming from Brennan, since they were typically communicated to FE-18 just after Brennan met with ICON's VPs. ¶367. FE-18 also described recurring "revenue sweeps" directed by Sheehan through emails that detailed schemes to remove costs and attached spreadsheets stating the specific hours and costs to be removed to inflate revenue on studies. ¶¶396-98.

FE-19 recounted that in summer 2024, Aidan Jameson (ICON's Revenue Manager) instructed him and 40 other U.S.-based analysts to remove specific costs from their studies, circulating an Excel file that showed the amounts to remove and identified ICON's revenue target. ¶¶361-64. After the analysts and their managers refused to delete the costs because they believed it violated GAAP—which FE-19 likened to a "***mutiny***"—Jameson removed the costs anyway. *Id.*

FE-16 also witnessed cost manipulation, describing Sheehan's directives not to load certain cost reserves, and estimated that these practices boosted revenue by 1-2% in his portfolio. ¶365.

Understating Pass-Through Costs. Sheehan directed a 15% reduction of forecasted pass-through (vendor) costs, where ICON earns zero margin, to boost percentage of completion and prematurely recognize revenue. ¶¶369-75. When FE-18 refused to reduce the pass-through costs, Sheehan directed others to remove them. ¶372. FE-17 also pushed back on Sheehan's requests but saw that the inflated revenue was approved anyway in the Rev system. ¶¶373-75. Sheehan issued "rash" and "aggressive" directives to boost revenues by specific amounts, such as "we need to increase service revenue by 'x' or increase pass-through revenue by 'y,'" driven by the fact that ICON's actual revenue fell increasingly short of its targets through at least July 2024. ¶700.

d. Draft, Unsigned Change Orders

After weekly meetings with Cutler or Brennan, Irish executive Aine McGill conveyed their instructions to prematurely recognize revenue from draft, unsigned change orders in violation of GAAP. ¶¶387-91 (FE-3). The final orders were typically 20-30% smaller than the drafts, resulting in substantial overstatements of revenue. *Id.*

e. ICON's Restatement

On May 27, 2026, ICON restated its 2023 and 2024 financial statements due to admitted "***misstatements***" and "***material errors***." ¶¶410-35. These admitted misstatements were highly material—as Defendants do not dispute. ICON overstated net income by ***10.5%*** (2023) and ***7.1%*** (2024), with quarterly overstatements of up to 77.5%. ¶414. And ICON's revenue overstatements ($65.3 million in 2023 and $92.7 million) were more than double the materiality thresholds set by ICON's former auditor, KPMG. ¶417. Further, the overstatements allowed ICON to beat earnings guidance in 2023 and the first half of 2024. Absent the manipulation, ICON missed consensus expectations for revenue, adjusted EBITDA, and adjusted EPS for ***every quarter*** during that period. ¶¶418-20. ICON also admitted multiple "material weaknesses" in its internal controls over financial reporting and that its disclosure controls were "not effective." ¶¶436-47.

2. Defendants Lied about ICON's RFPs

ICON's business depends on securing a continuous stream of new clinical trials—a process that starts with RFPs from trial sponsors. Thus, RFPs are a key indicator of ICON's performance and demand for its services that is closely tracked by analysts. *See, e.g.*, ¶¶130, 206.

During the Class Period, Defendants stated that ICON's RFPs had increased. Cutler touted RFP "growth in the high single digits on a trailing 12-month basis" (10/26/23); Brennan claimed there was a "significant kind of uptick" in RFPs from "biotech customers" that "persisted" into 3Q and 4Q23 (11/14/23); and Cutler asserted a "mid-single digits" RFP increase "in the biotech space" (2/22/24). ¶¶479, 483, 488. These statements were false: ICON's RFPs in fact decreased.

During 2023, Cutler received internal emails near the end of each quarter stating that ICON's RFPs were declining across the board. ¶¶145-47 (FE-7). These emails—"calls to action" that urged employees' full attention to each RFP given their diminishing number—usually came from the head of sales, consistently copied Cutler and CCO McMillan, and sometimes came from Cutler or McMillan themselves. ¶¶146-47. ICON's biotech RFPs in particular declined about 40% (about 6% per quarter) from the start of 2023 through fall 2024. ¶139 (FE-1). Brennan, Balfe, McMillan, and sometimes Cutler attended quarterly meetings where ICON's declining biotech RFPs were presented. ¶144 (FE-1). ICON also held weekly meetings to review reports on open and closed RFPs from ICON's Salesforce tracking system. ¶¶141-43 (FE-1, FE-15).

Defendants' RFP statements also misleadingly concealed that many of ICON's RFPs were fake or duplicative and never resulted in awards. First, up to ***40%*** of ICON's RFPs were issued only for price discovery. ¶¶149-51 (FE-7, FE-2). Second, many RFPs were duplicative because multiple sponsors competed to conduct one study using the same BARDA funding. As a result, in 2023 and 2024, ICON's RFP volume for BARDA-funded studies, including several studies worth $30 to $50 million, was several times higher than the maximum possible award. ¶152 (FE-1).

3. Defendants Lied about ICON's Large Pharma Customers

ICON's business depended heavily on its key large pharma customers, which comprised over half of ICON's revenues. ¶¶94-96. ICON's largest customer, Pfizer, generated 8.8% of revenues ($683 million) in 2022. ¶96. Cutler was central to the Pfizer relationship: he was Pfizer's "executive sponsor" at ICON and often met with Pfizer executives at ICON's headquarters. ¶¶97-99 (FE-1, FE-11). In October 2023, however, Pfizer announced a major cost-cutting program—including cuts of $3.5 billion—posing an existential threat to ICON's business. ¶¶195-96.

Publicly, Defendants denied any serious issues. When analysts asked whether customers' cuts had affected ICON, Defendants insisted that "[n]othing has changed" (4/25/24), ICON had retained "all of the alliances we had before, many of them expanded" (5/30/24), and there had been "[n]o material . . . changes" in the business (9/10/24). ¶¶495, 501, 506.

These claims were all false. Defendants knew Pfizer and other large customers had dramatically decreased their business by cutting ICON out of lucrative studies and switching their remaining work to a less-profitable FSP model, slashing ICON's margins by 35%. ¶215.

In fall 2023, Pfizer asked ICON to perform a "mock bid defense" for Pfizer to decide how to allocate its CRO business. ¶¶160-61 (FE-1, FE-2). Cutler personally approved ICON's "pitch" to Pfizer, but before Christmas 2023, Pfizer informed ICON that it would award 85% of its largest and most lucrative Phase 2 and 3 studies—and all of its Phase 1 studies—to ICON's competitors. ¶162 (FE-2). Pfizer also stopped awarding ICON any new full-service work, and by early 2024, ICON's win rate with Pfizer dropped to near zero. ¶¶163-65 (FE-1, FE-2).

Further, in late 2023 and early 2024, Pfizer, BMS, and a third large pharma customer—comprising 18% of ICON's total revenue—all switched their ICON work from FSO-model to FSP-model for both new studies and existing awards. ¶¶212-16. By January 2024, Pfizer advised ICON it was moving to FSP to reduce costs; Cutler approved ICON's internal announcement of

the change and headed a special Pfizer "liaison team" to manage ICON's transition to FSP. ¶¶213-14, 638(ix) (FE-2). The three customers' shift to FSP slashed ICON's profit margins by up to ***$500 million***—from 40%-50% for FSO to around 15% for FSP. ¶¶215-16 (FE-2, FE-9).

In early 2024, Cutler approved increasing requests from ICON's top 10 customers to reduce budgets, including a $50 million cut for Pfizer. ¶¶168, 217 (FE-2). At an internal town hall in February 2024, Cutler ***admitted that ICON had lost its contract with Pfizer and was no longer a Pfizer preferred partner***. ¶¶236-41 (FE-3). ICON then dissolved its Pfizer Strategic Business Unit ("PSBU"), which had housed thousands of employees. ¶246 (FE-8).

Finally, by mid-2024, one of ICON's largest remaining Pfizer projects—a COVID-flu vaccine study worth at least $60 million—failed its clinical trial. ¶¶270-76. While ICON knew about the failure by early August (¶¶274-75), on September 10, 2024, Cutler falsely claimed that there had been "***[n]o material changes***" to ICON's business. ¶¶285-88.

4. ICON's Inflated Business Wins and Book-to-Bill Ratio

ICON's business wins (the amount of new business ICON purportedly secured each quarter) and book-to-bill ratio (net business wins divided by revenue) indicated whether ICON's business was shrinking or growing. For instance, a book-to-bill ratio of 1.2 means business wins were 120% of revenue, indicating growth. ¶173. While ICON publicly reported book-to-bill ratios of up to 1.27, its actual book-to-bill ratios for 2023 and 2024 were significantly lower. ¶¶175, 182-83, 192. Defendants fraudulently inflated these metrics in three ways:

First, ICON's reported figures included numerous "awards" without signed contracts that were likely to be (and were) canceled. ¶¶177-82 (FE-1, FE-9). These studies without signed contracts were nonetheless marked "awarded" in the Salesforce system. *Id.*

Second, Cutler personally directed employees to book awards at larger dollar amounts than sponsors had approved. ¶¶184-85 (FE-7). ICON used this practice in 2Q23 and 3Q23, and it

boosted ICON's awards by at least $20 to $30 million per quarter. ¶¶186-87 (FE-7).

Third, ICON had an internal policy, initiated by Cutler, of keeping stale or inactive awards in backlog for years—long after customers told ICON that no revenue was forthcoming—until customers served written cancellation notices. ¶¶188-92 (FE-21). As a result, ICON kept $2.9 billion of stale "awards" (without any revenue or other activity) in its backlog for at least two years, which materially overstated ICON's net business wins and book-to-bill ratio. ¶¶191-92.

B. Cutler and Brennan Make Lucrative Insider Sales

During the Class Period, Cutler and Brennan capitalized on ICON's inflated share price to unload 22.7% and 98.6% of their respective holdings and reap ***$29.6 million*** in profits. ¶¶607-23.

ARGUMENT

The Court must "accept all factual allegations in the complaint as true." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). Under the PSLRA and Rule 9(b), courts must "be careful not to mistake heightened pleading standards for impossible ones." *In re Synchrony Fin. Sec. Litig.*, 988 F.3d 157, 161 (2d Cir. 2021).[2]

I. THE SAC ESTABLISHES A STRONG INFERENCE OF SCIENTER

In assessing scienter, the question is "whether *all* of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard." *Tellabs*, 551 U.S. at 322 (emphasis in original). The inference "need not be irrefutable, *i.e.*, of the 'smoking-gun' genre, or even the most plausible of competing inferences" and need only be "cogent and at least as compelling as any opposing inference." *Id.* at 324. Scienter requires (1) "motive and opportunity to commit fraud," ***or*** (2) "strong circumstantial

[2] Defendants improperly submitted three exhibits not referenced in the SAC. Dkts. 91-1, 91-2, and 91-3. These exhibits cannot be considered on a motion to dismiss. *U.S. v. AECOM*, 19 F.4th 85, 107 (2d Cir. 2021). Further, the Court cannot consider any of Defendants' exhibits "for the truth of the matters asserted." *Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007).

evidence of conscious misbehavior or recklessness." *Novak v. Kasaks*, 216 F.3d 300, 307 (2d Cir. 2000). Plaintiffs allege both. Cutler, Brennan and other insiders were motivated to commit fraud so they could unload stock for over $79 million in profits. To enable these lucrative insider sales, Defendants directed fraudulent revenue recognition to cover up ICON's mounting customer losses.

A. Motive and Opportunity

Motive exists where "insiders misrepresent material facts to keep the price of stock high while selling their own shares at a profit." *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 74 (2d Cir. 2001). "Personal financial gain may weigh heavily in favor of a scienter inference." *Tellabs*, 551 U.S. at 325. Here, Plaintiffs plead a powerful motive because Cutler and Brennan sold 22.7% and 98.6% of their shares—for $29.6 million in profits—while directing ICON's false financial statements and lying about RFPs and customer losses. ¶¶56, 607-23.

These large insider sales are unusual and suspicious under all seven of the relevant factors:

> (1) the amount of net profits realized from the sales; (2) the percentages of holdings sold; (3) the change in volume of insider defendant's sales; (4) the number of insider defendants selling; (5) whether sales occurred soon after statements defendants are alleged to have known were misleading; (6) whether sales occurred shortly before corrective disclosures or materialization of the alleged risk; and (7) whether sales were made pursuant to trading plans such as Rule 10b5-1 plans.

Zornberg v. NAPCO Sec. Techs., Inc., 778 F. Supp. 3d 516, 526 (E.D.N.Y. 2025).

Five Undisputed Factors Demonstrate Motive. Defendants ***do not dispute*** five factors indicating unusual insider sales: Cutler and Brennan realized large net profits of $14.5 million and $15.1 million (**factor 1**) (¶610); their Class Period sales deviated significantly from their normal practices (**factor 3**) (¶¶612-14); two Individual Defendants sold stock (**factor 4**); Cutler and Brennan reaped $6.5 million and $10.4 million from sales shortly after misstatements (**factor 5**) (¶617); and there was no Rule 10b5-1 plan (**factor 7**) (¶619). These factors establish motive, since "consistent with the teachings of *Tellabs*," not every factor is needed to find that "Plaintiffs'

allegations of motive, taken collectively, tip the scale in their favor." *Gimpel v. The Hain Celestial Grp., Inc.*, 156 F.4th 121, 144-45 (2d Cir. 2025) (finding motive from timing and volume alone).

The Remaining Factors Support Motive. Defendants only dispute (1) the proximity of Cutler's sales to the corrective disclosures; (2) Cutler's sale percentage and prices; and (3) the impact of Brennan's resignation. These ancillary arguments—though unnecessary to reach—fail.

First, Defendants argue that Cutler's sales through March 2024 were too long before ICON's October 2024 disclosure of disastrous 3Q24 results and reduced guidance, which were driven by customer losses and the partial collapse of Defendants' accounting fraud. ¶¶756-60.

Defendants are wrong. The Second Circuit has explicitly refused to "impos[e] a brightline rule that securities-fraud plaintiffs *must* allege that sales took place in the final 100 days of a class period" to support motive. *Hain*, 156 F.4th at 145 (emphasis in original); *see, e.g.*, *Zornberg*, 778 F. Supp. 3d at 527 (sales "nine and six months before the corrective disclosure" supported scienter). That makes sense: the passage of time before a stock drop doesn't erase ill-gotten gains.

Defendants also ignore that ***all*** of Cutler's sales occurred while ICON reported inflated quarterly financial results (¶¶56, 615), strongly supporting scienter for Defendants' financial misstatements. It is no defense that ICON waited 19 months—after Plaintiffs' prior complaint forced their hand—to investigate the GAAP violations. And ***all*** of Cutler's sales occurred at increasing prices, demonstrating that Cutler sought to maximize his profits from the fraud. Cutler made his last—and largest—sale on March 6, 2024, at $335.98 per share, ICON's ***all-time peak price at the time***. ¶616. This sale (which reaped 35.8% of Cutler's total profits) occurred days after (1) the February 2024 town hall where Cutler admitted that ICON had lost the Pfizer contract and missed its financial targets and (2) February 21-23, 2024, when Cutler falsely denied "any further concerns" and affirmed guidance, while ICON reported false 2023 financial results. ¶¶223-41; *see*

Zornberg, 778 F. Supp. 3d at 526 (sales "within days" of false statements were unusual).

Tellingly, Defendants make no mention of *Hain*—which is controlling—and solely cite pre-*Hain* cases. Br. 8. None hinged on the proximity of sales to corrective disclosures. For example, in *Woolgar v. Kingstone Co., Inc.*, 477 F. Supp. 3d 193, 235-36 (S.D.N.Y. 2020), the complaint was "silent" as to sale percentages and volume changes, and all sales were "pursuant to a Rule 10b5-1" plan. In *In re Take–Two Interactive Sec. Litig.*, 551 F. Supp. 2d 247, 278 (S.D.N.Y. 2008), plaintiffs failed to allege profits or unusual volume. No such gaps exist here.

Defendants' argument that Cutler sold some shares at prices below ICON's Class Period high also fails. "The fact that [Cutler] failed to maximize his profits by perfectly timing his stock sales does nothing to undercut" scienter. *Carpenters Pension Tr. Fund for N. Cal. v. Allstate Corp.*, 2018 WL 1071442, at *5 (N.D. Ill. Feb. 27, 2018). In any event, Cutler's timing was nearly perfect: ***all*** of his sales occurred at increasing prices, and his final—and largest—sale occurred at ICON's all-time peak price at the time (which was just 3% below the all-time peak). ¶¶608, 616.[3]

Third, Cutler's sale of 22.7% of his total holdings supports scienter. Courts regularly find scienter from similar or lower percentages. *See, e.g.*, *Hutchins v. NBTY, Inc.*, 2012 WL 1078823 at *2, 6 (E.D.N.Y. Mar. 30, 2012) (sales of 9.4%); *In re Initial Pub. Offering Sec. Litig.*, 241 F. Supp. 2d 281, 366-68 (S.D.N.Y. 2008) (sales of 10% sufficiently "unusual"; collecting cases).[4]

Finally, Defendants try to explain away Brennan's sales of 98.6% of his stock by attributing them to his resignation. But Defendants ignore that Brennan sold the majority (52.3%) of his stock

[3] These facts are starkly different from *Turner v. MagicJack VocalTec, Ltd.*, 2014 WL 406917, at *10 (S.D.N.Y. Feb. 3, 2014), where the ***only*** sale occurred 50% below the class period high.

[4] None of Defendants' cases involved such unusual, discretionary sales by a current officer. *See In re Travelzoo Inc. Sec. Litig.*, 2013 WL 1287342, at *10 (S.D.N.Y. Mar. 29, 2013) (outside director sold); *In re Henry Schein, Inc. Sec. Litig.*, 2019 WL 8638851, at *20 (E.D.N.Y. Sep. 27, 2019) ($26 million sale before, and $37 million sale during, class period).

before his April 2024 resignation announcement. ¶611. Standing alone, selling 52.3% of shares is highly unusual and establishes motive.

Further, Brennan's sales were calculated to maximize his own profits: ***all*** occurred while ICON reported inflated financials (¶615), the majority occurred at well over $300 per share (¶616), and Brennan rushed to finish selling by July 29, 2024 (¶269)—three months before his departure—when the accounting fraud peaked. Specifically, on July 25, 2024, ICON reported false quarterly results for 2Q24, including net income that was admittedly overstated by ***77.5%***; Brennan sold just two business days later, reaping $5.2 million in net profits. ¶617. By exiting near peak prices, Brennan avoided large losses when ICON's share price declined 21% in October 2024. ¶465. Defendants' cited cases are inapposite because they involved executives who sold shares "at the time [they] resigned," *Feasby v. Industri-Matematik Int'l Corp.*, 2000 WL 977673, at *4 n.5 (S.D.N.Y. July 17, 2000), or other factors absent here.[5]

Performance Compensation Supports Motive. Further supporting motive, Cutler and Brennan received nearly $2 million in performance stock units ("PSUs")—***116% and 55%*** of their respective salaries—by inflating ICON's earnings per share (EPS). ¶¶624-26. As the Second Circuit has confirmed, this Court may find "motive to commit fraud" because the PSUs "they received were tied to the very metrics [ICON] admittedly overstated." *Hain*, 156 F.4th at 145. Here, Plaintiffs allege a "direct link," *id.* at 146 n.17, because the PSU awards were tied to ICON's EPS (¶625), which was admittedly overstated by 5.8% in 2023. ¶414. *See Dentsply*, 732 F. Supp. 3d at 318 (scienter where inflated earnings "just barely hit the thresholds necessary for bonuses").

[5] In *In re Lululemon Sec. Litig.*, 14 F. Supp. 3d 553, 586 (S.D.N.Y. 2014), a CEO sold pursuant to her "established practice" and sold only 26% of shares before her resignation was announced. No. 13-cv-4596-KBF, Dkt. 43 (S.D.N.Y. Jan. 15, 2014). In *In re Avon Prods., Inc. Sec. Litig.*, 2009 WL 848017, at *21 (S.D.N.Y. Feb. 23, 2009), the defendant gifted his shares to his wife.

Additional Insider Sales Support Motive. Three non-defendant insiders—one of whom was responsible for reporting "ethics concerns" to the Board—reaped ***over $50 million*** from insider sales during the Class Period. ¶¶408, 629-35. These massive sales were far from "modest." Br. 11. Contrary to Defendants' single, unpublished citation, the Second Circuit has long recognized that motive is bolstered where, as here, non-defendant "insiders unload[]" stock. *Stevelman v. Alias Research Inc.*, 174 F.3d 79, 85 (2d Cir. 1999); *see also Van Dongen v. CNinsure Inc.*, 951 F. Supp. 2d 457, 475 (S.D.N.Y. 2013) (crediting sales by insiders "not named as defendants"). And these sales were highly unusual: the three insiders sold ***15 times*** more shares during the Class Period than the Control Period, and two dumped 46% of their shares. ¶¶630-34.

Defendants Were Motivated to Beat Analyst Estimates. Further supporting motive, ICON's admitted financial misstatements drove ***every*** revenue, adjusted EBITDA, and adjusted EPS "beat" during 2023 and the first half of 2024—the period of Cutler and Brennan's sales. ¶¶418-20, 615. Courts regularly find scienter where, as here, the fraud was "deemed critical to meet Wall Street financial benchmarks[.]" *Hain*, 156 F.4th at 149; *Fresno Cnty. Emps' Ret. Ass'n v. comScore, Inc.*, 268 F. Supp. 3d 526, 552 (S.D.N.Y. 2017) (scienter pled when "fictitious" financials allowed company "to meet analyst and market expectations").[6]

When "all the allegations" are viewed "holistically," *Tellabs*, 551 U.S. at 326, Plaintiffs plead far more than a generalized corporate motive. Br. 17. Defendants had a specific, powerful motive to maintain ICON's inflated share price, beat analyst estimates for six consecutive quarters, and fuel $79 million in insider sales. These motive allegations plead a strong inference of scienter.

B. Conscious Misbehavior or Recklessness

Plaintiffs also plead conscious misbehavior or recklessness because Defendants "knew

[6] *Kalnit v. Eichler*, 264 F.3d 131, 139 (2d Cir. 2001), does not discuss the desire to beat estimates.

facts or had access to information suggesting that their public statements were not accurate." *Emps.' Ret. Sys. of Gov't of the Virgin Islands v. Blanford*, 794 F.3d 297, 306 (2d Cir. 2015).

1. The Financial Misstatements

The admitted falsity of ICON's financial statements—which were signed and certified by Defendants Cutler, Brennan, Clerkin, and Sheehan—"support[s] a strong inference of scienter." *Hain*, 156 F.4th at 147. ICON's premature revenue recognition is "***especially indicative of conscious misbehavior*** since such violations do not commonly occur inadvertently, but instead suggest a conscious decision to improperly recognize revenue." *In re Veeco Instruments, Inc. Sec. Litig.*, 235 F.R.D. 220, 231-32 (S.D.N.Y. 2006). ICON's admission "that it had material weaknesses in its internal controls" is also "probative of scienter," *Hall v. The Children's Place Retail Stores, Inc.*, 580 F. Supp. 2d 212, 233 (S.D.N.Y. 2008), especially since the material weaknesses include improper "***tone from management***." ¶¶436-42; 720-27.

The totality of circumstances confirms scienter. "[T]he fraud flowed from the top-down," *comScore*, 268 F. Supp. 3d at 552, as Cutler, Brennan, and Sheehan issued top-down directives to boost revenue—consistent with ICON's admission that improper "tone from management" enabled the GAAP violations. ¶¶438, 692-707. Defendants' fraud was fueled by their desire to beat analysts' earnings estimates to fuel Cutler and Brennan's lucrative insider sales—***all*** of which occurred while ICON reported inflated financial results. ¶¶712-14. Indeed, Defendants do not dispute the temporal alignment between ICON's loss of business from key customers, the GAAP violations that temporarily concealed those losses, and Cutler and Brennan's insider sales. And Defendants focused intensely on and touted ICON's inflated EBITDA, EPS, and revenue. ¶713.

Thus, as in *Hain*, inflating ICON's financial results "was a top-down priority, deemed critical to meet Wall Street financial benchmarks, and involving top [ICON] executives," such that "the importance of the [violative] practices to meet financial targets" indicates that Defendants

"monitored these operations closely . . . and knew or should have known information contradicting their public statements." 156 F.4th at 149. "Put simply, it would strain credulity to conclude that [Defendants] were unaware of" the pervasive GAAP violations, *id.*, particularly when those violations allowed ICON to beat analyst expectations for ***six straight quarters***. ¶¶712-14; *see also comScore*, 268 F. Supp. 3d at 547-48 ("The fictitious nonmonetary revenue plausibly allowed comScore to raise revenue guidance and to meet analyst and market expectations.").

In response, Defendants offer no plausible counter-narrative—much less any that is more compelling than the inference of scienter. *Tellabs*, 551 U.S. at 322. Defendants' suggestion that revenue recognition is a "complicated" exercise requiring "judgments" (Br. 1) is no defense because ICON's false financial statements resulted from deliberate manipulation, not mistaken judgments. ¶292. Defendants directed top-down financial manipulation to cover up the actual decline in ICON's business and falsely portray growth. ¶¶289-403, 421, 435. Indeed, ICON's "accounting violations had the near-uniform effect of *increasing* its reported revenue and net income, unlike what one might expect from a random series of innocent mistakes." *In re Akorn, Inc. Sec. Litig.*, 240 F. Supp. 3d 802, 820 (N.D. Ill. 2017) (emphasis in original).

The Court should also reject Defendants' self-serving suggestion that ICON's auditor, KPMG, should have caught their fraud. Br. 11. Having directed the fraudulent accounting, Defendants cannot claim to "have properly relied" on audit opinions (Br. 12). *See SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 865 (S.D.N.Y. 1997) (unqualified audit opinion "does not negate the existence of the requisite intent or establish good faith reliance"); *In re Diamond Foods, Inc., Sec. Litig.*, 2012 WL 6000923, at *8 (N.D. Cal. Nov. 30, 2012) ("unqualified audit opinion does not negate" scienter, as "[s]enior management . . . had an independent duty to ensure compliance with GAAP"). Further, Defendants affirmatively concealed their manipulation from KPMG to avoid

detection. ¶401; *comScore*, 268 F. Supp. 3d at 552 (scienter despite clean audit opinions where defendants "did not disclose information to the auditor to avoid detection"). *Woolgar*, 477 F. Supp. 3d at 229, is inapposite because the company there never restated.

a. The FE Accounts Establish Conscious Misbehavior or Recklessness

The 23 FEs' allegations amply support scienter for Defendants' accounting misstatements. Sixteen FEs (1-4, 7-14, 16, 18, 20, and 22) had direct contact with the Individual Defendants, consistent with *In re Danimer Sci., Inc. Sec. Litig.*, 2023 WL 6385642 (E.D.N.Y. Sept. 30, 2023), and *Eden Alpha CI LLP v. Polished.com Inc.*, 763 F. Supp. 3d 270 (E.D.N.Y. 2025).[7]

To be sure, the fact "[t]hat some of the CWs [confidential witnesses] lacked direct contact with the Individual Defendants does not undermine their evidence." *Chicago Bridge & Iron Co. N.V. Sec. Litig.*, 2018 WL 2382600, at *10 (S.D.N.Y. May 24, 2018); *In re Avon Sec. Litig.*, 2019 WL 6115349 at *21 (S.D.N.Y. Nov. 18, 2019) (rejecting "[t]he notion that the CWs cannot be believed because none had direct contact with any individual Defendant"). "[T]here is no baseline requirement of such contact in order to allege 'sufficient particularity to support the probability that a person in the position occupied by the source would possess the information alleged.'" *Plumbers & Pipefitters Nat. Pension Fund v. Orthofix Int'l N.V.*, 89 F. Supp. 3d 602, 615-16 (S.D.N.Y. 2015) (citing *Novak*, 216 F.3d at 314). Defendants' citation to *Eden Alpha* fails, since the FEs there worked at a different entity and thus were not "in a position to know the facts," 763

[7] *See* ¶¶637(iv, vi) (FE-1) (meetings with Cutler/Brennan/Balfe); 638(vi-vii, ix, xii) (FE-2) (emails/notices from Cutler/meetings with Cutler); 639(ii-iv) (FE-3) (meetings with Cutler; work reviewed by Cutler); 640(ii) (FE-4) (meetings with Sheehan); 643(i-ii) (FE-7) (meetings with Cutler/copied on Cutler emails); 644(ii) (FE-8) (meetings with Cutler/Brennan); 645(i) (FE-9) (calls with Cutler); 646(vii) (FE-10) (meetings with Cutler/Brennan); 647(iii, vi) (FE-11) (meetings/emails with Cutler/Balfe); 648(iii) (FE-12) (Cutler emails); 649(ii) (FE-13) (meetings with Cutler/Brennan/Balfe); 650(i) (FE-14) (Cutler emails); 652(v) (FE-16) (calls with Sheehan); 654(v) (FE-18) (same); 656(vi) (FE-20) (same); 658(ii) (FE-22) (calls with Brennan).

F. Supp. 3d at 297, among other defects. Here, all 23 FEs worked directly for ICON.

Collectively, the FEs detail pervasive fraudulent accounting practices directed and overseen by Defendants. Defendants ***do not dispute*** that these fraudulent practices occurred. Instead, Defendants try to dissect four FEs' statements individually. But all of those FEs identified specific facts that demonstrate Cutler's and Brennan's knowledge or recklessness. Specifically:

FE-3 reported that Aine McGill, VP Client Contract Services, conveyed instructions to recognize revenue from draft, unsigned change orders after ***meeting with Cutler or Brennan***. ¶391. McGill framed her instructions as "the directive is"—*i.e.*, that she was passing on their message—and consulted with Cutler or Brennan again after FE-3 and others provided updates on what they had achieved in accordance with the directive. *Id.* Defendants' assertion that none of this "concerned revenue recognition" (Br. 13) is wrong.

What's more, FE-3 described how Cutler presided over "revenue sweeps" initiated by his direct report, ICON Biotech President Chris Smyth, via emails attaching a spreadsheet identifying the studies where additional revenue could be recognized. ¶¶277-82; *see In re Fairway Grp. Holding Corp. Sec. Litig.*, 2015 WL 249508, at *11, 16 (S.D.N.Y. Jan. 20, 2015) (crediting CW allegation that defendants manipulated financial targets for inference of scienter). The sweeps' artificial nature and size—culminating with an August 2024 demand to recognize ***$100 million in one business day***—were obvious red flags and strongly indicate that Cutler knew, or recklessly disregarded, that ICON was improperly recognizing revenue. ¶¶278-79, 694.

Further, FE-18 similarly described recurring revenue sweeps through July 2024 initiated by Brennan's direct report, Defendant Sheehan, with emails to the ***entire North American finance team*** that described schemes to boost revenue. ¶¶396-400. FE-3's and FE-18's "corroborati[ng]" allegations "support[] an inference of scienter." *Freudenberg v. E*Trade Fin. Corp.*, 712 F. Supp.

2d 171, 197 (S.D.N.Y. 2010). These allegations are not "rumor or conjecture."[8]

FE-4 stated that Sheehan communicated Brennan's directives to hold periods open at month-end or quarter-end. ¶¶299-301. The fact that Sheehan "reported directly to" Brennan underscores that Brennan "pushed for or at least knew of" this obvious GAAP violation. *Dentsply*, 732 F. Supp. 3d at 321. Their direct reporting relationship during the admitted GAAP violations is far different than Defendants' cited case, where a CW merely asserted that the CEO "would have been involved in" sales strategy because he had been "Vice President of Sales." *In re SolarEdge Techs., Inc. Sec. Litig.*, 2024 WL 4979296, at *14 (S.D.N.Y. Dec. 4, 2024).

FE-18 understood that Brennan directed the negative management reserves because he received directions to implement them just after Brennan met with ICON's VPs. ¶¶367, 696; *see Moshell v. Sasol Ltd.*, 481 F. Supp. 3d 280, 290 (S.D.N.Y. 2020) (sustaining scienter where CW attested that information "'would have gone to' the company's Vice President, 'who in turn would have submitted the Change Order to the senior executives'"). And Defendants ignore that Brennan's direct report Sheehan instructed FE-18 to reduce forecasted costs by 15 percent—even though U.S.-based personnel explicitly told Sheehan that was improper (¶372)—underscoring that Brennan "pushed for or at least knew of" the manipulation. *Dentsply*, 732 F. Supp. 3d at 321.

FE-22 participated in a "governance call" where Eli Lilly complained ***directly to Brennan*** about ICON's premature billing (which was $40-60 million for Eli Lilly alone). ¶¶322-24. Contrary to Defendants' assertion, FE-22 offered "specifics" (Br. 14): ICON's premature billing was a major topic of discussion on the call, and Brennan did most of the speaking. ¶323. Brennan

[8] Unlike the specific factual allegations here, *Malin v XL Capital Ltd.*, 499 F. Supp. 2d 117, 140 (D. Conn. 2007), involved "general, unsupported" allegations that the defendants knew of accounting deficiencies simply because the corporation's shoddy accounting was "'well known' in the [reinsurance] industry." The allegations in *In re Citigroup Inc. Sec. Litig.*, 753 F. Supp. 2d 206, 245 (S.D.N.Y. 2010), were merely that Citi "rarely inspected" mortgage applications.

also participated in similar calls with other clients, including Novartis and Vertex, underscoring his knowledge of widespread premature billing. ¶322. Unable to dispute Brennan's personal knowledge of ICON's premature billing, Defendants merely assert that revenue recognition "is not based on billing." Br. 14. That improper factual assertion is wrong. Multiple FEs confirmed that ICON used premature billing to prematurely recognize revenue. *E.g.*, ¶320 (FE-16: ICON prematurely billed two months at once to accelerate one month of revenue); ¶¶317-18 (FE-17: ICON manually updated Rev to pull forward revenue based on premature invoices).

"[V]iewed together"—as they must be—these mutually reinforcing allegations from multiple witnesses strongly indicate that Defendants knew about or recklessly disregarded ICON's false financial reporting. *Freudenberg*, 712 F. Supp. 2d at 197 ("CWs' information must be viewed together.").[9] "Crediting the allegations, it is plausible that [Defendants] were aware that the revenues were artificially inflated, or at the very least consciously or recklessly disregarded the evidence that the revenues were overstated." *comScore*, 268 F. Supp. 3d at 552.

b. Additional Evidence of Scienter

Access to Information. Defendants had direct access to study-specific data showing the manipulation of revenue, costs, margin, budgets, and percentage of completion in ICON's revenue-calculation (or "Rev") system; Excel reports; and Salesforce and Tableau reports that "track[ed] the actual hours and units for each project and calculate[d] overburn" and "flagged each study as 'red,' 'amber' or 'green'" based on performance. ¶¶708-10 (FE-10, FE-19, FE-20). This "access to information" is "sufficient" to allege scienter because "it would be reckless to tell investors about the company's [financials] without first looking at the company's [financial] data."

[9] The complaint in *SolarEdge*, 2024 WL 4979296, lacked the "corroboration from multiple" FEs present here. *Freudenberg*, 712 F. Supp. 2d at 197.

In re CarLotz, Inc. Sec. Litig., 2024 WL 1348749, at *16 (S.D.N.Y. Mar. 29, 2024).[10]

Improper Tone at the Top. Courts "have repeatedly held that improper tone at the top and poor internal controls support an inference of scienter." *Dentsply*, 732 F. Supp. 3d at 321. In *Hain*, 156 F.4th at 148, the Circuit confirmed that allegations of "an inappropriate 'tone at the top,' i.e., a company culture of secrecy and fear, and poor internal controls" support scienter.

Here, ICON admitted that the "tone from management," including failures to enforce "the expected standards of conduct" and "hold individuals accountable for their internal control responsibilities," "***contributed to material accounting errors***." ¶¶438; 720-27.

These admissions strongly support scienter. Defendants' own authority agrees. *See Bos. Ret. Sys. v. Alexion Pharms., Inc.*, 556 F. Supp. 3d 100, 135 (D. Conn. 2021) ("Alexion's admissions that there was a tone-at-the-top material weakness for the company also supports an inference of scienter.").[11] And these admissions are "coupled with allegations" that Defendants knew "or recklessly disregarded" that their actions "created an environment in which fraud was occurring." *Id.* For example, Cutler's demands for recurring revenue sweeps were obvious red flags, as were Brennan's directives to hold the books open and Sheehan's "rash" and "aggressive" instructions to boost revenue by specific amounts and bill clients prematurely. ¶¶694-703.

Unable to dispute ICON's improper tone at the top, Defendants merely argue that ICON's admissions did not explicitly name Cutler and Brennan—but Cutler, Brennan and Sheehan were all members of "management" who set the improper "tone." Indeed, FEs detailed their abusive behavior, which ranged from Cutler bullying personnel to tears and lying to customers to Sheehan

[10] None of Defendants' cases involved such specific allegations. *See, e.g.*, *Foley v. Transocean Ltd.*, 861 F. Supp. 2d 197, 213 (S.D.N.Y. 2012) (merely "list[ing] several internal databases").

[11] Defendants' out-of-Circuit citations are irrelevant. *Alaska Elec. Pension Fund v. Asar*, 768 F. App'x 175 (5th Cir. 2019); *In re Hertz Glob. Holdings Inc.*, 905 F.3d 106 (3d Cir. 2018).

swearing on billing calls. ¶¶321, 720-27. Such behavior exemplifies a "culture of secrecy and fear" that supports scienter. *Hain*, 156 F.4th at 148.

The Fraud's Magnitude. "[T]he size of the purported fraud may contribute to an inference of scienter." *comScore*, 268 F. Supp. 3d at 553 (collecting cases). Contrary to Defendants' mischaracterizations, ICON's restatement was "sizable." It corrected admittedly "***material errors***," erased ***$158 million*** in fraudulently recognized revenue (including $65.3 million in 2023 and $92.7 million in 2024), far exceeding KPMG's materiality thresholds, and reversed overstatements of net income by ***$58.1 million or 10.5%*** (2023) and ***$52.3 million or 7.1%*** (2024). ¶¶410-14. "The total *size* of this alleged fraud is comparable to other cases in which" the Second Circuit has "credited scienter allegations." *Hain*, 156 F.4th at 148 (restatement of net sales by approximately 2%, or $167 million over almost three years, contributed to scienter) (emphasis in original); *see also Scholastic*, 252 F.3d at 77 ($24 million in charges "undermines . . . the argument that the defendants were unaware").[12]

False SOX Certifications. Cutler, Brennan, and Clerkin certified that (1) ICON's financial statements were accurate and complied with GAAP, and (2) ICON had "effective" internal controls, which they designed and evaluated. ¶¶715-17. Both were false: ICON has admitted that (1) its financial statements contained "misstatements" and "material errors," and (2) its internal controls had "material weaknesses," including "tone from management" and management's failure to ensure "effective internal controls to prevent material errors to revenue." ¶¶412, 436-47.

Defendants' admission that they "failed to maintain sufficient internal controls" is "sufficiently indicative of scienter." *In re Insys Therapeutics, Inc. Sec. Litig.*, 2018 WL 2943746,

[12] Defendants assert that "even larger restatements" do not support scienter, but *In re Turquoise Hill Res. Ltd. Sec. Litig.*, 2014 WL 7176187, at *7 (S.D.N.Y. Dec. 16, 2014), did not involve insider sales—much less by the CEO and CFO who certified the false financial statements, as here.

at *6 (S.D.N.Y. June 12, 2018) (collecting cases); *see also Dentsply*, 732 F. Supp. 3d at 320 (falsity of SOX certifications "adds to the total mix of information" supporting scienter). Indeed, Defendants could not have evaluated ICON's controls ***without*** discovering the admitted "material weaknesses." As a result, the certifications support scienter, and Defendants' challenge to their falsity likewise fails. None of Defendants' cited cases involved a restatement with admissions of false financial statements and material controls weaknesses, as here.

Defendants' Final Misstatements. After ICON's Audit Committee began to investigate ICON's "accounting practices and controls"—and six weeks after Plaintiffs' prior complaint challenged ICON's accounting and controls—Defendants falsely assured analysts that ICON "has strong internal controls in place." ¶¶718-19. These final misstatements support scienter, particularly since ICON admitted only a few months later that it expected to report "material weaknesses" in controls. ¶719; *see In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.*, 763 F. Supp. 2d 423, 517 (S.D.N.Y. 2011) (temporal proximity supports scienter).

Defendants' improper factual assertion that "ICON promptly launched an investigation" ignores that the fraud had festered for years—yet Defendants only began to investigate ***after*** Plaintiffs challenged ICON's accounting and controls in their prior complaint. Dkt. 47. And if Defendants somehow ***were*** unsure what the investigation would uncover, prematurely touting ICON's "strong internal controls" was at minimum reckless.[13] ICON essentially "called a press conference before completing the steps necessary to determine just what had happened"—a scenario that, even under Defendants' own authority, "might more plausibly" indicate that they had "deceiv[ed] investors." *Higginbotham v. Baxter Int'l Inc.*, 495 F.3d 753, 761 (7th Cir. 2007).

[13] Contrary to Defendants' footnoted suggestion (Br. 18 n.12), their false factual assertion that "[a]s a public company, ICLR has strong internal controls in place" was not an opinion.

Executive Departures. "[T]he timing and circumstances of individual defendants' resignations may add some further weight to an overall inference of scienter." *Orthofix*, 89 F. Supp. 3d at 619. Brennan's 2024 resignation was suspicious given ICON's extensive financial manipulation during his tenure. ¶¶740-42. Cutler abruptly "retired" just before the Audit Committee began to investigate, then resigned from ICON's Board just ***six days*** before ICON restated in May 2026. ¶¶412, 744. Similarly, as the investigation concluded, Sheehan was terminated as a director of three ICON subsidiaries in April 2026. ¶745. Notably, Defendants—who call Sheehan a "former" employee (Br. 2)—***do not dispute*** that Sheehan's departure was related to his misconduct and the conclusion of the Audit Committee investigation, as alleged.

These suspicious departures support scienter. *See Hain*, 156 F.4th at 149-50 (CFO resignation upon restatement offered "supplemental, circumstantial support for" scienter); *Dentsply*, 732 F. Supp. 3d at 321-22 (departures during internal investigation that led to restatement supported scienter); *comScore*, 268 F. Supp. 3d at 553 (executive departure "toward the conclusion of the Audit Committee investigation" supported scienter).

KPMG, ICON's auditor since 1990, was also terminated amidst Defendants' financial manipulation in 2024. ¶743. Defendants' purported explanation (Br. 49-50) is improperly based on extrinsic documents and cannot be considered. *AECOM*, 19 F.4th at 107.

2. The Remaining Misstatements

a. The FE Allegations Establish Recklessness

The FEs described specific emails, reports, and meetings where the Individual Defendants learned facts that contradicted their public statements—including that ICON's RFPs continuously declined and its largest customer relationships had collapsed.

Declining RFPs. FE-7 saw that Cutler ***personally received—and sometimes sent***—emails toward the end of each quarter in 2023 stating that ICON's RFPs were declining across the board.

¶643(ii). Defendants cannot dispute that Cutler received and sent these emails, which directly contradict his public statements that RFPs increased each quarter. *E.g.*, ¶¶476-79, 481-82, 486-87. Plaintiffs identify the emails' authors (Cutler and ICON's head of sales), "how frequently [they] were prepared" (quarterly), and "who reviewed them" (Cutler). *Scholastic*, 252 F.3d at 73. And the fact that "analysts often inquired" about RFPs "reinforces the inference of scienter" by confirming that Cutler was "alert to information concerning" any decline. *New Orleans Emps. Ret. Sys. v. Celestica, Inc.,* 455 F. Appx. 10, 14 (2d Cir. 2011); *see, e.g.*, ¶¶136, 206.

Biotech. Brennan, Balfe, and sometimes Cutler attended quarterly meetings with FE-1 where ICON's declining biotech RFPs were presented. ¶144. Brennan and Balfe used a Company-wide Salesforce dashboard to present biotech cancellations, which increased every quarter from mid-2023 through September 2024. ¶155. Cutler received the cancellation data and attended an April 2024 sales meeting with FE-1 where the cancellations were discussed. ¶154-55. FE-3 attended a February 2024 town hall where Cutler stated that ICON's biotech win rate had declined. ¶257. These events, "where the problems at issue were directly discussed with Defendants, evidence scienter." *Freudenberg*, 712 F. Supp. 2d at 198. Defendants also had access to ICON's RFPs, cancellations, and award values through ICON's Salesforce database and reports. ¶¶637(v), 651(iv); *see Chicago Bridge*, 2018 WL 2382600 at *10 ("information made available to senior executives via the Sharepoint system" established scienter).

Loss of Large Pharma Customers. "[C]orroboration from multiple" FEs confirms that Defendants knew about Pfizer's material cuts and the three customers' shift to FSP when they concealed these facts from investors. *Freudenberg*, 712 F. Supp. 2d at 197. For example:

- Cutler approved ICON's 2023 "pitch" to keep Pfizer's business but learned that Pfizer had cut ICON out of 85% of its Phase 2 and 3 studies and all Phase 1 studies. ¶638(vii) (FE-2).
- By early 2024, Pfizer, BMS, and a third large customer advised ICON that they were

moving to a less-profitable FSP model to reduce costs; Cutler personally signed ICON's internal announcement of Pfizer's shift, headed ICON's Pfizer "liaison team" to manage the transition, and met with Pfizer to work out the details. ¶638(v), (viii)-(ix) (FE-2).

- FE-2 saw emails where Cutler approved increasing requests from top 10 customers to reduce ICON's budgets in early 2024, including a $50 million cut for Pfizer. ¶638(vi).

- ICON's loss of Pfizer business was so significant that in February 2024, Cutler admitted at a Company-wide town hall—which FE-3 attended—that ICON had ***lost*** the Pfizer contract and was no longer a preferred partner of Pfizer. ¶639(iii).

- By March 2024, FE-8 saw ICON employees question Cutler and Brennan about ICON's significant layoffs, including from the PSBU, at Zoom town halls.[14] ¶644(ii).

These facts establish scienter because Cutler knew that ICON's customers ***had*** conveyed "further concerns" and there ***had*** been "material changes" (¶¶487, 504), while Brennan knew that customers were ***not*** "all saying that they're going to increase spending." ¶491. *See In re Nortel Networks Corp. Sec. Litig.*, 238 F. Supp. 2d 613, 631 (S.D.N.Y. 2003) (scienter pled where "major clients" informed "senior management . . . that orders in 2001 would be significantly reduced").

Defendants also had "access to non-public information contradicting their public statements." *Scholastic*, 252 F.3d at 76. Cutler personally met with Pfizer executives (¶680 (FE-1)), and with Balfe and FE-11, Cutler attended multi-day QBR meetings focused on large pharma customers, including Pfizer, where they reviewed presentations with revenue and margins, the status of key accounts and contracts, and a "Risk Factors" slide that flagged material threats, like termination. ¶¶675-77, 705. FE-11 confirmed that large customers' significant headcount reductions would be flagged in QBR presentations months in advance. ¶677.[15]

[14] Defendants' claim that Cutler and Brennan's knowledge of layoffs "in no way supports scienter" (Br. 45) ignores that the layoffs tie directly to the PSBU closure and lack of Pfizer work. ¶644(ii).

[15] While FE-11 left ICON before the Class Period, "activity in one period can support an inference of similar circumstances in a subsequent period." *Blanford*, 794 F.3d at 307. FE-11's account supports the inference that Cutler and Balfe continued to receive QBR presentations during the Class Period and thus knew about the material cuts by ICON's largest customers, including Pfizer.

FE-2 confirmed that Cutler, Brennan and Balfe reviewed revenue and margins in monthly VP and "end gate" meetings. ¶¶678-79. Cutler admitted that "we track our margins" (¶683), confirming he "had access to—and reviewed—such information" as the large customers' shift to FSP lowered ICON's margins by up to 35%. *Dentsply*, 732 F. Supp. 3d at 320. And Balfe's role as President of Pharma Development Solutions focused on partnerships with large customers. ¶¶83, 265. These facts further confirm scienter.

Inflated Book-to-Bill Ratio. FE-7 was copied on Cutler's emails—and sometimes ***stood in Cutler's office***—when Cutler personally directed ICON employees to book awards at larger dollar amounts than sponsors had approved, inflating awards by at least ***$20-30 million per quarter*** just for the subset of awards that FE-7 personally observed. ¶¶184-87. Cutler also personally initiated ICON's policy of keeping canceled "awards" in backlog for years after being informed by customers that no revenue was forthcoming. ¶¶189-90 (FE-21).

b. Additional Evidence of Scienter

Defendants' Admissions. In October 2024, ICON admitted that its two largest customers shifting business to competitors was "not a new development" and "***did not come as a surprise*** to ICON," and Brennan admitted that ICON had "certainly ***anticipated a decline [in] revenues***" from full-service work. ¶¶662-63. In November 2024, Cutler admitted that ICON's business with one of these customers "had been falling over the last 12, 24 months" and that "around 20% to 30% of the RFP dollars that we put out don't come to a decision" (*i.e.*, are not awarded). ¶¶663-64.

These admissions that Defendants had long known about ICON's declining business contradict their public statements and further evidence scienter. *In re Vivendi Universal, S.A.*, 381 F. Supp. 2d 158, 181 (S.D.N.Y. 2003) (post-corrective disclosure admissions indicated scienter). Defendants' improper factual assertion that ICON had expected an "increase in FSP work" (Br. 46) cannot be considered at this stage, *IWA Forest Indus. Pension Plan v. Textron Inc.*, 14 F.4th 141,

146-47 (2d Cir. 2021), and fails. First, ICON "had no factual basis" to expect more FSP business because: (1) large customers' business had long declined; (2) "80%" of ICON's business admittedly "is already decided" a year in advance; (3) growth would require all three large customers shifting their business to FSP to immediately triple their revenue; and (4) ramping up a new study can take over a year. ¶¶456-57. These facts left no basis to assume hockey-stick growth. Second, Defendants only revealed their purported expectation ***after*** the fraud started to collapse. Before October 2024, Defendants never told investors that ICON merely hoped to counter material losses with more FSP work. Instead, they falsely assured that "[n]othing has changed." ¶495.

Statements Indicating Knowledge. Defendants also made specific statements about ICON's purported RFP growth (¶690), book-to-bill ratio (¶¶482, 515-31), and "large pharma preferred partnerships." ¶501. Cutler touted his "close contact" with customers and role in "strategic partnership" meetings. ¶¶686-89. "[T]he specificity of [such] statements" is "strong circumstantial evidence that [Defendants] were receiving some form of specific information" on these topics. *In re Virtu Fin., Inc. Sec. Litig.*, 770 F. Supp. 3d 482, 522 (E.D.N.Y. 2025). They either had "access to information or were recklessly indifferent to the truth or falsity of their statements." *Avon*, 2019 WL 6115349, at *20.

Core Operations. "Bolstering the scienter inference is that the alleged fraud touched on large swaths of [ICON's] business and areas of critical import to [ICON's] executives, who we may infer are likely to know more about things central to their business." *Hain*, 156 F.4th at 148. ICON derived over 95% of its revenue from clinical trial services, and its top 10 customers comprised 41% of 2023 revenue. ¶¶728-32; *see Okla. Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc.*, 367 F. Supp. 3d 16, 37-38 (S.D.N.Y. 2019) (scienter inference "buttressed" where segment generated 35% of revenues). Defendants cannot avoid the core operations doctrine by

focusing narrowly on Pfizer (Br. 48) since they made interrelated misstatements about ICON's ***full*** clinical trial business. *E.g.*, ¶¶486, 491-92, 501.

Temporal Proximity. Cutler assured investors on September 10, 2024 that there were "no material changes" in ICON's business and "nothing['s] fundamentally changed[.]" ¶734. The next month, ICON revealed a $100 million "revenue shortfall" for 3Q24 and cut 2024 guidance by $220 million. ¶735. That sudden reversal supports scienter. ¶736. Cutler's purported caution about "the balance of Q3" (Br. 48) only strengthens the inference, since Cutler knew the risks had already materialized. *See In re Synchrony Fin. Sec. Litig.*, 2022 WL 427499, at *9 (D. Conn. Feb. 11, 2022). And any purported "cautions" were inadequate: analysts called ICON's disastrous October results a "***major surprise***," stating that "***the market was not expecting***" them, "especially after" ICON "reiterated guidance" on September 10. ¶738.

C. ICON's Corporate Scienter Is Imputed from Cutler, Brennan, and Sheehan

ICON's corporate scienter is imputed from the scienter of Cutler, Brennan, and Sheehan. Courts "readily attribute[] the scienter of management-level employees to corporate defendants." *In re Marsh & Mclennan Cos., Inc. Sec. Litig.*, 501 F. Supp. 2d 452, 481-82 (S.D.N.Y. 2006). Defendants do not dispute that Sheehan's scienter is adequately alleged. Nor could they: as SVP of Finance, Sheehan reported directly to Brennan (¶85), personally directed fraudulent accounting (¶¶599-604), and was terminated as the Audit Committee investigation concluded (¶745).

Sheehan's scienter is imputed to ICON because he made and disseminated misstatements. Sheehan personally signed the April 2024 Registration Statement that included misstatements from ICON's admittedly false FY23 Form 20-F and 1Q24 Form 6-K. ¶¶570-71. Defendants note that Sheehan signed on behalf of ICON's subsidiaries, and that it "incorporates by reference" ICON's false SEC filings (Br. 20), but neither changes the fact that Sheehan made the misstatements. "[C]ourts consistently hold that signatories of misleading documents 'made' the statements"

therein, *In re Smith Barney Transfer Agent Litig.*, 884 F. Supp. 2d 152, 163 (S.D.N.Y. 2012) (sustaining claims against officer of non-party), and incorporated misstatements are actionable. *In re Ambac Fin. Grp., Inc. Sec. Litig.*, 693 F. Supp. 2d 241, 259, 270 (S.D.N.Y. 2010) (sustaining misstatements in "documents incorporated by reference"). Moreover, Defendants' suggestion that Sheehan had no "role in making" ICON's false financial statements is simply wrong. Sheehan personally directed multiple GAAP violations that infected those financials. ¶¶599-604, 697-704.

Sheehan also disseminated the misstatements. As Defendants concede, "[t]he scienter of the other officers or directors who were involved in the dissemination of the fraud may also be imputed to the corporation, even if they themselves were not the actual speaker," where there is "connective tissue between those employees and the alleged misstatements." *Jackson v. Abernathy*, 960 F.3d 94, 98-99 (2d Cir. 2020). Here, there is ample "connective tissue" because Sheehan (1) personally directed GAAP violations, (2) knew the resulting false financial statements were filed with the SEC, and (3) disseminated them to investors by signing the Registration Statement. ¶¶599-604; 697-704.[16]

II. PLAINTIFFS PLEAD LOSS CAUSATION

"[T]here is no heightened pleading standard" for loss causation. *Hain*, 156 F.4th at 151. Plaintiffs need only satisfy Rule 8 and allege "some indication of the loss and the causal connection" to the statements. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005). Loss causation is satisfied by alleging that "the subject of the fraudulent statement or omission was the cause of the actual loss suffered." *In re Vivendi Universal, S.A. Sec. Litig.*, 838 F.3d 223, 261 (2d

[16] Defendants' citations are inapposite. In *Jackson*, 960 F.3d at 99, low-level employees "did not themselves possess scienter" because they took steps "to raise concern about the [product at issue's] testing failures." In *Silvercreek Mgmt., Inc. v. Citigroup, Inc.*, 248 F. Supp. 3d 428, 440 (S.D.N.Y. 2017), the employees who made the misstatements were not "involved in or even aware of the deceptive" conduct. And unlike in *SolarEdge*, 2024 WL 4979296, at *15, Sheehan "made the challenged statements" ***and*** was "involved in" their "dissemination."

Cir. 2016). The truth may emerge "through events constructively disclosing the fraud," regardless of whether they "exposed" its "precise extent." *Id.* at 262. Plaintiffs amply meet these standards.

October 23-24, 2024. On October 23, 2024, ICON announced disastrous 3Q24 results—including a $100 million "revenue shortfall" and a $220 million reduction in 2024 revenue guidance—despite reiterating guidance the prior month. ¶¶756-62. Cutler cited "lower than anticipated revenue contribution from ***two of our largest customers***," reduced biotech activity, and "vaccine related cancellations"—facts long known to Defendants. *Id.* In response, ICON's stock plunged 21%. ¶761. Plaintiffs squarely allege that "the subject of" the misstatements, including a contracting customer base and increased cancellations, caused ICON's stock drop and began to "constructively disclos[e] the fraud." *Vivendi*, 838 F.3d at 261-62.

Courts have found loss causation from similar earnings misses driven by the concealed truth. *See, e.g.*, *Dentsply*, 732 F. Supp. 3d at 324 (courts "permit[] earnings reports to serve as loss-causing events"); *Haw. Structural Ironworkers Pension Tr. Fund v. AMC Ent. Holdings, Inc.*, 422 F. Supp. 3d 821, 854-55 (S.D.N.Y. 2019) (same); *In re Signet Jewelers Ltd. Sec. Litig.*, 2018 WL 6167889, at *16 (S.D.N.Y. Nov. 26, 2018) (loss causation from "earnings misses accompanied by other disclosures"); *see also Jastram v. NextEra Energy, Inc.*, 161 F.4th 693, 710 n.10 (11th Cir. 2025) ("At oral argument in *Dura*, Justice Breyer commented that the truth 'might come out in many different ways,' [including when it] 'oozes out as earnings reports come in.'"). Defendants cite no contrary authority, and their arguments fail.

First, Defendants wrongly insist that a corrective disclosure must "repudiate" specific misstatements. Br. 22. A "corrective disclosure need not be a 'mirror image' tantamount to a confession of fraud," *In re Tenaris S.A. Sec. Litig.*, 493 F. Supp. 3d 143, 164 (E.D.N.Y. 2020), or a "'flashing neon light' with an explicit message stating that" it is "intended to cure an earlier

fraudulent statement." *In re Chicago Bridge & Iron Co. N.V. Sec. Litig.*, 2019 WL 5287980, *23 n.141 (S.D.N.Y. Oct. 18, 2019). Regardless, Defendants' own admissions confirm that ICON's poor earnings were caused by the same facts they misstated and concealed. Defendants expressly attributed the results to "***material headwinds from two large customers***" and reduced biotech activity (¶759)—while they had previously ***denied any material changes*** to ICON's relationships and claimed that biotech RFPs had increased. ¶¶476, 483, 488, 495, 504. These disclosures thus revealed "that the prior problems Defendants had seemingly denied had actually already transpired and existed." *In re AppHarvest Sec. Litig.*, 684 F. Supp. 3d 201, 274 (S.D.N.Y. 2023).

Second, Defendants' claim that the issues exposed in October 2024 did not exist when prior statements were made (Br. 22) ignores the pleading. ICON's earnings miss was "foreseeable" to Defendants, *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 173 (2d Cir. 2005), because they knew that ICON's RFPs had continuously declined since 2023 and that ICON had suffered material cuts from three large pharma customers by early 2024. ¶¶145-47, 452-59. These facts made clear to Defendants that when existing studies ended, ICON would have fewer new studies to replace them, causing earnings to decline. In any event, whether a stock drop was "due to 'new events' . . . constitutes an issue of fact" that cannot be resolved now. *Freudenberg*, 712 F. Supp. 2d at 203.

Third, Defendants wrongly argue that the October 2024 results reflected the materialization of "disclosed risk[s]." Br. 23. None of Defendants' boilerplate warnings disclosed the then-existing negative facts, including the cuts by Pfizer and other large customers and ICON's declining RFPs. If anything, they further misled investors by characterizing risks as merely hypothetical when they had ***already*** materialized. *Set Cap. LLC v. Credit Suisse Grp. AG*, 996 F.3d 64, 85 (2d Cir. 2021) ("cautionary words about future risk cannot insulate from liability an issuer's failure to disclose that the risk has, in fact, materialized"); *Tenaris*, 493 F. Supp. 3d at 161 (use of "hypothetical

qualifier" to discuss risks that had materialized "is actionable deceit"). Underscoring the inadequacy of any purported warnings, analysts exclaimed that "the magnitude of the [earnings] miss was ***surprising***" and called "the drop-off in [large pharma] spending" a "***new*** dynamic." ¶762.

January 14, 2025. On January 14, 2025, ICON announced poor 2025 guidance driven by "cautious spending from biopharma customers," higher biotech cancellations, and "a headwind from our top two customers." ¶¶763-67. ICON's share price declined another 8.1%. ¶766. Defendants' assertion that these disclosures "did not correct any challenged statements" (Br. 23) again fails because there is no mirror-image requirement. *Supra* at 34. Nor did the disclosures "address[] only ICON's predictions for future performance." Br. 23. Cutler stated—in the past tense—that ICON's "trial activity ***has been impacted*** by cautious spending" in biotech and large pharma and cited higher biotech cancellations in the prior quarter (4Q24). ¶¶764-65. Balfe said ICON did not have "a huge update" on its two largest customers, confirming the sustained impact of their cuts. ¶468. And Defendants' assertion that the newly-revealed facts were "consistent with ICON's October 2024 disclosures" (Br. 23) is false—the supposed "October 2024" disclosure Defendants cite is actually from ***January 14, 2025***. Dkt. 91-20.

In all events, courts have held that "forward-looking" guidance revisions were corrective. *City of Warren Police & Fire Ret. Sys. v. World Wrestling Entm't Inc*., 477 F. Supp. 3d 123, 138 (S.D.N.Y. 2020) (sustaining "lower-than-expected income projections" as corrective disclosure).[17] The facts Defendants had concealed—biotech weakness and large customers' material cuts—drove ICON's poor guidance and thus "bear upon the loss suffered." *Lentell*, 396 F.3d at 175.

October 22-23, 2025. On October 22, 2025, after market close, ICON reported elevated

[17] In *Janbay v. Canadian Solar, Inc*., 2012 WL 1080306 (S.D.N.Y. Mar. 30, 2012), the plaintiffs "concede[d]" that the projections were unrelated to the alleged false statements. *Id.* at *15.

cancellations of $901 million in 3Q25—the delayed result of ICON's failure to timely recognize cancellations of stale awards. ¶¶768-70. ICON's share price declined 6.5%. ¶770.

Defendants assert that this disclosure "concerned cancellations in Q3 2025" and "said nothing of" prior misstatements about ICON's book-to-bill ratio and business wins. Br. 24. That is wrong because—as Balfe admitted, yet Defendants ignore—the cancellations reported in 3Q25 reflected older, long-delayed studies that ICON had kept in its backlog even though the studies "were canceled prior to commencing enrollment." ¶¶768-69. These canceled studies had inflated ICON's backlog and book-to-bill ratio for years. ¶¶188-92. When ICON finally removed them, cancellations rose "above historical norms," and ICON's stock price dropped. ¶¶769-70. Indeed, Barclays tied the high cancellations to "an intended backlog flush ***over a period of time***[.]" ¶769.

III. THE SAC IS NOT A "PUZZLE PLEADING"

Defendants' "puzzle pleading" argument fails. The SAC does not require "the Court to sort out the alleged misrepresentations and then match them with the corresponding adverse facts." *In re Alcatel Sec. Litig.*, 382 F. Supp. 2d 513, 534 (S.D.N.Y. 2005). Instead, the bases for falsity are specified directly after each challenged statement. ¶¶476-598. *See Kusnier*, 639 F. Supp. 3d at 368 (rejecting puzzle pleading argument where plaintiffs "identified specific statements (and added emphasis where challenged assertions are embedded in longer passages) and followed each by a list of reasons why those statements are allegedly misleading"). The fact that the SAC's narrative and FE sections (starting at ¶89 and ¶636, respectively) provide further factual detail regarding scienter, materiality, and the background of the FEs (as is routine) hardly presents a "puzzle."[18]

[18] Defendants' cases are inapposite. In *Alcatel*, 382 F. Supp. 2d at 534, the plaintiff failed to specify "what portion of each quotation" was false. In *Wenger v. Lumisys, Inc.*, 2 F. Supp. 2d 1231, 1243 (N.D. Cal. 1998), the complaint merely provided "a three-page laundry list of reasons why all the statements were allegedly false." In *Petersen v. Stem, Inc.*, 2024 WL 4602710 (N.D. Cal. Aug. 30, 2024), the complaint did not provide the grounds for falsity after each statement. *Id.* at *4-5.

IV. THE SAC PLEADS MATERIAL MISSTATEMENTS

A statement is actionable when it is "either untrue outright or misleading by virtue of what it omits to state." *Vivendi*, 838 F.3d at 239. "[O]nce a company speaks on an issue or topic, there is a duty to tell the whole truth," "complete[ly] and accurate[ly]." *Meyer v. JinkoSolar Hold. Co.*, 761 F.3d 245, 250 (2d Cir. 2014). "'[H]alf-truths'—literally true statements that create a materially misleading impression—will support claims for securities fraud." *Set Cap.*, 996 F.3d at 85.

A. Financial Misstatements

Defendants concede material falsity in light of ICON's admissions. ¶¶533-98.

B. Misstatements about ICON's Purportedly Increasing RFPs

Defendants touted continuous increases in ICON's RFPs, even as (1) the RFPs consistently decreased, and (2) many were fake. ¶¶476-79, 481-83, 485-86, 488-90, 492-94, 502, 508.

1. The RFP Statements Are Not Puffery

Defendants' specific, quantitative RFP statements are not puffery. Defendants challenge only snippets of eight statements (¶¶476, 479, 481, 483, 485, 489, 494, 508) by cherry-picking words like "improvement" and "positive." Br. 25. But in the full statements, Defendants made specific, concrete assertions that ICON's RFPs had increased. For example, Cutler did not merely assert "constructive positive RFP numbers," but quantified a "high single digits" increase "for the last 2 quarters" across "all the segments." ¶481. And Defendants specifically asserted that RFPs had increased "in the high single digits on a trailing 12-month basis." ¶479; *see also* ¶¶476, 483, 485, 489, 494, 508. Such "misrepresentations of existing facts" are not puffery. *Novak*, 216 F.3d at 315. Falsity is readily measured by an "objective, black-and-white standard," *Virtu*, 770 F. Supp. 3d at 501, because ICON's own internal documents show RFPs had declined. ¶¶145-47.

Defendants cite no case holding that such ***quantitative*** misstatements of existing fact are puffery. Instead, Defendants argue that their misstatements were "immaterial" because ICON

purportedly "disclosed" that RFPs "can be volatile." Br. 26. But Defendants fail to show, as required, that the misstatements "are so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance." *Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 162 (2d Cir. 2000). Analysts repeatedly inquired about ICON's RFPs, and Defendants specifically stated that they had increased. Generic, hypothetical disclaimers cannot "cure the alleged falsity" of those misstatements. *Synchrony*, 988 F.3d at 168.[19] Defendants also ignore that Cutler said "***one quarter*** . . . is again unreliable and can be volatile. But I think ***on a trailing 12-month in the mid- to high-single-digits***, I think that's a very positive sort of environment for us." Dkt. 91-11 at 2. Thus, Cutler ***affirmed*** the reliability of the same trailing 12-month metric that Defendants repeatedly misstated. ¶¶479, 485-86, 489, 492-93, 502.

2. The RFP Statements Are Materially False

Overall RFPs. The quarterly emails to Cutler in 2023 calling out ICON's decline in RFPs (¶¶145-47, FE-7) directly contradict Defendants' statements—including Cutler's claims of a "sequential improvement" in RFPs in the first two quarters of 2023 and "high single digits" growth "on a trailing 12-month basis" in October 2023. ¶¶476-79, 481-82. Defendants' responses fail.

First, Defendants' assertion that FE-7 "does not challenge any of the stated [RFP] numbers" (Br. 26) is wrong. The emails showed declining RFPs, while Cutler publicly stated the opposite. At the time of seeing the emails, FE-7 recognized that they ***contradicted*** Cutler's public statements that RFPs had increased. ¶643(ii). And while FE-7 worked on "large pharma" proposals (Br. 26), the emails said RFPs were declining across the board, not just in large pharma (¶146).

Second, Plaintiffs provide "sufficient facts" about the emails, "who reviewed them, and the

[19] *Emps.' Ret. Sys. of the City of Baton Rouge & Par. of E. Baton Rouge v. MacroGenics, Inc.*, 61 F.4th 369, 386-87 (4th Cir. 2023), involved an ongoing clinical trial that "could still fail." Here, Defendants falsely claimed RFPs had increased in ***prior*** periods.

issues they addressed to satisfy . . . particularity[.]" *Celestica*, 455 F. App'x at 14. The emails were sent near each quarter-end in 2023, typically from ICON's head of sales, copied Cutler, and sometimes were sent by Cutler himself. ¶¶145-47. They indicated that ICON's RFPs were declining across the board, urged employees' full attention to each RFP given their diminishing number, and quantified the gap between ICON's current numbers and target, indicating that ICON needed to "book X amount more." *Id.*

Defendants respond by raising premature factual disputes. For example, Defendants assert that FE-7 does not identify the precise amount of decline (Br. 26), but ***any*** decline squarely contradicts Cutler's public statements that RFPs had ***increased*** by "high single digits." ¶¶479, 481, 486. FE-7 also specified that the emails to Cutler included ICON's current RFP numbers. ¶¶145-46. Defendants' effort to question the emails' "time period" and "when in 2023 RFPs were declining" (Br. 26) fails, since (1) the emails reported declines each quarter in 2023, while (2) Cutler falsely claimed RFP increases ***every quarter*** in 2023 (¶¶476-79, 481-82, 486). *See, e.g.*, *Shenwick v. Twitter, Inc.*, 282 F. Supp. 3d 1115, 1137 (N.D. Cal. 2017) (rejecting argument "that [p]laintiff cannot allege precisely *when* the ratio declined" because plaintiff's allegations "give rise to the inference" that the "ratio was declining during the Class Period") (emphasis in original).

Third, while FE-7 left ICON in November 2023, at minimum, FE-7's information supports falsity for Defendants' statements that RFPs had increased through then. ¶¶476-79, 481-82.

Biotech RFPs. It is undisputed that ICON's biotech RFPs ***declined*** "every quarter during 2023 and through fall 2024"—by about 6% per quarter, or ***40%*** total—and "did not increase at any point" through September 2024. ¶139 (FE-1). Defendants pivot to three unconvincing arguments.

First, Defendants' assertion that "nearly all" of their misstatements only said ICON's biotech RFPs increased "***at a moment*** during the quarter" (Br. 27) is wrong. Defendants expressly

touted quarterly and trailing 12-month increases in biotech RFPs, falsely claiming that:

- In October 2023, RFPs had increased "for the last 2 quarters" by "high single digits" (¶481) and a "significant kind of uptick . . . certainly has persisted" into 3Q and 4Q23 (¶483);
- In March 2024, RFPs increased "mid-single digits [on] a trailing 12-month basis" (¶492);
- In July 2024, biotech RFPs were up "on a trailing 12-month and sequential basis." ¶502.

Defendants' further claims of an "uptick" or "pickup" in biotech RFPs (*e.g.*, ¶¶476, 488) were also false because there was no "uptick." Instead, there was a continuous decline. ¶139.

Second, Defendants' assertion that the biotech RFP decline somehow "does not contradict" their public statements (Br. 27) makes no sense. Defendants repeatedly said biotech RFPs had ***increased*** (by up to "high single digits") when they actually ***declined*** about 6% each quarter.

Third, Defendants' attacks on FE-1's basis for knowledge fail. FE-1 had ample basis from multiple independent sources to know that ICON's biotech RFPs were continuously declining:

- FE-1 attended quarterly meetings—with Brennan, Balfe, and sometimes Cutler—where declining biotech RFPs ***in 2023 and 2024*** were shown. ¶637(iv).
- FE-1 saw Salesforce reports on "how many open RFPs were in the pipeline" and reviewed "open and closed RFPs" at weekly meetings. ¶637(v)(a)-(b).
- FE-1 personally tracked RFPs that covered over half of ICON's full-service biotech work and saw that they declined from nearly 50 per month by 2022 to the low 30s per month by 2024. ¶637(iv)(e). These RFPs showed a year-over-year decline in 2023. *Id.*

3. The RFP Statements Are Materially Misleading

Defendants' RFP statements were also materially misleading because, having chosen to tout ICON's RFP growth, Defendants were obligated to "tell the whole truth," *JinkoSolar*, 761 F.3d at 250, that many of the RFPs were fake or duplicative and thus "had no prospect of translating into new business for ICON" (¶148)—facts that undermined the purported RFP growth itself.

First, up to ***40%*** of ICON's RFPs were fake and issued only for price discovery. ¶¶149-50 (FE-7). While Defendants try to downplay FE-7's identification of 40% of ICON's large pharma

RFPs as fake, Cutler himself admitted that up to 30% of ICON's overall RFP dollars were "canceled before they even get to a contracting point." ¶149. These fake RFPs proliferated during the Class Period: they increased towards the end of FE-7's tenure (November 2023), and in 1Q24, ICON executive Smyth admitted that sponsors were issuing RFPs to twice as many CROs, driving a 50% reduction in ICON's win rate. ¶¶150-51, 258 (FE-2, FE-3, FE-7, FE-15). Contrary to Defendants' assertion that "ICON had no way of knowing" that RFPs were issued only for price discovery (Br. 29), sponsors told ICON directly and issued multiple RFPs for the same study (¶¶150-51, FE-2, FE-7), and Cutler admitted that he knew up to 30% were canceled (¶149).

Second, ICON bid on several $30 to $50 million BARDA-funded studies where sponsors issued three or four duplicative RFPs per study. ¶152 (FE-1). Defendants' improper comparison of these duplicative RFPs to ICON's purported "over 1,000 studies each year with revenue of over $8 billion" (Br. 29) is based on extrinsic materials that cannot be considered. *AECOM*, 19 F.4th at 107. In any event, the duplicative RFPs (at up to $50 million each) added up to $150 million per study, and thus inflated ICON's RFPs by hundreds of millions of dollars. *See In re Grab Holdings Ltd. Sec. Litig.*, 2024 WL 1076277, at *17 (S.D.N.Y. Mar. 12, 2024) ("[A]t the pleading stage, Plaintiffs enjoy the benefit of reasonable inferences rooted in simple computations.").

Defendants barely defend two other categories of misstatements. First, on April 25, 2024, Cutler stated that ICON's "win rate in that biotech space has ***gone up*** over the last quarter or so" and touted "a nice uptick on the win rate." ¶¶497-99. But at a February 2024 town hall, Cutler admitted a ***lower*** biotech win rate, stating that biotech RFPs were not converting to wins at the same rate as in the past. ¶257 (FE-3). Cutler's admission was not limited to ICON's "win rate in Q4 2023," contrary to Defendants' assertion (Br. 31), and demonstrates both falsity and scienter.

Second, on July 25, 2024, Cutler falsely claimed that in Q2 2024, ICON had seen "a

reduction in the number" of biotech study cancellations. ¶503. In truth, ICON's biotech cancellations increased ***every quarter*** from mid-2023 through September 2024, amounting to hundreds of millions of dollars; Cutler received aggregated data on the increasing cancellations and personally attended an April 2024 sales meeting in Florida where they were discussed. ¶¶153-55. FE-1, whose role involved IRT and CSM sales for the "whole company" (¶637) and attended quarterly meetings where Brennan and Balfe presented ICON's increasing biotech cancellations (¶637(vi)), was in a "position" to "possess the information alleged." *Novak*, 216 F.3d at 314.

C. Misstatements about ICON's Large Pharma Customers

Defendants touted ICON's relationships with large pharma customers and denied any serious issues. In truth, three of ICON's largest customer relationships had already collapsed, causing ICON to lose over $500 million. ¶¶156-69, 211-17, 236-41, 246, 266, 270-76.

1. The Large Pharma Customer Statements Are Not Puffery

Defendants again snip words out of context to argue five statements were puffery. Br. 31-32. But each was objectively "verifiable." *Virtu*, 770 F. Supp. 3d at 501. Three statements cited a specific quantitative metric—ICON's purportedly-increasing RFPs (¶¶487, 489-90). The remaining statements are not puffery because they "purported to describe the state of [ICON's large pharma] relationships." *Synchrony*, 988 F.3d at 168. Cutler declared that "***[n]othing has changed***" in the "very stable and very strong demand in the large pharma" space "over the last 12, 18 months," while Brennan claimed that ICON's pharma customers "are ***all*** saying that they're going to increase spending." ¶¶491, 495.

These specific, concrete statements are not puffery. In *Synchrony*, a "concrete," "factual representation" that Synchrony was "not getting any pushback" on underwriting standards was misleading because its largest customer, Wal-Mart, had pushed back. 988 F.3d at 168-69. So too here: contrary to Defendants' statements, large pharma demand had "changed," and large pharma

customers were not "all saying" they would increase spending. *See also Dentsply*, 665 F. Supp. 3d at 284 (statements about "strong" customer relationships "are not mere puffery"). And all five statements were made "in response to direct questions by analysts." *Id.*; *see* ¶¶487, 489-91, 495.

2. Plaintiffs Plead Material Falsity

Defendants ignore that their large pharma statements were outright false—like the false denial of "any pushback" from customers in *Synchrony*, 988 F.3d at 168-69. Again, ICON's large pharma demand had "changed"; ICON's large pharma customers had raised "further concerns" and were not "all saying" they would "increase spending"; and ICON did not maintain "***all*** of the [large pharma] alliances we had before, many of them expanded." ¶¶487, 491, 501.

The statements are also actionable half-truths. Defendants chose to speak about ICON's large pharma customer relationships and thus had "a duty to tell the whole truth," *JinkoSolar*, 761 F.3d at 250, yet concealed that three of ICON's largest relationships had collapsed.[20]

a. Defendants' Duty to Disclose the Customer Losses

A reasonable investor would understand Defendants' statements—which encompassed "all" of ICON's large pharma customers (¶¶491, 501)—to include Pfizer (historically, ICON's largest customer, ¶96), BMS, and the third large customer. By asserting that "[n]othing has changed" and denying "any further concerns" about customers' spending (¶¶230, 254), Defendants put these customers' material spending cuts "in play." *JinkoSolar*, 761 F.3d at 250 n.3. The statements' "context and manner of presentation" confirms the point, *Hain*, 156 F.4th at 139, since analysts probed whether large pharma cuts had affected ICON—the precise issue Defendants concealed. *E.g.*, ¶¶198-201, 227-30, 244-46, 253-55. Defendants' contrary arguments fail.

[20] For the same reason, Defendants' hypothetical risk disclosures about losing large customers are actionably misleading because they "related to a risk that had already transpired." *Virtu*, 770 F. Supp. 3d at 518. Defendants offer no independent challenges to these misstatements. Br. 31 n.21.

First, Defendants argue that their statements cannot be misleading unless they named specific customers. But the omitted facts need not precisely mirror the statement itself. Indeed, the point of a half-truth is that it omits "critical qualifying information"—like a "child telling his parents that he ate dessert [when] he ate the entire cake." *Hain*, 156 F.4th at 138, 143. Defendants' statements about large pharma customers misleadingly omitted the "critical qualifying information" that ICON's relationships with three key large pharma customers had collapsed. *Id.*

To be sure, there is no magic-word requirement to name specific customers. In *Synchrony*, the Second Circuit held that the statement that Synchrony was "not getting any pushback" from customers was misleading even though it did not explicitly name Wal-Mart. 988 F.3d at 168. Likewise, *Wallace v. IntraLinks*, 2013 WL 1907685 (S.D.N.Y. May 8, 2013), held statements about customers' "high level of satisfaction" and "strong market demand" to be misleading although the departing customer was not named, since "the failure to disclose the impending loss of a major customer can render optimistic statements about the company misleading." *Id.* at 7.[21]

Second, Defendants assert that no customer exceeded 10% of ICON's revenue during the Class Period. Br. 33. But there is no bright-line rule of materiality, *see Litwin v. Blackstone Grp., L.P.*, 634 F.3d 706, 717-18 (2d Cir. 2011), and the omitted facts—concerning customers that comprised 18% of ICON's revenue—were plainly material, as discussed below. *Infra* at 46-47.

Third, ICON's generic, hypothetical warnings about losing customers (¶¶510-12) do not "cure" Defendants' specific misstatements, *Synchrony*, 988 F.3d at 168, or "insulate from liability

[21] Defendants' case citations do not change that result. In *In re Tempur Sealy Int'l, Inc. Sec. Litig.*, 2019 WL 1368787 (S.D.N.Y. Mar. 26, 2019), the defendant "remained silent" as to ***ongoing*** "negotiations." *Id.* at *12. *In re Express Scripts Holdings Co. Sec. Litig.*, 773 F. App'x 9, 14 (2d Cir. 2019), and *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 266-67 (2d Cir. 1993), also involved "ongoing" negotiations. In *Schoenhaut v. Am. Sensors, Inc.*, 986 F. Supp. 785 (S.D.N.Y. 1997), the customer's historical sales were accurately reported. *Id.* at 793. Here, Defendants boasted about ICON's large customers ***after*** three key customers made material cuts. ¶¶487, 491, 495, 501.

[Defendants'] failure to disclose that the risk has, in fact, materialized." *Set Cap.*, 996 F.3d at 85. Indeed, they underscore materiality by highlighting the "material adverse effect" of losing even "one" key customer (¶¶510-12)—even as ICON had lost material business from three of its largest.

Finally, Balfe's statement that ICON had retained "***all*** of the alliances we had before" was false and misleading given the 85% reduction in Pfizer's new Phase 2 and 3 business (¶501), regardless of Defendants' improper factual assertion that ICON kept a 15% sliver (Br. 34).

b. Defendants Omitted Specific, Highly Material Facts

Unable to escape their disclosure duties, Defendants resort to arguing that Plaintiffs' falsity allegations are too generalized (Br. 34-39)—although they do not dispute that ICON lost significant business from Pfizer, BMS, and the third customer. These arguments also fall short.

First, Defendants question whether Plaintiffs "quantify any alleged loss of business." Br. 35. This ignores that "plaintiffs need not prove their entire case within the confines of the complaint." *Synchrony*, 988 F.3d at 161. In any event, the SAC quantifies substantial losses:

- In late 2023, ICON lost 85% of Pfizer's Phase 2 and 3 business and 100% of its Phase 1 business (¶¶159-62), and by early 2024, its Pfizer win rate dropped to near zero (¶164);
- By early 2024, Pfizer, BMS and a third large customer shifted their remaining work from nearly 100% FSO to nearly 100% FSP. These customers' shift to FSP slashed ICON's margins up to 35%—erasing up to ***$500 million***, ***or 21%, of ICON's annual profits***. ¶215.

There is a "substantial likelihood that a reasonable shareholder would consider" these omitted facts "important." *Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988); *see Hutchins*, 2012 WL 1078823, at *2, 5-6 ("misleading" to omit that customer comprising 18% of sales "was soliciting competitive bids"). Indeed, when ICON admitted an earnings shortfall "from two of our largest customers," its stock dropped 21%, and analysts called out the customers' "***material, outsized impact*** on ICON's performance." ¶¶756-62.

The $500 million profit impact is not a "hypothetical." Br. 37 & n.26. ICON's own

disclosures indicate that 18% of revenue was attributable to the three customers, and Plaintiffs allege their shift to FSP and 35% margin reduction based on reliable FE accounts. ¶215. Standing alone, the 35% margin reduction decreased ICON's profits by up to $500 million. *Id.*

Defendants also argue that ICON kept a 15% sliver of Pfizer's new Phase 2 and 3 business (Br. 35), but their effort to spin this as an ***improvement*** for ICON is an improper attempt to "go beyond the pleadings." *Signet*, 2018 WL 6167889 at *14. ICON lost material business from Pfizer, resulting in 35% lower margins and a win rate near zero. ¶¶162-64, 215, 237. And the fact that ICON lost at least 85% of Pfizer's Phase 2 and 3 studies and all of its Phase 1 studies corroborates—and certainly does not "undermine" (Br. 35)—Cutler's internal admission that ICON lost the Pfizer contract, which must be accepted as true. *Tellabs*, 551 U.S. at 322.[22]

Second, Defendants dispute the FEs' "visibility into ICON's overall financial condition." Br. 36. But each FE is described "with sufficient particularity to support the probability that a person in [their] position . . . would possess the information alleged." *Novak*, 216 F.3d at 314.

To start, Defendants ignore two key Company-wide allegations. FE-4—a Senior Finance Manager in Ireland, where ICON is headquartered—confirmed that ICON experienced a decrease in business from Pfizer and all other large customers (with only two exceptions) in early 2023 through 2024. ¶640(v). FE-4 knew this from seeing billing and revenue information for ICON's top 5-10 customers (*id.*); Defendants do not dispute that FE-4 "would possess the information alleged." *Novak*, 216 F.3d at 314. Moreover, in February 2024, FE-3 personally saw Cutler present

[22] Defendants' cases (Br. 35-36) are misplaced. In *Metzler Asset Mgmt. GmbH v. Kingsley*, 305 F. Supp. 3d 181 (D. Mass. 2018), a sales decline was wholly unquantified, *id*. at 214-16; here, Plaintiffs quantified a $500-million-plus impact and ICON's largest customer relationships had collapsed. ¶¶487, 501. In *Pyramid Holdings, Inc. v. Inverness Med. Innovations, Inc.*, 638 F. Supp. 2d 120 (D. Mass. 2009), FEs did not show "major integration problems" without a reference point for "what is normal." *Id.* at 127-28. *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981 (9th Cir. 2009), simply criticized two FEs who were not employed during the class period. *Id.* at 996.

a slide deck that showed ICON had missed its revenue and new business award targets. ¶639(ii).

FEs also corroborated the specific cuts by major customers—and their material impact:

- FE-2 ran projects for Pfizer and described ICON's loss of new Pfizer studies before Christmas 2023, Pfizer's $50 million budget cut in January 2024, and the shift to FSP. ¶638(vi)-(x). FE-2 saw financial information, including revenue and margins, from working on decks used for monthly meetings with Cutler, Brennan, and Balfe. ¶638(xi).

- FE-1—who worked with Pfizer for over a decade—confirmed that ICON's Pfizer win rate dropped from 50% to near zero by early 2024. ¶¶96, 157, 164. FE-1 knew about Pfizer's declining business from participating in monthly business development calls to review Salesforce reports that included Pfizer's backlog, awards, and pipeline. ¶637(ii)(c).

- FE-3 attended the February 2024 town hall where Cutler admitted that ICON had lost the Pfizer contract and was no longer a Pfizer preferred partner and reported that BMS did not award ICON any new business from January 2023 through November 2024. ¶639(iii).

Further, Defendants' assertion that no FEs could speak to ICON's profit margins ignores the allegations. FE-4—whom Defendants ignore—saw financial information for ICON's largest customers and confirmed that ICON had previously earned nearly 50% margin on Pfizer work (¶640(v)(b)), aligning with FE-2's description of 40-50% margins but only 15% for FSP (¶638(viii)(a)). Similarly, FE-9, who headed a full-service division, reported that FSO projects had margins of 40% to 50%, while FSP margins were closer to 15%. ¶645(iv)(b). These corroborating accounts confirm that ICON's business losses had a material impact. And none of these allegations are "hearsay": the FEs had direct knowledge of the cuts' impact from their own work.

Third, Defendants' assertion that ICON's material customer losses "are untethered to the challenged statements" is addressed above. *Supra* at 44-45.

Fourth, Defendants offer a feeble truth-on-the-market argument that they "acknowledged" that "Pfizer might not be ICON's largest customer anymore." Br. 38. To the contrary, Defendants explicitly declined to "comment on specific customers" and only vaguely suggested that there "might" be "others in the mix." *Id.* That "tepid warning" was far from "enough to put investors on notice" that cuts by Pfizer and other clients had materially impacted ICON. *Sherman v. Abengoa,*

S.A., 156 F.4th 152, 168 (2d Cir. 2025). Defendants also repeatedly ***denied*** any significant impact and insisted that ICON had kept "***all*** of the alliances we had before." *E.g.*, ¶¶29, 230-32, 244, 254, 263, 285-87. Defendants thus fall far short of showing that corrective information was conveyed "with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by the alleged misstatements." *Ganino*, 228 F.3d at 167; *see Hain*, 156 F.4th at 142 (rejecting truth-on-the-market argument based on "generic" language).

Finally, whether Defendants "falsely reported" ICON's "amount of business" from "any particular customer" or "the large pharma sector overall" (Br. 39) is a red herring because Defendants inflated ICON's financial performance in violation of GAAP to cover up the fact that ICON's largest customer relationships had already collapsed.

D. Misstatements about ICON's Business Wins and Inflated Book-to-Bill Ratio

ICON's business wins and book-to-bill ratio were false and misleading for three reasons:

First, these metrics were inflated by awards without signed contracts, which were often canceled. ¶¶177-83. Defendants' improper (and unsupported) assertion that "these metrics do not require signed contracts" (Br. 39-40) fails, since it is error to "rel[y] on factual allegations contained in legal briefs." *AECOM*, 19 F.4th at 107. In any event, Defendants did not tell investors that ICON booked unsigned "wins." To the contrary, they claimed ICON had "***always been relatively conservative*** in how we book our business" (Dkt. 91-7 at 6), indicating that ICON only booked signed contracts. And the Court is "required to credit" Plaintiffs' "plausible reading of the statements, not Defendants' competing explanation." *Dentsply*, 665 F. Supp. 3d at 287. The SAC also quantifies when and how much these metrics were inflated: ICON's actual book-to-bill ratios for 2023 and 2024 were 0.9 or lower—well below ICON's stated ratios, such as 1.20 in 2Q23. ¶¶182-83. That difference is highly material: the 0.3 inflation indicates an extra ***$600 million*** in purported net business wins in 2Q23 alone. ¶183. FE-1 and FE-9 also personally observed many

"awards" in Salesforce without signed contracts—a trend confirmed by a third ICON employee who quantified their material impact on ICON's book-to-bill ratio. ¶¶177-83.

Second, ICON's business wins and book-to-bill ratio were further inflated because Cutler directed employees to book awards at larger dollar amounts than sponsors had approved—a practice Defendants do not dispute. ¶¶184-85. Defendants' assertion that FE-7 does not specify "where or when this occurred" (Br. 41) is false: FE-7 was copied on Cutler's emails—and sometimes stood in Cutler's office—when Cutler gave the directions, and FE-7 confirmed that ICON used this practice in 2Q23 and 3Q23. ¶¶184, 186. Defendants' efforts to narrow FE-7's role cannot expunge these facts. And while exact quantification is not required, FE-7 noted that Cutler's inflated bookings boosted ICON's awards by at least $20-$30 million per quarter. ¶187. The inflated bookings impacted ICON's public reporting: the awards were booked in Salesforce (¶643(i)), and FE-1 tied the Salesforce data to ICON's public financial disclosures (¶637(vii)).

Third, per Cutler's policy, ICON kept nearly $3 billion in canceled "awards" in its backlog after customers told ICON that no revenue was forthcoming—which materially inflated ICON's backlog, book-to-bill ratio, and business wins. ¶¶188-92. Defendants argue that backlog is a "non-GAAP number" (Br. 43), but calling a key metric "non-GAAP" doesn't excuse fraud. It was inherently misleading to inflate ICON's backlog and other key metrics by including "awards" that ICON knew had ***already been canceled***. Defendants make it sound like "ICON disclosed" that its "original policy" was to include these canceled studies (Br. 42), but the only documents they cite (Dkts. 91-29, 91-30) are ***post-Class Period*** materials. Defendants never disclosed this purported "policy" ***during*** the Class Period. Instead, they touted the inflated backlog figure while concealing that $2.9 billion of the awards had already been canceled.

CONCLUSION

The motion should be denied. Alternatively, Plaintiffs respectfully request leave to amend.

Dated: November 2, 2026

Respectfully submitted,

KESSLER TOPAZ MELTZER & CHECK, LLP

/s/ *Matthew L. Mustokoff*
Matthew L. Mustokoff
Margaret E. Mazzeo*
Richard A. Russo*
Lyndsey Campbell*
280 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
mmustokoff@ktmc.com
mmazzeo@ktmc.com
rrusso@ktmc.com
lcampbell@ktmc.com

Counsel for Lead Plaintiffs and Named Plaintiff Plumbers Local Union No. 690 Pension Fund and Lead Counsel for the Putative Class

pro hac vice

BLEICHMAR FONTI & AULD LLP

/s/ *Joseph A. Fonti*
Joseph A. Fonti
Nancy A. Kulesa*
Evan A. Kubota
Brandon A. Slotkin
300 Park Avenue, Suite 1301
New York, New York 10022
Telephone: (212) 789-1340
Facsimile: (212) 205-3960
jfonti@bfalaw.com
nkulesa@bfalaw.com
ekubota@bfalaw.com
bslotkin@bfalaw.com

Counsel for Lead Plaintiffs and Named Plaintiff Macomb County Retiree Health Care Fund and Lead Counsel for the Putative Class

CLARK HILL
Ronald A. King*
215 South Washington Square, Suite 200
Lansing, Michigan 48933
Telephone: (517) 318-3015 (office)
Telephone: (517) 449-2860 (mobile)
rking@clarkhill.com

Additional Counsel for Plaintiff Police and Fire Retirement System of the City of Detroit

VMT LAW
Thomas C. Michaud
1 Woodward Ave. Suite 1504
Detroit, MI 48226
Telephone: (313) 578-1200
tmichaud@vmtlaw.com

Additional Counsel for Plaintiff Macomb County Retiree Health Care Fund